6–8–06 Thursday
Vol. 71 No. 110 June 8, 2006

Pages 33147–33374

Federal Register

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.archives.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.

2. The relationship between the Federal Register and Code of Federal Regulations.

3. The important elements of typical Federal Register documents.

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

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

WHEN: Tuesday, June 13, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

Contents

Federal Register

Vol. 71, No. 110

Thursday, June 8, 2006

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8028.....33373

6 CFR
25.....33147

7 CFR
301.....33168
319.....33172
979.....33178
1980.....33181
4279.....33181

Proposed Rules:
250.....33344

10 CFR
170.....33190
171.....33190

11 CFR
33190

14 CFR

Proposed Rules:
39 (5 documents)
109 .....33260, 33262, 33264, 33267, 33270

15 CFR
736.....33211
744.....33211
902.....33211

19 CFR
101.....33235

21 CFR
520 (2 documents) 33236, 33237

22 CFR
62.....33237

26 CFR
1.....33239

Proposed Rules:
1.....33273

27 CFR
9.....33239

30 CFR
925.....33243
944.....33249

Proposed Rules:
924.....33273

36 CFR
1151.....33254

49 CFR
1548.....33254

50 CFR
36.....33255
648.....33211

Rules and Regulations

Federal Register
Vol. 71, No. 110
Thursday, June 8, 2006

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 25

[USCG–2003–15425]

RIN 1601–AA15

Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This final rule implements Subtitle G of Title VIII of the Homeland Security Act of 2002—the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (''the SAFETY Act'' or ''the Act''), which provides critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for providers of ''qualified anti-terrorism technologies.'' The purpose of this rule is to facilitate and promote the development and deployment of anti-terrorism technologies that will save lives. The final rule amends the interim rule to incorporate changes resulting from the comments.

DATES: This final rule is effective July 10, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–15425 or RIN 1601–AA15, to the Docket Management Facility at the Department of Transportation, by *one* of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking portal: *http://www.regulations.gov. Instructions:* Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–15425 and are available for inspection or copying from the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, contact the Director of the Office of SAFETY Act Implementation, Science and Technology, Department of Homeland Security, telephone 703–575–4511. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION: Capitalized terms appearing in this preamble shall have the meanings ascribed to such terms in § 25.2 of this final rule. This section is organized as follows:

Table of Contents

I. Analysis of the SAFETY Act

A. Background

Congress was clear, both in the text of the SAFETY Act and in the Act's legislative history, that the SAFETY Act can and should be a critical tool in expanding the creation, proliferation and use of anti-terrorism technologies. On July 11, 2003, the Department of Homeland Security (''DHS'') published its first proposed rules for implementation of the SAFETY Act (Notice of Proposed Rulemaking entitled ''Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)'' (68 FR 41420), laying out its fundamental interpretive approach to the Act and requesting comment. On October 16, 2003, an interim rule governing implementation of the SAFETY Act was promulgated making certain changes to the proposed rules but again embracing many of the fundamental interpretive approaches proposed several months earlier (68 FR 59684). Subsequently, the Department published detailed procedural mechanisms for implementation of the Act and announced additional details relating to the process for filing and adjudicating applications.

The SAFETY Act program is now in its third year, and the Department has a substantial record of program performance to evaluate. While the Department concludes that the Department's core legal interpretations of the Act's provisions are fundamentally sound, experience in administering the program has demonstrated that certain of the procedural processes built to administer the Act can be improved. Shortly after being sworn in, Secretary of Homeland Security Michael Chertoff stated: ''There is more opportunity, much more opportunity, to take advantage of this important law, and we are going to do that.'' In the past year, the Department has instituted process improvements which have yielded positive initial results. In the first sixteen months of the SAFETY Act program, from October 2003 to February 2005, six technologies were designated Qualified Anti-Terrorism Technologies under the SAFETY Act. By contrast, since March 2005, 68 additional technologies have received SAFETY Act protections. This is a greater than ten-fold increase in SAFETY Act approvals in the past 14 months. In addition, the Department has instituted a program to run SAFETY Act reviews in parallel with key anti-terrorism procurement processes.

Despite these recent improvements, further changes to Department rules and processes are necessary to ensure that the program achieves the results that Congress intended. With this final rule, the Department:

1. Further clarifies the liability protections available under the SAFETY Act;

2. States with greater specificity those products and services that are eligible for Designation as a Qualified Anti-Terrorism Technology;

3. Clarifies the Department's efforts to protect the confidential information, intellectual property, and trade secrets of SAFETY Act applicants;

4. Articulates the Department's intention to extend SAFETY Act liability protections to well-defined categories of anti-terrorism technologies by issuing ''Block Designations'' and ''Block Certifications;''

5. Discusses appropriate coordination of SAFETY Act consideration of anti-terrorism technologies with government procurement processes; and

6. Takes other actions necessary to streamline processes, add flexibility for applicants, and clarify protections afforded by the SAFETY Act.

While this rule is indeed final, the Department remains committed to making future changes to the implementing regulation or to any element of the program that interferes with the purposes of the SAFETY Act. To that end, the Department seeks further comment on the specific issues identified herein.

Section I of this preamble reviews the Department's longstanding legal interpretation of the SAFETY Act's provisions and reviews the Act's statutory and regulatory history. Section II addresses regulatory changes and outlines additional improvements in SAFETY Act processes and procedures that the Department will implement in the coming months that will improve administration of the Act. Section III addresses this rule's compliance with other regulatory requirements.

B. Statutory and Regulatory History and Analysis

As part of the Homeland Security Act of 2002, Public Law 107–296, Congress enacted liability protections for providers of certain anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of ''risk management'' and a system of ''litigation management.'' The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or sellers of anti-terrorism technologies from developing, deploying, and commercializing technologies that could save lives. The Act thus creates certain liability limitations for ''claims arising out of, relating to, or resulting from an act of terrorism'' where Qualified Anti-Terrorism Technologies (as such term is defined in 6 CFR 25.2) have been deployed.

Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in Federal court for suits against the sellers of ''Qualified Anti-Terrorism Technologies'' (§ 863(a)(2));
- A limitation on the liability of sellers of Qualified Anti-Terrorism Technologies to an amount of liability insurance coverage specified for each Qualified Anti-Terrorism Technology, provided that sellers cannot be required to obtain any more liability insurance coverage than is reasonably available ''at prices and terms that will not unreasonably distort the sales price'' of the technology (§ 864(a)(2));
- A prohibition on joint and several liability such that sellers can only be liable for the percentage of noneconomic damages that is proportionate to their responsibility (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));
- The reduction of a plaintiff's recovery by the amount of collateral source compensation, such as insurance benefits or government benefits, such plaintiff receives or is eligible to receive (§ 863(c)); and
- A rebuttable presumption that sellers are entitled to the ''government contractor defense'' (§ 863(d)).

The Secretary's designation of a technology as a Qualified Anti-Terrorism Technology (QATT) confers each of the liability protections identified above except the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional ''Certification'' by the Secretary under section 863(d) of the Act. In many cases, however, SAFETY Act Designation and Certification are conferred contemporaneously.

As noted above, the Designation of a technology as a Qualified Anti-Terrorism Technology confers all of the liability protections provided in the SAFETY Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a Qualified Anti-Terrorism Technology, although the Act sets forth the following criteria for consideration of a particular technology: (1) Prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. It is not required that applicants satisfy all of the preceding criteria to receive SAFETY Act protections. Moreover, these criteria are not exclusive—the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary depending upon the particular technology at issue and the threats that the particular technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is

not required to reject an application that fails to meet one or more of the criteria. Rather, the Secretary may conclude, after considering all of the relevant criteria and any other relevant factors, that a particular technology merits Designation as a Qualified Anti-Terrorism Technology even if one or more particular criteria are not satisfied. The Secretary's considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies.

The SAFETY Act applies to a broad range of technologies, including products, services, and software, or combinations thereof, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits Designation. The Secretary may designate a system containing many component technologies (including products and services) or may designate specific component technologies individually. Further, as the statutory criteria suggest, a Qualified Anti-Terrorism Technology need not be newly developed—it may have already been employed (*e.g.* ''prior United States government use''') or may be a new application of an existing technology.

The SAFETY Act provides that, before designating a Qualified Anti-Terrorism Technology, the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the anti-terrorism technology at issue. Under section 864(a), the Secretary must certify that the coverage level is appropriate ''to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.'' § 864(a)(1). While the Act provides the Secretary with significant discretion in this regard, the Secretary may not require the Seller to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market. Likewise, the Secretary may not require a Seller to obtain insurance, the cost of which would unreasonably distort the sales price of Seller's anti-terrorism technologies. § 864(a)(2). Although the Secretary may permit the Seller to self-insure, he may not require the Seller to self-insure if appropriate insurance is unavailable. § 864(a)(2).

The Secretary does not intend to set a ''one-size-fits-all'' numerical requirement regarding required insurance coverage for all technologies that have been designated as QATTs. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including without limitation the following: (i) The amount of insurance the Seller has previously maintained; (ii) the amount of insurance maintained by the Seller for other related technologies or for the Seller's business as a whole; (iii) the amount of insurance typically maintained by Sellers of comparable technologies; (iv) data and history regarding mass casualty losses; and (v) the particular technology at issue. Once the Secretary concludes the analysis regarding the appropriate level of insurance coverage (which typically will include discussions with the Seller), the Secretary will provide a description of the coverage appropriate for the particular Seller of a Qualified Anti-Terrorism Technology to maintain. The Seller's insurance certification may identify an appropriate amount of insurance coverage available under a comprehensive general liability policy or other liability insurance program. The insurance certification also may specify that the amount of insurance required to be maintained will be the amount of coverage available under the terms of the specific policy at issue. If, during the term of the Designation, the Seller desires to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so and the Secretary is authorized to use the discretion described above to adjust insurance requirements appropriately. If the Seller fails to maintain coverage at the certified level, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. The Department recognizes that the market for insurance might change over time and seeks further comment on how the Department can and should address changes in insurance availability.

C. Government Contractor Defense

The SAFETY Act creates a rebuttable presumption that the government contractor defense applies to those Qualified Anti-Terrorism Technologies ''approved by the Secretary'' in accordance with certain criteria specified in § 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under § 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all ''approved'' Qualified Anti-Terrorism Technologies for claims brought in a ''product liability or other lawsuit'' and ''arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies * * * have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' *Id.* While the government contractor defense is a judicially-created doctrine, section 863's express terms supplant the requirements in the case law for the application of the defense. First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to those who sell to State and local governments or the private sector. *See* § 863(d)(1) (''This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.'') Second, Sellers of Qualified Anti-Terrorism Technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's Certification of technologies. Specifically, the Act provides that before issuing a Certification for a technology, the Secretary will conduct a ''comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.'' § 863(d)(2). The Act also provides that the Seller will ''conduct safety and hazard analyses'' and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense. Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome only by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology. *See* § 863(d)(1) (''This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.'')

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria

for applicability of the government contractor defense outside the context of the SAFETY Act. While the Act does not expressly delineate the scope of the defense (i.e., the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an ''approved'' technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology. In *Boyle* v. *United Technologies Corp.,* and its progeny, the Supreme Court has ruled that the government contractor defense bars a broad range of claims. For example, the Supreme Court in *Boyle* concluded that ''state law which holds Government contractors liable for design defects'' can present a significant conflict with Federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore ''must be displaced.'' *Boyle* v. *United Technologies Corp.,* 487 U.S. 500, 512 (1988). The Department believes with the SAFETY Act that Congress incorporated government contractor defense protections outlined in the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in the courts. Indeed, it is difficult to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.*, 148 Cong. Rec. E2080 (November 13, 2001) (statement of Rep. Armey) (''[Companies] will have a government contractor defense as is commonplace in *existing* law.'') (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's Certification of a Qualified Anti-Terrorism Technology specifically for the purposes of the government contractor defense. This Certification is an act separate from the Secretary's issuance of a Designation for a Qualified Anti-Terrorism Technology and confers additional benefits to Sellers. Importantly, Sellers may submit applications for both Designation as a Qualified Anti-Terrorism Technology and Certification for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications contemporaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the Designation as a Qualified Anti-Terrorism Technology. In appropriate cases, Sellers may obtain the protections that come with Designation as a Qualified Anti-Terrorism Technology even if they have not satisfied the additional requirements for the government contractor defense.

In an effort to provide greater clarity, the Department intends to publish guidance regarding its interpretation of the government contractor defense and the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act.

D. Exclusive Federal Jurisdiction and Scope of Insurance Coverage

The Act creates an exclusive Federal cause of action ''for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' § 863(a)(2); *See also* § 863(a)(1). This exclusive ''Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology.'' § 863(a)(1). The best reading of § 863(a), and the reading the Department has adopted, is that

(1) Only one cause of action exists for loss of property, personal injury, or death for performance or non-performance of the Seller's Qualified Anti-Terrorism Technology in relation to an Act of Terrorism,

(2) Such cause of action may be brought only against the Seller of the Qualified Anti-Terrorism Technology and may not be brought against the buyers, the buyers' contractors, downstream users of the Qualified Anti-Terrorism Technology, the Seller's suppliers or contractors, or any other person or entity, and

(3) Such cause of action must be brought in Federal court. The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in § 863(a)(2). That subsection states: ''Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when Qualified Anti-Terrorism Technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' *Id.* Any presumption of concurrent causes of action (between state and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over State law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a ''cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology.'' § 863(a)(1). Second, if the Seller of the Qualified Anti-Terrorism Technology at issue were not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's Qualified Anti-Terrorism Technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be predicated on the performance or non-performance of the Seller's Qualified Anti-Terrorism Technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus ''may result in loss to the Seller'' under § 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of Qualified Anti-Terrorism Technology. Rather, Congress balanced the need to provide recovery to plaintiffs against the need to

ensure adequate deployment of anti-terrorism technologies by creating a cause of action that provides a certain level of recovery against Sellers, while at the same time protecting others in the supply chain.

E. Relationship of the SAFETY Act to Indemnification Under Public Law 85–804

The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85–804 to Sellers of anti-terrorism technologies. The liability protections of the SAFETY Act should, in many circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there are circumstances in which both SAFETY Act coverage and indemnification are warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armey) (November 13, 2002) (stating that in some situations the SAFETY Act protections will ''complement other government risk-sharing measures that some contractors can use such as Pub. L. 85–804''). In recognition of this close relationship between the SAFETY Act and indemnification authority, in section 73 of Executive Order 13286 of February 28, 2003, the President amended the existing Executive Order on indemnification–Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85–804. At the same time, it requires that all agencies—not just the Department of Homeland Security—follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that Federal agencies cannot provide indemnification ''with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology'' unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office of Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is ''necessary for the timely and effective conduct of United States military or intelligence activities.''

II. Discussion of Changes and Comments

The Department received 16 sets of comments to the interim rule during the comment period and has made substantive and stylistic changes in response to those comments. The Department considered all of the comments received and the Department's responses follow.

A. Confidentiality of Information

Eight commenters expressed dissatisfaction with the Department's stated policy with regard to safeguarding proprietary information (including business confidential information) submitted as part of a SAFETY Act application. Some commenters desired the Department to declare that SAFETY Act application contents are ''voluntary submissions'' for purposes of determining whether the Critical Infrastructure Information Act applies. Commenters also noted that Exemption 4 of FOIA protects ''trade secrets or commercial or financial information from a person [that is] privileged or confidential.''

The Department remains committed to the vigorous protection of applicants' submissions and confidential information. One applicant suggested that the Department ''adopt a general presumption of confidential treatment of all SAFETY Act applications, evaluations and studies of such applications, underlying decisional documentation, and application rejection notices.'' This has been the Department's intention, policy, and practice from the outset. DHS is committed to taking all appropriate steps to protect the proprietary information of applicants consistent with applicable FOIA exemptions and the Trade Secrets Act (18 U.S.C. 1905). As an example of this commitment, those engaged in evaluating applications are required to enter into appropriate nondisclosure agreements. In addition, prior to being granted access to any proprietary information associated with an application or its evaluation, each potential evaluator is examined for potential conflicts of interest. Finally, the Department's conflict of interest and confidentiality policies apply to everyone associated with SAFETY Act implementation.

Underlying this commitment to protect an applicant's information are various Federal civil and criminal laws that potentially apply to unauthorized disclosure of SAFETY Act confidential materials, including the Trade Secrets Act and 18 U.S.C. Chapter 90 (Protection of Trade Secrets, especially section 1831—Economic Espionage, and section 1832—Theft of Trade Secrets). These laws establish criminal penalties for disclosing proprietary data under various circumstances. There are also relevant state laws, including versions of the Uniform Trade Secrets Act adopted in the District of Columbia, the State of Maryland, the Commonwealth of Virginia, and 39 other states. In addition, sensitive homeland security information, including information regarding vulnerabilities of critical infrastructure can be entitled to certain statutory protections under sections 892(a)(1)(B), 892(b)(3), 892(f) of the Homeland Security Act of 2002, Sensitive Security Information under 49 U.S.C. 40119, 49 CFR part 1520 and FOIA Exemption 3 (among other FOIA exemptions).

The Department also believes that all information that is submitted as part of an application, including the fact that a particular entity has submitted an application, is confidential commercial information under the tests established in *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974), and its progeny. In particular, much or all of this information qualifies as confidential under both the ''competitive harm'' prong of the test, and the ''third prong'' of government interest and program effectiveness.

The Department will assert appropriate exemptions (including, as applicable, FOIA Exemptions 1 through 4) in declining to disclose under FOIA any information concerning the source of a SAFETY Act application or the contents of applications. This policy is now reflected in the rule at section 25.10 of this final rule. In addition, the Department will work with applicants to ensure that no proprietary information is published in connection with an announcement of a Block Designation (pursuant to § 25.6(i) of this final rule), DHS's publication of the Approved Product List for Homeland Security (pursuant to § 25.8(k) of the final rule) or the voluntary publication by DHS of issued Designations. Moreover, the Government does not, at this time, intend to ''portion mark'' information contained in the application, or associated case file, to delineate between protected proprietary information (also referred to as ''SAFETY Act Confidential Information'') and other less sensitive data in the application. Instead the entirety of the application will be treated as confidential under appropriate law. It is the Department's

belief that requiring the reviewer to portion mark at the time of submission would greatly impact efficiency and applicants' confidence in the integrity of protections for proprietary information, and that such a practice does not reflect the requirements of applicable confidentiality protections.

The Department has established internal security procedures for handling technical, business, and insurance information that is submitted in connection with a SAFETY Act application. Certain of the measures the Department has instituted to safeguard proprietary information are reflected in 6 CFR 25.10. All applications, whether paper or electronic, will be subject to stringent safeguards. In obtaining the input of subject matter experts and evaluators that analyze SAFETY Act applications, the Department will only seek input from individual experts or evaluators and will not consult any committee in the process of reviewing SAFETY Act applications. Finally, the Department recognizes that information submitted in SAFETY Act applications may constitute Protected Critical Infrastructure Information pursuant to sections 211–215 of the Homeland Security Act of 2002. The Department is in the process of revising its Protected Critical Infrastructure Information regulations and anticipates providing further information on this subject in the near future.

B. Application Preparation Burden

Six commenters expressed concern that the amount and type of information required by the SAFETY Act Application Kit is extremely burdensome, if not prohibitively so, and that only large companies have the resources necessary to respond to each of the questions. Commenters also expressed the opinion that some of the information being requested—particularly financial information—is not relevant to the evaluation of applications against the criteria of the Act.

The Department recognizes that the SAFETY Act Application Kit utilized to date poses significant burdens for applicants. We are very sensitive to concerns about the application process and the difficulty of preparing and submitting a SAFETY Act application. The Department specifically solicited comments on the SAFETY Act Application Kit and application process set forth in the interim rule. In addition, the Department released for comment a revised SAFETY Act Application Kit in December 2004. Based on both the comments received concerning the SAFETY Act Application Kit as well as the experience of the Office of SAFETY Act Implementation (''OSAI'') with the applications filed to date, OSAI has published numerous Frequently Asked Questions on its Web site as well as undertaken a substantial revision of the SAFETY Act Application Kit. The Department plans to publish a revised SAFETY Act Application Kit, which will account for the changes contained in this final rule and which will state with greater specificity the information required to properly evaluate a SAFETY Act application. For example, the Department agrees that some of the financial information requested in the original SAFETY Act Application Kit is not essential to the evaluation of every application. The Department, therefore, will limit the amount of financial information requested as part of the initial submission and to supplement the information as needed throughout the evaluation process.

The Department believes that the streamlining of the SAFETY Act Application Kit will result in further efficiencies and time reductions. We anticipate making a revised SAFETY Act Application Kit available as soon as practicable.

C. Certifying ''accuracy and completeness'

Two commenters expressed the opinion that it is unreasonable to require applicants to certify the application as ''accurate and complete'' under penalty of perjury when some of the questions require the applicant to provide answers on a ''best guess'' basis. In particular, the answers to the questions related to threat estimates, potential casualties, and potential casualty reductions were cited as questions whose answers may be essentially unknowable.

The Department agrees that it would be unreasonable to expect applicants to certify the accuracy of their speculative or predictive estimates of future events and risks. The language of the completeness certification is qualified, however, by the phrase ''to the best of my knowledge and belief.'' Since the applicant either knows or is able to obtain accurate factual information about the applicant's anti-terrorism technology and business enterprise, the Department believes the application's completeness certification is appropriate as to factual information and the application will so state. Conversely, since estimates are by definition not factual information, the Department's position is that the completeness certification requires only that estimates be provided in good faith with a reasonable belief they are as accurate as possible at the time of submission. The Department will add this explanation as to estimates to the application form, and will consider all forms presented to date as incorporating this explanation.

D. Conditions on Designations

Two commenters took exception to the inclusion of limitations on SAFETY Act Designations (as such term is defined in 6 CFR 25.2) or Certifications (as such term is defined in 6 CFR 25.2), suggesting that the liability protections presented by the SAFETY Act potentially could be bypassed through a claim that such limitations imposed by the Department as a condition of SAFETY Act Designation were not met.

The Department is aware of this concern and understands that undependable or uncertain liability protections would not have the desired effect of fostering the deployment of anti-terrorism technologies. Further, the Department is aware of the difficulty of crafting language for limitations that is not subject to multiple interpretations. As a general matter, the Department does not intend to impose conditions on SAFETY Act Designations and Certifications. If a question arises regarding the functionality of a technology, generally the Department will address and resolve that question in the course of the application process.

E. Significant Modification to a Qualified Anti-Terrorism Technology

Section 25.5(i) of the interim final rule has been the focus of significant attention, both by commenters and by members of Congress. That provision provided for automatic termination of SAFETY Act protection if a ''significant modification'' was made to a QATT, defined as a modification that could significantly reduce the technology's safety or effectiveness, unless the Seller notified the Under Secretary and received approval of the modification. Several commenters have argued that the rule improperly suggests that a SAFETY Act Designation or Certification could terminate without notice if a ''significant modification'' is made to the QATT. Commenters have argued that, in hindsight, any routine, non-substantive or immaterial change in use, implementation, components, manufacturing process or other facet of a Technology might later be regarded as a ''significant modification.'' If such a change might be used later in litigation to invalidate SAFETY Act coverage retroactive to the time of the change, they argue, the value of a SAFETY Act Designation or Certification is minimal. The American Bar Association, Public

Contract Law Section commented, for instance, that: ''the regulations should be clear that the designation cannot be stripped away after the fact by a claimant alleging a significant change * * *'' ''Because the SAFETY Act covers all parties in the stream of commerce who rely on the designation and certification, it makes sense that their justifiable reliance not be undermined by retroactive effect back to the time of the change * * *'' Other commenters were even more direct: ''This requirement is misplaced in several respects and undermines the intent of the SAFETY Act to provide certainty and protection for those afforded coverage under the Act.'' ''[T]he language of this provision is so broad that some unanticipated future change in operation, maintenance or methodology by a downstream user of the technology, totally outside the control of the QATT Seller, might ultimately be construed to terminate the Seller's SAFETY Act coverage. This is particularly problematic for technologies involving technical services—almost every new application of these technologies will encounter unique circumstances and variations in operation, installation, implementation that, in retrospect, might be construed to be 'significant.' '' Commenters indicated that section 25.5(i) was thus a ''grave concern,'' and that ''it is essential that this provision be altered.''

The American Bar Association proposed regulatory language to address this issue, including the following: ''The termination of the Designation will apply prospectively and will only affect products or services deployed after the DHS notice of termination * * *'' In addition, commenters and certain members of Congress have raised concerns about the tension between the statutory provision in § 863(d) of the SAFETY Act and the text of the section 25.5(i) of the interim final rule. Section 863(d) of the SAFETY Act provides that a SAFETY Act Certification is entitled to a presumption that the Government Contractor Defense applies, and specifies that a Certification may only terminate for one reason:

> This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection. § 863(d)(1)

Thus, the argument goes, because the statute specifies one and only one means to terminate a certification, the regulations cannot add a second route to termination through the ''significant modification'' provision.

The Department has carefully considered all of these comments and the legal arguments above. Section 25.5(i) of the interim final rule was intended to serve an important purpose—to provide the Department with knowledge of and the ability to address significant modifications that diminish the capability of a QATT. While the Department needs to preserve the intended function of this provision of the interim final rule, it agrees that changes to the provision are necessary to address the legal and policy concerns raised above.

The final rule eliminates language from section 25.5(i) of the interim final rule that could suggest that a Designation or Certification could terminate automatically and retroactively to the time of change and without notice, and replaces such language with a portion of the suggested text from the ABA commentary, and with procedures similar to those recommended by other commenters. To be clear, modifications that do not cause the QATT to be outside the scope of the QATT's Designation or Certification will not adversely affect SAFETY Act coverage, nor are such modifications required to be notified to the Department. The final rule does not, however, eliminate the requirement that a Seller provide notice to the Department if the Seller intends to make, or has made, a modification that would cause the QATT to be outside the scope of a Designation or Certification.

The Department recognizes that many modifications to components, processes, use, implementation or other aspects of a technology occur from time to time during the life of a technology, and that many modifications either will have no consequence for the functionality of the Technology or will improve it. While certain proposed significant modifications should require review, many routine or non-significant modifications will not. The Department needs a rapid system for prospectively reviewing significant modifications that could reduce the effectiveness of a QATT. Such a system must recognize that routine changes may occur to components or processes that do not reduce the safety or effectiveness of the Technology.

This final rule modifies the procedure for Sellers to notify the Department of modifications or proposed modifications to a QATT and for the Department to respond quickly to such notifications with appropriate instructions for the Seller. Immaterial or routine modifications that are within the scope of the Designation will not require notice. It is important, however, and required, that the Department be informed of any significant modifications that the Seller makes or intends to make to a QATT. A significant modification is one that is outside the scope of a Designation. The Under Secretary will make the language of Designations and Certifications as precise as practicable under the circumstances to ensure that Sellers and other parties have fair notice of the scope of coverage, and in that regard the Department calls attention to the revisions in sections 25.6(e) and 25.9(f) of the final rule.

Whether notice to the Department is required for a change to a particular QATT will depend on the specific nature of the QATT and the terms of the Designation or Certification applicable to the QATT. If notice of a modification is required, review of the notice will also be undertaken in a reasonable time. If the Department does not take action in response to the notice, SAFETY Act coverage of the Technology as modified will be conclusively established. If the Department ultimately does not approve of the proposed changes, it will so notify the Seller and may discuss possible remedial action to address the Department's concerns or take other appropriate action in the discretion of the Under Secretary, as provided in section 25.6(l) of the final rule. In no event will a Designation terminate automatically or retroactively under this provision.

It is also important to recognize that the ''significant modification'' provisions may require notice by the Seller to the Department only when the modifications are made to a QATT by the Seller or are made to a QATT with the Seller's knowledge and consent. The rule does not require that a Seller notify the Department of changes to a QATT made post-sale by an end-user of the QATT, and any such change by an end-user cannot result in loss of SAFETY Act protection for the Seller or others protected by the Seller's Designation or Certification.

F. Exclusive Responsibility for Government Contractor Defense, Definitions of Fraud and Willful Misconduct

The Act is clear in allocating to the Secretary the exclusive responsibility for establishing the government contractor defense under section 861. The Act does not permit judicial review of the Secretary's exercise of discretion in this context. When the Secretary determines that a Certification is appropriate, that decision creates a

rebuttable presumption that the government contractor defense applies. This presumption may only be rebutted ''by clear and convincing evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Department during the course of the consideration of such Technology.'' *See* section 25.8(b).

Two commenters expressed concern over the lack of a concrete standard of evidence for determining ''fraud'' or ''willful misconduct.'' One commenter specifically suggested adoption of the ''clear and convincing evidence'' standard from common-law civil fraud jurisprudence.

The Department agrees that the statutory presumption should only be overcome by evidence demonstrating an intentional effort to deceive the Department during the Certification process. This is the clear import of the statutory language and legislative history of the Act. Also, the traditional common law ''clear and convincing evidence'' standard is appropriate for evaluating a claim of fraud or willful misconduct in the SAFETY Act context.

G. Definition of ''Act of Terrorism''

Two commenters expressed uncertainty concerning whether an act on foreign soil could be deemed an ''Act of Terrorism'' for purposes of the SAFETY Act. One commenter additionally requested clarification of the role of the Secretary in declaring whether a given event was or was not an ''Act of Terrorism'' for purposes of the SAFETY Act.

The definition of the term ''Act of Terrorism'' set forth in the SAFETY Act provides that any act meeting the requirements specified in the Act, as such requirements ''are further defined and specified by the Secretary,'' may be deemed an ''Act of Terrorism.'' In the interim rule, the Department presented its view that the term ''Act of Terrorism'' potentially encompasses acts that occur outside the territory of the United States. The Department stated that the basis for that view is ''there is no geographic requirement in the definition; rather, an act that occurs anywhere may be covered if it causes harm to a person, property, or an entity in the United States.'' The Department confirms its prior interpretation. The statutory requirements for what may be deemed an ''Act of Terrorism'' address the legality of the act in question, the harm such act caused, and whether instrumentalities, weapons or other methods designed or intended ''to cause mass destruction, injury or other loss to citizens or institutions of the United States'' were employed. The statutory requirements are focused on the locus where harm was caused, the intent of the perpetrators and the victims of the particular act. See § 865(2)(B)(ii). The Department does not interpret the language of the Act to impose a geographical restriction for purposes of determining whether an act may be deemed an ''Act of Terrorism.'' In other words, the Act is concerned more with where effects of a terrorist act are felt rather than where on a map a particular act may be shown to have occurred. Accordingly, an act on foreign soil may indeed be deemed an ''Act of Terrorism'' for purposes of the SAFETY Act provided that it causes harm in the United States. The Department interprets ''harm'' in this context to include harm to financial interests. It is certainly possible that terrorist acts occurring outside the United States could be intended to cause, and may result in, devastating financial harm in the United States.

The focus of the ''Act of Terrorism'' definition on where harm is realized is appropriate in light of the possibility that an Act of Terrorism may be the result of a series of actions occurring in multiple locations or that the locus of the terrorist act may not be readily discernible. This is especially the case with respect to acts of cyber terrorism.

H. Retroactive Designation

Five commenters found the distinction between ''sales'' and ''deployments,'' as expressed in the interim rule, to be confusing. The commenters expressed concern that similar deployments of identical QATTs might not be similarly protected, depending on when the deployment was made. In particular, failing to extend SAFETY Act liability protections retroactively may incentivize Sellers to remove or nullify existing deployments, only to make identical new deployments at significant cost to the Seller and/or its customers.

The Department believes these commenters may have misunderstood the language of the interim rule. As part of each Designation or Certification, the Department will specify the earliest date that deployments of the QATT will be accorded the protections of that Designation or Certification. The Seller supplies the information concerning the earliest date the technology was deployed.

I. Bias Toward Product-Based Anti-Terrorism Technologies

Despite the assurances of the interim rule, particularly in the responses to comments on the Notice of Proposed Rulemaking, four commenters thought that the language of the interim rule and of the SAFETY Act Application Kit implicitly assumed that all anti-terrorism technologies would be product-based and not service-based or analysis-based.

To avoid any confusion on this issue, the definition of ''Technology'' set forth in this final rule clearly and unequivocally states that a Technology for SAFETY Act purposes includes ''any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing.'' In particular, design services, consulting services, engineering services, software development services, software integration services, program management and integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may each be deemed a Technology under the SAFETY Act. Corresponding changes will be incorporated into the revised SAFETY Act Application Kit. Further, this concern is not manifest in the operating history of the Act. Multiple anti-terrorism services have received SAFETY Act Designation to date.

J. Scope of Insurance Coverage

Several commenters suggested there is no reason for the insurance required to be purchased by Sellers pursuant to the Act to cover claims brought against the Seller's supply and distribution chains since a plaintiff's sole point of recovery with respect to claims implicating the SAFETY Act would be the Seller. Furthermore, commenters pointed out that insurance policies offering coverage for a Seller and the Seller's contractors, subcontractors, suppliers, vendors and customers are not currently available on the open market.

The Department recognizes that an action for recovery of damages proximately caused by a QATT that arises out of an Act of Terrorism may only be properly brought against a Seller. Accordingly, the Department has specified, and will continue to specify in particular Designations, that the liability insurance required to be obtained by the Seller shall not be required to provide coverage for the Seller's contractors, subcontractors, suppliers, vendors or customers.

K. Interactions With Public Law 85–804

Three commenters believed that the language in the interim rule concerning Public Law 85–804, and its relationship with the SAFETY Act, was unclear, especially in light of Executive Order 13286. In particular, the commenters

sought clarification with respect to the circumstances in which both SAFETY Act Designation and indemnification under Public Law 85–804 might be available. One commenter suggested that DHS implement a mechanism for simultaneous SAFETY Act and Public Law 85–804 consideration in association with a procurement.

Commenters also expressed concern with the availability of Public Law 85–804 indemnification for technologies for which Sellers do not apply for (or receive) SAFETY Act Designation. They suggested that the phrase ''any matter that has been, or could be, designated by the Secretary of Homeland Security as a Qualified Anti-Terrorism Technology'' in Executive Order 13286 is a potential source of confusion and an obstacle to otherwise appropriate indemnification for Sellers who do not seek, and would not merit, Designation.

Section 73(b) of Executive Order 13286 revises Executive Order 10789 to state that no technology that has been, or could be Designated as a QATT, can be considered for indemnification under Public Law 85–804 (except by the Department of Defense) until ''(i) the Secretary of Homeland Security has advised whether the use of the authority provided under [the SAFETY Act] would be appropriate, and (ii) the Director of the Office and Management and Budget has approved the exercise of authority under this order.''

The Department is sympathetic to the notion that separate processes in multiple agencies for Public Law 85–804 and SAFETY Act review could consume inordinate time and expense. The Department is supporting interagency efforts to find a solution to speed and ease the burden of both processes.

The Department acknowledges that some anti-terrorism technologies involve unusually hazardous risk, independent of an act of terrorism, and that indemnification under Public Law 85–804 might appropriately be made available under such circumstances. In those circumstances, both the SAFETY Act and Public Law 85–804 could be applicable to the same technology for different risks at the same time, and one process should not slow progress in the other. Executive Order 10789, as amended by section 73 of Executive Order 13286, allows for such a solution with the concurrence of the Director of the Office of Management and Budget.

Where appropriate, the Department will entertain letter requests for a ''Notice of Inapplicability of SAFETY Act Designation,'' which would allow entities to obtain a statement from the Department regarding the inappropriateness of SAFETY Act Designation for a particular technology in a particular context, outside of the established SAFETY Act application process. In this process, the Department expects that submitters will include sufficient information within their letter request to allow for a determination of inapplicability to be made. The Department will, however, reserve the right either to request additional information of the type included in the SAFETY Act application if it determines that the request does not adequately describe the Seller's technology before a determination of applicability or inapplicability, as the case may be, can be made.

L. Prioritization of Evaluations

Three commenters noted the importance of an appropriate process for expediting SAFETY Act applications associated with government procurements that are ready to proceed and where the need for immediate deployment is urgent and compelling. They also asked that the Department publish guidance describing how it plans to prioritize application reviews.

The Department will expedite the review of SAFETY Act applications that it deems particularly urgent and that involve government procurements and will publish guidance on how SAFETY Act applications and the government procurement process may best be aligned (*See* ''Coordination with Government Procurements'' below and section 25.6(g) of the rule).

M. Standards

Three commenters expressed concern about standards and suggested proposed changes to the interim rule in this area. The gist of these suggestions was to ensure that proprietary standards are not treated inappropriately by the Department, and that the Department not needlessly develop new standards in competition with existing, widely-accepted, proprietary standards. In addition, several commenters felt that adherence to certain existing standards, or to Federal certifications of various kinds, should be deemed conclusive evidence of compliance with certain SAFETY Act evaluation criteria.

The Department reiterates that it intends to protect proprietary and other protected information to the maximum extent possible. No copyrighted or otherwise protected intellectual property will be distributed by the Department without the express permission of the owner, unless the Department's rights in that data have been acquired through some other manner. Where specific proprietary standards are relevant to the SAFETY Act evaluation process, the Department will advise applicants of the appropriate channels for obtaining copies of such standards.

The Department has to date and will continue to work closely with standard-setting organizations that have sought SAFETY Act protection for anti-terrorism standards. The Secretary has discretion to decide which standards are relevant with respect to the criteria for SAFETY Act Designation and Certification, and the Department remains open to the concept that a standard itself may constitute a QATT.

N. Expiration of Designations

Three commenters stated that Designations should not expire, or should at the least have a minimum term of 10 years or more.

The Department notes that qualification for SAFETY Act coverage depends on a combination of the ability of the technology to be effective in a specific threat environment, the nature and cost of available insurance, and other factors, all of which are subject to change. At the same time, the Department is cognizant of the need for a guaranteed period of protection for successful SAFETY Act applicants to achieve the main goal of the Act, which is to facilitate the deployment of needed anti-terrorism technologies. Since the expiration of SAFETY Act Designation and Certification would impact only future sales of the subject QATT, the Department believes that mandatory reconsideration of Designations after five to eight years provides a fair balancing of public and private interests while providing the certainty required by Sellers. Sellers may apply for renewal up to two years prior to the expiration of their SAFETY Act Designation.

O. Appeal/Review of Decisions Regarding SAFETY Act Applications

Two commenters reiterated a request for an independent appeal or review process. The Department is aware of the complexity of the review process and has made and is making numerous allowances for exchange of information and concerns between evaluators and applicants at multiple points during the application process, to give the applicant further opportunity to provide supplemental information and address issues. The Department believes that this interactive process will provide sufficient recourse to applicants. The SAFETY Act is a discretionary authority accorded by Congress to the Secretary of Homeland Security to facilitate the commercialization and deployment of

needed anti-terrorism technologies. The exercise of that authority with respect to a particular technology requires that many discretionary judgments be made regarding the applicability of the SAFETY Act criteria to the technology and the weighting of the criteria in each case.

SAFETY Act protections are not a prerequisite for marketing any technology and therefore the absence of a grant of protection under the SAFETY Act will not prevent any person, firm or other entity from doing business. The Department also notes that a SAFETY Act Designation is not a ''license required by law'' within the meaning of the Administrative Procedure Act (APA), and thus is not covered by the APA. 5 U.S.C. 558(c).

P. Coordination With Government Procurements

The Department recognizes the need to align consideration of SAFETY Act applications and the government procurement process more closely. Accordingly, the final rule incorporates provisions that establish a flexible approach for such coordination. A government agency can seek a preliminary determination of SAFETY Act applicability, a ''Pre-Qualification Designation Notice,'' with respect to a technology to be procured. This notice would (i) enable the selected contractor to receive expedited review of a streamlined application for SAFETY Act coverage and (ii) in most instances establish the presumption that the technology under consideration constitutes a QATT. If the technology in question has previously received Block Designation or Block Certification (as defined in 6 CFR 25.8), or the technology is based on established, well-defined specifications, the Department may indicate in DHS procurements, or make recommendations with respect to procurements of other public entities, that the contractor providing such technology will affirmatively receive Designation or Certification with respect to such technology, provided the contractor satisfies each other applicable requirement set forth in this final rule. In addition, the OSAI may expedite SAFETY Act review for technologies subject to ongoing procurement processes. The Department will on an on-going basis provide guidance for effectively coordinating government procurements (among Federal and non-Federal procurement officials) and consideration of SAFETY Act applications. In addition, the Department may unilaterally determine that the subject of a procurement is eligible for SAFETY Act protections and give notice of such determination in connection with a government solicitation.

The final rule clarifies that a determination by the Department to designate, or not to designate, a particular technology as a QATT should not be viewed as a determination that the technology meets, or fails to meet, the requirements of any solicitation issued by a Federal government customer or a non-Federal government customer.

Q. Pre-Application Consultations

The Department regards the process by which an applicant seeks SAFETY Act coverage as necessarily interactive and cooperative. Accordingly, the final rule continues to provide that the Department and applicants may consult prior to the submission of SAFETY Act Application. These consultations will provide an opportunity for applicants to provide the Department with a description of their anti-terrorism technology and will allow for the Department to address an applicant's questions with respect to the application process and the criteria by which the Department evaluates the anti-terrorism technology. Prospective applicants may request such consultations through the pre-application process set forth in the SAFETY Act Application Kit. The confidentiality provisions in § 25.10 are applicable to such consultations.

R. Developmental Testing and Evaluation Designations

The SAFETY Act provides the Secretary significant discretion in determining what may be designated a ''Qualified Anti-Terrorism Technology.'' Section 25.4 recognizes that there may be instances of certain anti-terrorism technologies being developed that could serve as an important homeland security resource but that require additional developmental testing and evaluation, e.g., a prototype of a particular technology that has undergone successful lab testing may require field testing or a controlled operational deployment to validate its safety and efficacy. This section provides that the system of litigation and risk management established by the SAFETY Act may be afforded to such technologies albeit with certain limitations and constraints that otherwise would not attach to Qualified Anti-Terrorism Technologies that are Designated pursuant to § 25.4(a). Developmental Testing and Evaluation (DT&E) Designations will facilitate the deployment of promising anti-terrorism technologies in the field either for test and evaluation purposes or in response to exigent circumstances, by providing, on a limited basis, the liability protections offered by the SAFETY Act. The limits on the protections offered by a DT&E Designation, as compared with a Designation issued pursuant to § 25.4(a), are set forth in the final rule.

In general, DT&E Designations will include limitations on the use and deployment of the subject technology, remain terminable at-will by the Department should any concerns regarding the safety of technology come to light, and will have a limited term not to exceed a reasonable period for testing or evaluating the technology (presumptively not longer than 36 months). Further, the SAFETY Act liability protections associated with DT&E Designations will apply only to acts that occur during the period set forth in the particular DT&E Designation. The Department seeks further comment on this topic.

S. Seller's Continuing Obligations With Respect to Maintaining Insurance

The Department received comments on insurance certification requirements. There is no change with respect to the obligation of the Seller to certify to the Department in writing that the insurance required to be maintained pursuant to a particular SAFETY Act Designation has been obtained. However, this rule modifies each Seller's obligation to certify to the Department that the required insurance has been maintained, and to do so within 30 days of each anniversary of the issuance of their SAFETY Act Designation. A Seller's obligation to certify on an annual basis that the required insurance has been maintained is now dependent upon the Under Secretary making a request for such an insurance certification from the Seller. In other words, following their initial insurance certification, Sellers will be obligated to certify that they have maintained the required insurance as set forth in their SAFETY Act Designation only upon the Department requesting such a certification. However, no change has been made to each Seller's continuing obligation to advise the Department of any material change in the type or amount of liability insurance coverage that the Seller actually maintains.

T. Block Designations and Block Certifications

The Department has established a streamlined procedure for providing SAFETY Act coverage for qualified Sellers of certain categories of

technologies. Those Certifications or Designations are known as ''Block Designations'' or ''Block Certifications.'' Block Designations and Block Certifications may be issued at the Secretary's discretion and are intended to recognize technology that meets the criteria for Designation as a Qualified Anti-Terrorism Technology and that is based on established performance standards or defined technical characteristics. Fundamentally, Block Designation or Block Certification will announce to potential Sellers of the subject QATT that the Department has determined that the QATT satisfies the technical criteria for either Certification or Designation and that no additional technical analysis will be required in evaluating applications from potential Sellers of that QATT. The terms of any such Block Designation or Block Certification will establish the procedures and conditions upon which an applicant may receive SAFETY Act coverage as a Seller of the subject technology. Applications from potential Sellers of a QATT that has received either Block Designation or Block Certification will receive expedited review and will not require submission of information concerning the technical merits of the underlying technology.

All Block Designations and Block Certifications will be published by the Department within ten days after the issuance thereof at *http://www.safetyact.gov,* and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, Office of SAFETY Act Implementation, Room 4320, Department of Homeland Security, Washington, DC 20528. Such publication will be coordinated to guard again the unauthorized disclosure of proprietary information. Any person, firm, or other entity that desires to qualify as a Seller of a QATT that is the subject of a Block Designation or Block Certification will be required to submit only those portions of the application referenced in § 25.6(a) that are specified in such Block Designation or Block Certification and otherwise to comply with terms of § 25.6(a) and the relevant Block Designation or Block Certification.

U. Reciprocal Waivers

Several commenters stated that reciprocal waivers of the type described in the SAFETY Act (reciprocal waivers of claims by the specified parties for losses sustained arising from an Act of Terrorism with respect to which a Qualified Anti-Terrorism Technology is deployed) are not standard practice in most industries and that some parties may be unwilling to enter into such reciprocal agreements. The Department recognizes that the ability of the Seller to obtain the reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers necessarily depends on action by parties other than the Seller and that it may not be possible to obtain such waivers in all circumstances. The Department's view is that such waivers are not an absolute condition precedent or subsequent for the issuance, validity, effectiveness, duration, or applicability of a Designation because (1) obtaining such waivers often will be beyond the control of SAFETY Act applicants, (2) requiring all of such waivers as such a condition would thwart the intent of Congress in enacting the SAFETY Act by rendering the benefits of the SAFETY Act inapplicable in many otherwise appropriate situations, and (3) the consequences of failing to obtain the waivers are not specified in the Act. Accordingly, as was previously the case, this rule requires only a good faith effort by the Seller to secure these waivers.

V. Deference Due to Other Federal or State Regulatory or Procurement Officials

The Department has received multiple comments suggesting that the Department defer to the expertise of other Federal or state procurement officials in reviewing the technical criteria for SAFETY Act applications. The level of deference due to other governmental officials will depend on the nature of such officials' review of the technology in question. In certain circumstances when qualified officials have determined specifically that a technology is appropriate for anti-terrorism purposes, such determinations may be accorded significant weight in the SAFETY Act application review process. In other circumstances, where a prior government determination was made for different purposes or by persons not qualified to address anti-terrorism threats, less weight will be given the prior determination. *See* § 25.4(b)(8).

III. Regulatory Requirements

A. Executive Order 12866

The Department has examined the economic implications of the final rule as required by 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). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

These matters were discussed in the interim rule and the Department received no comments on the economic analysis.

The Department concludes that the final rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under section 3(f)(1) of Executive Order 12866, and it raises novel legal and policy issues under section 3(f)(4) of the Executive Order. The Department concludes, however, that the final rule does not meet the significance threshold of $100 million effect on the economy in any one year under section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of Certifications and Designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in the final rule to have a large impact on the public.

Need for the Regulation and Market Failure

The final rule implements the SAFETY Act and is intended to implement the provisions set forth in that Act. The Department believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market, technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of the Terrorism Risk Insurance Act of 2002 (TRIA), concluded that temporary financial assistance in the insurance market is needed to ''allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.'' Public Law

107–297, 101(b)(2). This final rulemaking addresses a similar concern, to the extent that potential technology developers are unable to insure efficiently against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough efficiently to spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in the final rule are designed to meet this goal; they will provide certain liability protection and consequently will increase the likelihood that businesses will pursue development and deployment of important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this final rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this rulemaking will be positive; companies presumably will not choose to pursue the Designation of ''Qualified Anti-Terrorism Technology'' unless they believe it to be a profitable endeavor. The Department cannot predict with certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this Designation. As mentioned above, insurance markets appear currently to be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate.

If a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs to that firm will be the time and money required to submit the required paperwork and other information to the Department. Only companies that choose to request this protection will incur paperwork costs in completing the application kit.

The direct benefits to firms include lower potential losses from liability for terrorist attacks and, as a consequence, a lower burden from liability insurance for this type of technology. In this assessment, we were careful to consider only benefits and costs specifically due to the implementation of the final rule and not costs that would have been incurred by companies absent any rulemaking. The SAFETY Act requires the Sellers of the technology to obtain liability insurance ''of such types and in such amounts'' certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of the final rule for firms.

The language of the SAFETY Act clearly states that Sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the Seller's Anti-Terrorism Technologies. We tentatively conclude, however, that this final rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of the final rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of the final rule to firms. This change will most likely be a reduction in demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

The Department also expects, however, that this final rule will lead to greater market entry, which will generate benefits for technology firms but should also lead to a larger pool of potential products that will require insurance.

Costs and Benefits to Insurers

The Department has little information on the future structure of the terrorism risk insurance market, and how this final rule will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer of economic benefits from insurers to technology firms. On the other hand, this type of intervention should serve to increase the economic benefits of insurers by making some types of insurance products possible that would have been cost prohibitive for customers to purchase or insurers to design in the absence of this final rulemaking.

Costs and Benefits to the Public

The benefits to the public of this final rulemaking are very difficult to put in dollar value terms since the ultimate objective of the final rule is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically-needed anti-terrorism technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may be developed and qualify for this program that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this final rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts may be especially effective, since profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of the Department that liability discouragement in this market is currently too strong or prohibitive, for the reasons mentioned above. The Department tentatively concludes that the final rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is ''required by section 553 * * *, or any other law, to publish general notice of proposed rulemaking for any proposed rule, or publishes a notice of proposed rulemaking for interpretative rule involving the internal revenue laws of the United States * * *'' 5 U.S.C.

603(a). The Regulatory Flexibility Act requires the Department to determine whether this final rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this final rulemaking will impose a significant financial impact on them. In fact, we believe the final rule will be a benefit to technology development businesses, especially small businesses, and present them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this final rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost from the final rule.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by the final rule. The Department believes that eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this final rulemaking on insurers is ambiguous but could very well be positive. We also expect that this final rulemaking will affect relatively few firms and relatively few insurers either positively or negatively, as this appears to be a specialized industry. Therefore, we certify this final rule will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

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, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Executive Order 13132—Federalism

The Department of Homeland Security does not believe the final rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from the final rule to the extent that they are purchasers of qualified anti-terrorism technologies.

E. Paperwork Reduction Act

The revised SAFETY Act Application Kit referenced above was released for comment with public notice published in the **Federal Register** on December 13, 2004, at 69 FR 72207. The SAFETY Act Application Kit may also be found at *http://www.safetyact.gov*. Concurrent with the publication of this final rule, the Department submitted a revised Paperwork Reduction Act package to the Office of Management and Budget (OMB) for review.

List of Subjects in 6 CFR Part 25

Business and industry, Insurance, Practice and procedure, Science and technology, Security measures.

■ For the reasons discussed in the preamble, 6 CFR part 25 is revised to read as follows:

PART 25—REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

Authority: Subtitle G, of Title VIII, Public Law 107–296, 116 Stat. 2238 (6 U.S.C. 441–444).

§ 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, sections 441–444 of title 6, United States Code (the ''SAFETY Act'' or ''the Act'').

§ 25.2 Definitions.

Act of Terrorism—The term ''Act of Terrorism'' means any act determined to have met the following requirements or such other requirements as defined and specified by the Secretary:

(1) Is unlawful;

(2) Causes harm, including financial harm, to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Certification—The term ''Certification'' means (unless the context requires otherwise) the certification issued pursuant to section 25.9 that a Qualified Anti-Terrorism Technology for which a Designation has been issued will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.

Contractor—The term ''contractor'' means any person, firm, or other entity with whom or with which a Seller has a contract or contractual arrangement relating to the manufacture, sale, use, or operation of anti-terrorism Technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, or effectiveness of such Technology, or the conformity of such Technology to the Seller's specifications.

Designation—The term ''Designation'' means the designation of a Qualified Anti-Terrorism Technology under the SAFETY Act issued by the Under Secretary under authority delegated to the Under Secretary by the Secretary of Homeland Security.

Loss—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

Noneconomic damages—The term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

Office of SAFETY Act Implementation—The term ''Office of SAFETY Act Implementation'' or ''OSAI'' means the office within the Department of Homeland Security's Directorate of Science and Technology that assists with the implementation of the SAFETY Act. The responsibilities of the Office of SAFETY Act Implementation may include, without limitation, preparing the SAFETY Act Application Kit, receiving and

facilitating the evaluation of applications, managing the SAFETY Act Web site and otherwise providing the public with information regarding the SAFETY Act and the application process.

Physical harm—The term ''physical harm'' as used in the Act and this part means any physical injury to the body, including an injury that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

Qualified Anti-Terrorism Technology or QATT—The term '''Qualified Anti-Terrorism Technology'' or ''QATT'' means any Technology (including information technology) designed, developed, modified, procured, or sold for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a Designation has been issued pursuant to this part.

SAFETY Act or Act—The term ''SAFETY Act'' or ''Act'' means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, sections 441–444 of title 6, United States Code.

SAFETY Act Application Kit —The term ''SAFETY Act Application Kit'' means the Application Kit containing the instructions and forms necessary to apply for Designation or Certification. The SAFETY Act Application Kit shall be published at *http://www.safetyact.gov* or made available in hard copy upon written request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

SAFETY Act Confidential Information—Any and all information and data voluntarily submitted to the Department under this part (including Applications, Pre-Applications, other forms, supporting documents and other materials relating to any of the foregoing, and responses to requests for additional information), including, but not limited to, inventions, devices, Technology, know-how, designs, copyrighted information, trade secrets, confidential business information, analyses, test and evaluation results, manuals, videotapes, contracts, letters, facsimile transmissions, electronic mail and other correspondence, financial information and projections, actuarial calculations, liability estimates, insurance quotations, and business and marketing plans. Notwithstanding the foregoing, ''SAFETY Act Confidential Information'' shall not include any information or data that is in the public domain or becomes part of the public domain by any means other than the violation of this section.

Secretary—The term ''Secretary'' means the Secretary of Homeland Security as established by section 102 of the Homeland Security Act of 2002.

Seller—The term ''Seller'' means any person, firm, or other entity that sells or otherwise provides Qualified Anti-Terrorism Technology to any customer(s) and to whom or to which (as appropriate) a Designation and/or Certification has been issued under this Part (unless the context requires otherwise).

Technology—The term ''Technology'' means any product, equipment, service (including support services), device, or technology (including information technology) or any combination of the foregoing. Design services, consulting services, engineering services, software development services, software integration services, threat assessments, vulnerability studies, and other analyses relevant to homeland security may be deemed a Technology under this part.

Under Secretary—The term ''Under Secretary'' means the Under Secretary for Science and Technology of the Department of Homeland Security.

§ 25.3 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act, except the authority to declare that an act is an Act of Terrorism for purposes of section 865(2) of the SAFETY Act, may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security or the Under Secretary's designees.

§ 25.4 Designation of Qualified Anti-Terrorism Technologies.

(a) *General.* The Under Secretary may Designate as a Qualified Anti-Terrorism Technology for purposes of the protections under the system of litigation and risk management set forth in sections 441–444 of Title 6, United States Code, any qualifying Technology designed, developed, modified, provided or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be Considered.* (1) In determining whether to issue the Designation under paragraph (a) of this section, the Under Secretary may exercise discretion and judgment in considering the following criteria and evaluating the Technology:

(i) Prior United States Government use or demonstrated substantial utility and effectiveness.

(ii) Availability of the Technology for immediate deployment in public and private settings.

(iii) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism Technology.

(iv) Substantial likelihood that such anti-terrorism Technology will not be deployed unless protections under the system of risk management provided under sections 441–444 of title 6, United States Code, are extended.

(v) Magnitude of risk exposure to the public if such anti-terrorism Technology is not deployed.

(vi) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the Technology to substantially reduce risks of harm.

(vii) Anti-terrorism Technology that would be effective in facilitating the defense against acts of terrorism, including Technologies that prevent, defeat or respond to such acts.

(viii) A determination made by Federal, State, or local officials, that the Technology is appropriate for the purpose of preventing, detecting, identifying or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(ix) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(2) The Under Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary depending upon the particular Technology at issue and the threats that the Technology is designed to address. The Under Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Under Secretary is not required to reject an application that fails to meet one or more of the criteria. The Under Secretary may conclude, after considering all of the relevant criteria and any other relevant factors, that a particular Technology merits Designation as a Qualified Anti-Terrorism Technology even if one or more particular criteria are not satisfied. The Under Secretary's considerations will take into account evolving threats and conditions that give rise to the need for the anti-terrorism Technologies.

(c) *Use of Standards.* From time to time, the Under Secretary may develop,

issue, revise, adopt, and recommend technical standards for various categories or components of anti-terrorism Technologies (''Adopted Standards''). In the case of Adopted Standards that are developed by the Department or that the Department has the right or license to reproduce, the Department will make such standards available to the public consistent with necessary protection of sensitive homeland security information. In the case of Adopted Standards that the Department does not have the right or license to reproduce, the Directorate of Science and Technology will publish a list and summaries of such standards and may publish information regarding the sources for obtaining copies of such standards. Compliance with any Adopted Standard or other technical standards that are applicable to a particular anti-terrorism Technology may be considered in determining whether a Technology will be Designated pursuant to paragraph (a) of this section. Depending on whether an Adopted Standard otherwise meets the criteria set forth in section 862 of the Homeland Security Act; 6 U.S.C. 441, the Adopted Standard itself may be deemed a Technology that may be Designated as a Qualified Anti-Terrorism Technology.

(d) *Consideration of Substantial Equivalence*. In considering the criteria in paragraph (b) of this section, or evaluating whether a particular anti-terrorism Technology complies with any Adopted Standard referenced in paragraph (c) of this section, the Under Secretary may consider evidence that the Technology is substantially equivalent to other Technologies (''Predicate Technologies'') that previously have been Designated as Qualified Anti-Terrorism Technologies under the SAFETY Act. A Technology may be deemed to be substantially equivalent to a Predicate Technology if:

(1) It has the same intended use as the Predicate Technology; and

(2) It has the same or substantially similar performance or technological characteristics as the Predicate Technology.

(e) *Pre-Application Consultations*. To the extent that he deems it to be appropriate, the Under Secretary may consult with prospective and current SAFETY Act applicants regarding their particular anti-terrorism Technologies. Prospective applicants may request such consultations through the Office of SAFETY Act Implementation. The confidentiality provisions in § 25.10 shall be applicable to such consultations.

(f) *Developmental Testing & Evaluation (DT&E) Designations.* With respect to any Technology that is being developed, tested, evaluated, modified or is otherwise being prepared for deployment for the purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, the Under Secretary may Designate such Technology as a Qualified Anti-Terrorism Technology and make such Technology eligible for the protections under the system of litigation and risk management set forth in sections 441–444 of title 6, United States Code. A Designation made pursuant to this paragraph shall be referred to as a ''DT&E Designation,'' and shall confer all of the rights, privileges and obligations that accompany Designations made pursuant to paragraph (a) of this section except as modified by the terms of this paragraph or the terms of the particular DT&E Designation. The intent of this paragraph is to make eligible for SAFETY Act protections qualifying Technologies that are undergoing testing and evaluation and that may need to be deployed in the field either for developmental testing and evaluation purposes or on an emergency basis, including during a period of heightened risk. DT&E Designations shall describe the subject Technology (in such detail as the Under Secretary deems to be appropriate); identify the Seller of the subject Technology; be limited to the period of time set forth in the applicable DT&E Designation, which in no instance shall exceed a reasonable period for testing or evaluating the Technology (presumptively not longer than 36 months); be terminable by the Under Secretary at any time upon notice to the Seller; be subject to the limitations on the use or deployment of the QATT set forth in the DT&E Designation; and be subject to such other limitations as established by the Under Secretary. The protections associated with a DT&E Designation shall apply only during the period specified in the applicable DT&E Designation. Consent of the Seller of a QATT Designated pursuant to this paragraph will be a condition precedent to the establishment of any deployment or use condition and any other obligation established by the Under Secretary pursuant to this paragraph. Those seeking a DT&E Designation for a QATT pursuant to this paragraph (f) shall follow the procedures for DT&E Designations set forth in the SAFETY Act Application Kit.

§ 25.5 Obligations of Seller.

(a) *Liability Insurance Required.* The Seller shall obtain liability insurance of such types and in such amounts as shall be required in the applicable Designation, which shall be the amounts and types certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies have been deployed in defense against, response to, or recovery from, such act. The Under Secretary may request at any time that the Seller of a Qualified Anti-Terrorism Technology submit any information that would:

(1) Assist in determining the amount of liability insurance required; or

(2) Show that the Seller or any other provider of Qualified Anti-Terrorism Technology otherwise has met all of the requirements of this section.

(b) *Amount of Liability Insurance.* (1) The Under Secretary may determine the appropriate amounts and types of liability insurance that the Seller will be required to obtain and maintain based on criteria he may establish to satisfy compensable third-party claims arising from, relating to or resulting from an Act of Terrorism. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(i) The particular Technology at issue;

(ii) The amount of liability insurance the Seller maintained prior to application;

(iii) The amount of liability insurance maintained by the Seller for other Technologies or for the Seller's business as a whole;

(iv) The amount of liability insurance typically maintained by Sellers of comparable Technologies;

(v) Information regarding the amount of liability insurance offered on the world market;

(vi) Data and history regarding mass casualty losses;

(vii) The intended use of the Technology; and

(viii) The possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the Technology.

(2) In determining the appropriate amounts and types of insurance that a particular Seller is obligated to carry, the Under Secretary may not require any type of insurance or any amount of insurance that is not available on the world market, and may not require any type or amount of insurance that would

unreasonably distort the sales price of the Seller's anti-terrorism Technology

(c) *Scope of Coverage.* (1) Liability insurance required to be obtained pursuant to this section shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of Qualified Anti-Terrorism Technologies deployed in defense against, response to, or recovery from, an Act of Terrorism:

(i) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(ii) Contractors, subcontractors, suppliers, and vendors of the customer.

(2) Notwithstanding the foregoing, in appropriate instances the Under Secretary will specify in a particular Designation that, consistent with the Department's interpretation of the SAFETY Act, an action for the recovery of damages proximately caused by a Qualified Anti-Terrorism Technology that arises out of, relates to, or results from an Act of Terrorism may properly be brought only against the Seller and, accordingly, the liability insurance required to be obtained pursuant to this section shall be required to protect only the Seller.

(d) *Third Party Claims.* To the extent available pursuant to the SAFETY Act, liability insurance required to be obtained pursuant to this section shall provide coverage against third party claims arising out of, relating to, or resulting from an Act of Terrorism when the applicable Qualified Anti-Terrorism Technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal Waiver of Claims.* The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use, or operation of Qualified Anti-Terrorism Technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies have been deployed in defense against, response to, or recovery from such act. Notwithstanding the foregoing, provided that the Seller has used diligent efforts in good faith to obtain all required reciprocal waivers, obtaining such waivers shall not be a condition precedent or subsequent for, nor shall the failure to obtain one or more of such waivers adversely affect, the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification. Nothing in this paragraph (e) shall be interpreted to render the failure to obtain one or more of such waivers a condition precedent or subsequent for the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification.

(f) *Information to be Submitted by the Seller.* As part of any application for a Designation, the Seller shall provide all information that may be requested by the Under Secretary or his designee, regarding a Seller's liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an Act of Terrorism when the Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act, including:

(1) Names of insurance companies, policy numbers, and expiration dates;

(2) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);

(3) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;

(4) Deductibles or self-insured retentions, if any, that are applicable;

(5) Any relevant exclusions from coverage under such policies or other factors that would affect the amount of insurance proceeds that would be available to satisfy third party claims arising out of, relating to, or resulting from an Act of Terrorism;

(6) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's Qualified Anti-Terrorism Technology deployed in defense against, or response to, or recovery from an Act of Terrorism;

(7) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-terrorism Technologies deployed in defense against, response to, or recovery from an Act of Terrorism; and

(8) Any limitations on such liability insurance.

(g) *Under Secretary's Certification.* For each Qualified Anti-Terrorism Technology, the Under Secretary shall certify the amount of liability insurance the Seller is required to carry pursuant to section 443(a) of title 6, United States Code, and paragraphs (a), (b), and (c) of this section. The Under Secretary shall include the insurance certification under this section as a part of the applicable Designation. The insurance certification may specify a period of time for which such insurance certification will apply. The Seller of a Qualified Anti-Terrorism Technology may at any time petition the Under Secretary for a revision of the insurance certification under this section, and the Under Secretary may revise such insurance certification in response to such a petition. The Under Secretary may at any time request information from the Seller regarding the insurance carried by the Seller or the amount of insurance available to the Seller.

(h) *Seller's Continuing Obligations.* Within 30 days after the Under Secretary's insurance certification required by paragraph (g) of this section, the Seller shall certify to the Under Secretary in writing that the Seller has obtained the required insurance. Within 30 days of each anniversary of the issuance of a Designation or at any other time as he may determine, the Under Secretary may require, by written notice to the Seller, that the Seller certify to the Under Secretary in writing that the Seller has maintained the required insurance. The Under Secretary may terminate a Designation if the Seller fails to provide any of the insurance certifications required by this paragraph (h) or provides a false certification.

§ 25.6 Procedures for Designation of Qualified Anti-Terrorism Technologies.

(a) *Application Procedure.* Any person, firm or other entity seeking a Designation shall submit an application to the Under Secretary or such other official as may be named from time to time by the Under Secretary. Such applications shall be submitted according to the procedures set forth in and using the appropriate forms contained in the SAFETY Act Application Kit prescribed by the Under Secretary, which shall be made available at *http://www.safetyact.gov* and by mail upon written request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. The burden is on the applicant to make timely submission of all relevant data requested in the SAFETY Act Application Kit to substantiate an application for Designation. An applicant may withdraw a submitted application at any time and for any reason by making a written request for withdrawal with the Department. Withdrawal of a SAFETY Act

application shall have no prejudicial effect on any other application.

(b) *Initial Notification.* Within 30 days after receipt of an application for a Designation, the Under Secretary his designee shall notify the applicant in writing that:

(1) The application is complete and will be reviewed and evaluated, or

(2) That the application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process.* (1) The Under Secretary or his designee will review each complete application and any included supporting materials. In performing this function, the Under Secretary or his designee may but is not required to:

(i) Request additional information from the Seller;

(ii) Meet with representatives of the Seller;

(iii) Consult with, and rely upon the expertise of, any other Federal or non-Federal entity;

(iv) Perform studies or analyses of the subject Technology or the insurance market for such Technology; and

(v) Seek information from insurers regarding the availability of insurance for such Technology.

(2) For Technologies with which a Federal, State, or local government agency already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon such prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the Technology that he deems appropriate and that are available or can be feasibly conducted or obtained, including test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, in order to assess the effectiveness of the Technology or the capability of the Technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include, without limitation:

(i) Public source studies;

(ii) Classified and otherwise confidential studies;

(iii) Studies, tests, or other performance records or data provided by or available to the producer of the specific Technology; and

(iv) Proprietary studies that are available to the Under Secretary.

(3) In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular Technology, the Under Secretary will bring to bear his expertise concerning the protection of the security of the United States and will consider the urgency of the need for the Technology.

(d) *Action by the Under Secretary.* Within 90 days of notification to the Seller that an application for a Designation is complete in accordance with paragraph (b)(1) of this section, the Under Secretary shall take one of the following actions:

(1) Approve the application and issue an appropriate Designation to the applicant for the Technology, which shall include the insurance certification required by § 25.5(h) of this Part;

(2) Notify the applicant in writing that the Technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(3) Deny the application, and notify the applicant in writing of such decision. The Under Secretary may extend the 90-day time period for up to 45 days upon notice to the Seller. The Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(e) *Content of Designation.* (1) A Designation shall:

(i) Describe the Qualified Anti-Terrorism Technology (in such detail as the Under Secretary deems to be appropriate);

(ii) Identify the Seller(s) of the Qualified Anti-Terrorism Technology;

(iii) Specify the earliest date of sale of the Qualified Anti-Terrorism Technology to which the Designation shall apply (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, the effective date of the Designation);

(iv) Set forth the insurance certification required by § 25.5(g); and

(v) To the extent practicable, include such standards, specifications, requirements, performance criteria, limitations, or other information as the Department in its sole and unreviewable discretion may deem appropriate.

(2) The Designation may, but need not, specify other entities that are required to be covered by the liability insurance required to be purchased by the Seller. The failure to specify a covered person, firm, or other entity in a Designation will not preclude the application or applicability of the Act's protections to that person, firm, or other entity.

(f) *Term of Designation; Renewal.* A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary) commencing on the date of issuance, and the protections conferred by the Designation shall continue in full force and effect indefinitely to all sales of Qualified Anti-Terrorism Technologies covered by the Designation. At any time within two years prior to the expiration of the term of the Designation, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewal available at *http://www.safetyact.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(g) *Government Procurements.* (1) *Overview.* The Under Secretary may coordinate the review of a Technology for SAFETY Act purposes in connection with a Federal, State, or local government agency procurement of an anti-terrorism Technology in any manner he deems appropriate consistent with the Act and other applicable law. A determination by the Under Secretary to issue a Designation, or not to issue a Designation for a particular Technology as a QATT is not a determination that the Technology meets, or fails to meet, the requirements of any solicitation issued by any Federal government customer or non-Federal government customer. Determinations by the Under Secretary with respect to whether to issue a Designation for Technologies submitted for his review shall be based on the factors identified in § 25.4(b).

(2) *Procedure.* Any Federal, State, or local government agency that engages in or is planning to engage in the procurement of a Technology that potentially qualifies as a Qualified Anti-terrorism Technology, through the use of a solicitation of proposals or otherwise, may request that the Under Secretary issue a notice stating that the Technology to be procured either affirmatively or presumptively satisfies the technical criteria necessary to be deemed a Qualified Anti-Terrorism Technology (a ''Pre-Qualification Designation Notice''). The Pre-Qualification Designation Notice will provide that the vendor(s) chosen to provide the Technology (the ''Selected Vendor(s)''), upon submitting an application for SAFETY Act Designation will: Receive expedited review of their application for Designation; either affirmatively or presumptively (as the case may be) be deemed to have satisfied the technical criteria for SAFETY Act Designation with respect to the Technology identified in the Pre-Qualification Designation Notice; and be

authorized to submit a streamlined application as set forth in the Pre-Qualification Designation Notice. In instances in which the subject procurement involves Technology with respect to which a Block Designation or Block Certification has been issued, the Department may determine that the vendor providing such Technology will affirmatively receive Designation or Certification with respect to such Technology, provided the vendor satisfy each other applicable requirement for Designation or Certification. Government agencies seeking a Pre-Qualification Designation Notice shall submit a written request using the ''Procurement Pre-Qualification Request'' form prescribed by the Under Secretary and made available at *http://www.safetyact.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(3) *Actions.* Within 60 days after the receipt of a complete Procurement Pre-Qualification Request, the Under Secretary shall take one of the following actions:

(i) Approve the Procurement Pre-Qualification Request and issue an appropriate Pre-Qualification Designation Notice to the requesting agency that it may include in the government contract or in the solicitation materials, as appropriate; or

(ii) Notify the requesting agency in writing that the relevant procurement is potentially eligible for a Pre-Qualification Designation Notice, but that additional information is needed before a decision may be reached; or

(iii) Deny the Procurement Pre-Qualification Request and notify the requesting agency in writing of such decision, including the reasons for such denial.

(4) *Contents of Notice.* A Pre-Qualification Designation Notice shall contain, at a minimum, the following:

(i) A detailed description of and detailed specifications for the Technology to which the Pre-Qualification Designation Notice applies, which may incorporate by reference all or part of the procurement solicitation documents issued or to be issued by the requesting agency;

(ii) A statement that the Technology to which the Pre-Qualification Designation Notice applies satisfies the technical criteria to be deemed a Qualified Anti-Terrorism Technology and that the Selected Vendor(s) may presumptively or will qualify for the issuance of a Designation for such Technology upon compliance with the terms and conditions set forth in such Pre-Qualification Designation Notice and the approval of the streamlined application;

(iii) A list of the portions of the application referenced in § 25.6(a) that the Selected Vendor(s) must complete and submit to the Department in order to obtain Designation and the appropriate period of time for such submission;

(iv) The period of time within which the Under Secretary will take action upon such submission;

(v) The date of expiration of such Pre-Qualification Designation Notice; and

(vi) Any other terms or conditions that the Under Secretary deems to be appropriate in his discretion.

(5) *Review of Completed Applications.* The application for Designation from the Selected Vendor(s) shall be considered, processed, and acted upon in accordance with the procedures set forth in § 25.6 (which shall be deemed to be modified by the terms and conditions set forth in the applicable Pre-Qualification Designation Notice). However, the review and evaluation of the Technology to be procured from the Selected Vendor(s), in relation to the criteria set forth in § 25.4(b), shall ordinarily consist of a validation that that the Technology complies with the detailed description of and detailed specifications for the Technology set forth in the applicable Pre-Qualification Designation Notice.

(h) *Block Designations.* (1) From time to time, the Under Secretary, in response to an application submitted pursuant to § 25.6(a) or upon his own initiative, may issue a Designation that is applicable to any person, firm, or other entity that is a qualified Seller of the QATT described in such Designation (a ''Block Designation''). A Block Designation will be issued only for Technology that relies on established performance standards or defined technical characteristics. All Block Designations shall be published by the Department within ten days after the issuance thereof at *http://www.safetyact.gov*, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Any person, firm, or other entity that desires to qualify as a Seller of a QATT that has received a Block Designation shall complete only such portions of the application referenced in § 25.6(a) as are specified in such Block Designation and shall submit an application to the Department in accordance with § 25.6(a) and the terms of the Block Designation. Applicants seeking to be qualified Sellers of a QATT pursuant to a Block Designation will receive expedited review of their applications and shall not be required to provide information with respect to the technical merits of the QATT that has received Block Designation. Within 60 days (or such other period of time as may be specified in the applicable Block Designation) after the receipt by the Department of a complete application, the Under Secretary shall take one of the following actions:

(i) Approve the application and notify the applicant in writing of such approval, which notification shall include the certification required by § 25.5(g); or

(ii) Deny the application, and notify the applicant in writing of such decision, including the reasons for such denial.

(2) If the application is approved, commencing on the date of such approval the applicant shall be deemed to be a Seller under the applicable Block Designation for all purposes under the SAFETY Act, this part, and such Block Designation. A Block Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary in his discretion) commencing on the date of issuance, and may be renewed or extended by the Under Secretary at his own initiative or in response to an application for renewal submitted by a qualified Seller under such Block Designation in accordance with § 25.6(h). Except as otherwise specifically provided in this paragraph, a Block Designation shall be deemed to be a Designation for all purposes under the SAFETY Act and this part.

(i) *Other Bases for Expedited Review of Applications.* The Under Secretary may identify other categories or types of Technologies for which expedited processing may be granted. For example, the Under Secretary may conduct expedited processing for applications addressing a particular threat or for particular types of anti-terrorism Technologies. The Under Secretary shall notify the public of any such opportunities for expedited processing by publishing such notice in the **Federal Register**.

(j) *Transfer of Designation.* Except as may be restricted by the terms and conditions of a Designation, any Designation may be transferred and assigned to any other person, firm, or other entity to which the Seller transfers and assigns all right, title, and interest in and to the Technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the Technology, to any

person, firm, or other entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until the Under Secretary is notified in writing of the transfer using the ''Application for Transfer of Designation'' form issued by the Under Secretary (the Under Secretary shall make this application form available at *http://www.safetyact.gov* and by mail by written request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528). Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable Technology for all purposes under the SAFETY Act, this part, and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(k) *Application of Designation to Licensees.* Except as may be restricted by the terms and conditions of a Designation, any Designation shall apply to any other person, firm, or other entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or sell the Technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a ''Notice of License of Qualified Anti-terrorism Technology'' form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.safetyact.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(l) *Significant Modification of Qualified Anti-terrorism Technologies.* (1) The Department recognizes that Qualified Anti-Terrorism Technologies may routinely undergo changes or modifications in their manufacturing, materials, installation, implementation, operating processes, component assembly, or in other respects from time to time. When a Seller makes routine changes or modifications to a Qualified Anti-Terrorism Technology, such that the QATT remains within the scope of the description set forth in the applicable Designation or Certification, the Seller shall not be required to provide notice under this subsection, and the changes or modifications shall not adversely affect the force or effect of the Seller's QATT Designation or Certification.

(2) A Seller shall promptly notify the Department and provide details of any change or modification to a QATT that causes the QATT no longer to be within the scope of the Designation or Certification by submitting to the Department a completed ''Notice of Modification to Qualified Anti-Terrorism Technology'' form issued by the Under Secretary (a ''Modification Notice''). A Seller is not required to notify the Department of any change or modification of a particular Qualified Anti-Terrorism Technology that is made post-sale by a purchaser unless the Seller has consented expressly to the modification. The Under Secretary shall make an appropriate form available at *http://www.safetyact.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. The Department will promptly acknowledge receipt of a Modification Notice by providing the relevant Seller with written notice to that effect. Within 60 days of the receipt of a Modification Notice, the Under Secretary may, in his sole and unreviewable discretion:

(i) Inform the submitting Seller that the QATT as changed or modified is consistent with, and is not outside the scope of, the Seller's Designation or Certification;

(ii) Issue to the Seller a modified Designation or Certification incorporating some or all of the notified changes or modifications;

(iii) Seek further information regarding the changes or modifications and temporarily suspend the 60-day period of review;

(iv) Inform the submitting Seller that the changes or modifications might cause the QATT as changed or modified to be outside the scope of the Seller's Designation or Certification, and require further review and consideration by the Department;

(v) Inform the submitting Seller that the QATT as changed or modified is outside the scope of the subject Seller's Designation or Certification, and require that the QATT be brought back into conformance with the Seller's Designation or Certification; or

(vi) If the Seller fails to bring the subject QATT into conformance in accordance with the Under Secretary's direction pursuant to paragraph (l)(2)(v) of this section, issue a public notice stating that the QATT as changed or modified is outside the scope of the submitting Seller's Designation or Certification and, consequentially, that such Designation or Certification is not applicable to the QATT as changed or modified. If the Under Secretary does not take one or more of such actions within the 60-day period following the Department's receipt of a Seller's Modification Notice, the changes or modifications identified in the Modification Notice will be deemed to be approved by the Under Secretary and the QATT, as changed or modified, will be conclusively established to be within the scope of the description of the QATT in the Seller's Designation or Certification.

(3) Notwithstanding anything to the contrary herein, a Seller's original QATT Designation or Certification will continue in full force and effect in accordance with its terms unless modified, suspended, or terminated by the Under Secretary in his discretion, including during the pendency of the review of the Seller's Modification Notice. In no event will any SAFETY Act Designation or Certification terminate automatically or retroactively under this section. A Seller is not required to notify the Under Secretary of any change or modification that is made post-sale by a purchaser or end-user of the QATT without the Seller's consent, but the Under Secretary may, in appropriate circumstances, require an end-user to provide periodic reports on modifications or permit inspections or audits.

§ 25.7 Litigation Management

(a) Liability for all claims against a Seller arising out of, relating to, or resulting from an Act of Terrorism when such Seller's Qualified Anti-Terrorism Technology has been deployed in defense against, response to, or recovery from such act and such claims result or may result in loss to the Seller shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section or as specified in the applicable Designation.

(b) In addition, in any action for damages brought under section 442 of Title 6, United States Code:

(1) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses

may be awarded, nor shall any party be liable for interest prior to the judgment;

(2) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm; and

(3) Any recovery by a plaintiff shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such Acts of Terrorism that result or may result in loss to the Seller.

(c) Without prejudice to the authority of the Under Secretary to terminate a Designation pursuant to paragraph (h) of § 25.6, the liability limitations and reductions set forth in this section shall apply in perpetuity to all sales or deployments of a Qualified Anti-Terrorism Technology in defense against, response to, or recovery from any Act of Terrorism that occurs on or after the effective date of the Designation applicable to such Qualified Anti-Terrorism Technology, regardless of whether any liability insurance coverage required to be obtained by the Seller is actually obtained or maintained or not, provided that the sale of such Qualified Anti-Terrorism Technology was consummated by the Seller on or after the earliest date of sale of such Qualified Anti-Terrorism Technology specified in such Designation and prior to the earlier of the expiration or termination of such Designation.

(d) There shall exist only one cause of action for loss of property, personal injury, or death for performance or non-performance of the Seller's Qualified Anti-Terrorism Technology in relation to an Act of Terrorism. Such cause of action may be brought only against the Seller of the Qualified Anti-Terrorism Technology and may not be brought against the buyers, the buyers' contractors, or downstream users of the Technology, the Seller's suppliers or contractors, or any other person or entity. In addition, such cause of action must be brought in the appropriate district court of the United States.

§ 25.8 Government Contractor Defense

(a) *Criteria for Certification.* The Under Secretary may issue a Certification for a Qualified Anti-Terrorism Technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to issue such Certification, the Under Secretary or his designee shall conduct a comprehensive review of the design of such Technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such Qualified Anti-Terrorism Technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person, firm, or entity, and may consider test results produced by an independent laboratory or other person, firm, or other entity engaged by the Seller.

(b) *Extent of Liability.* Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies Certified by the Under Secretary as provided in §§ 25.8 and 25.9 of this part have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by clear and convincing evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Department during the course of the consideration of such Technology under this section and § 25.9 of this part. A claimant's burden to show fraud or willful misconduct in connection with a Seller's SAFETY Act application cannot be satisfied unless the claimant establishes there was a knowing and deliberate intent to deceive the Department. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers. Such presumption shall apply in perpetuity to all deployments of a Qualified Anti-Terrorism Technology (for which a Certification has been issued by the Under Secretary as provided in this section and § 25.9 of this part) in defense against, response to, or recovery from any Act of Terrorism that occurs on or after the effective date of the Certification applicable to such Technology, provided that the sale of such Technology was consummated by the Seller on or after the earliest date of sale of such Technology specified in such Certification (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Certification.

(c) *Establishing Applicability of the Government Contractor Defense.* The Under Secretary will be exclusively responsible for the review and approval of anti-terrorism Technology for purposes of establishing the government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an Act of Terrorism when Qualified Anti-Terrorism Technologies approved by the Under Secretary, as provided in this final rule, have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller. The Certification of a Technology as an Approved Product for Homeland Security shall be the only evidence necessary to establish that the Seller of the Qualified Anti-Terrorism Technology that has been issue a Certification is entitled to a presumption of dismissal from a cause of action brought against a Seller arising out of, relating to, or resulting from an Act of Terrorism when the Qualified Anti-Terrorism Technology was deployed in defense against or response to or recovery from such Act of Terrorism. This presumption of dismissal is based upon the statutory government contractor defense conferred by the SAFETY Act.

§ 25.9 Procedures for Certification of Approved Products for Homeland Security.

(a) *Application Procedure.* An applicant seeking a Certification of anti-terrorism Technology as an Approved Product for Homeland Security under § 25.8 shall submit information supporting such request to the Under Secretary. The Under Secretary shall make application forms available at *http://www.safetyact.gov*, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. An application for a Certification may not be filed unless the applicant has also filed an application for a Designation for the same Technology in accordance with § 25.6(a). Such applications may be filed simultaneously and may be reviewed simultaneously by the Department.

(b) *Initial Notification.* Within 30 days after receipt of an application for a Certification, the Under Secretary or his designee shall notify the applicant in writing that:

(1) The application is complete and will be reviewed, or

(2) That the application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review Process.* The Under Secretary or his designee will review each complete application for a Certification and any included supporting materials. In performing this function, the Under Secretary or his designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or non-Federal entity; and

(4) Perform or seek studies or analyses of the Technology.

(d) *Action by the Under Secretary.*

(1) Within 90 days after receipt of a complete application for a Certification, the Under Secretary shall take one of the following actions:

(i) Approve the application and issue an appropriate Certification to the Seller;

(ii) Notify the Seller in writing that the Technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) Deny the application, and notify the Seller in writing of such decision.

(2) The Under Secretary may extend the time period one time for 45 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(e) *Designation is a Pre-Condition.* The Under Secretary may approve an application for a Certification only if the Under Secretary has also approved an application for a Designation for the same Technology in accordance with § 25.4.

(f) *Content and Term of Certification; Renewal.* (1) A Certification shall:

(i) Describe the Qualified Anti-Terrorism Technology (in such detail as the Under Secretary deems to be appropriate);

(ii) Identify the Seller(s) of the Qualified Anti-Terrorism Technology;

(iii) Specify the earliest date of sale of the Qualified Anti-Terrorism Technology to which the Certification shall apply (which shall be determined by the Under Secretary in his discretion, and may be prior to, but shall not be later than, the effective date of the Certification); and

(iv) To the extent practicable, include such standards, specifications, requirements, performance criteria, limitations, or other information as the Department in its sole and unreviewable discretion may deem appropriate.

(2) A Certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the ''Application for Certification of an Approved Product for Homeland Security'' form issued by the Under Secretary.

(g) *Application of Certification to Licensees.* A Certification shall apply to any other person, firm, or other entity to which the applicable Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or and sell the Technology, in the same manner and to the same extent that such Certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a ''Notice of License of Approved Anti-terrorism Technology'' form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.safetyact.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(h) *Transfer of Certification.* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism Technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(i) *Issuance of Certificate; Approved Product List.* For anti-terrorism Technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism Technology on an Approved Product List for Homeland Security, which shall be published by the Department.

(j) *Block Certifications.* (1) From time to time, the Under Secretary, in response to an application submitted pursuant to § 25.9(a) or at his own initiative, may issue a Certification that is applicable to any person, firm or other entity that is a qualified Seller of the Approved Product for Homeland Security described in such Certification (a ''Block Certification''). All Block Certifications shall be published by the Department within ten days after the issuance thereof at *http://www.safetyact.gov*, and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Any person, firm, or other entity that desires to qualify as a Seller of an Approved Product for Homeland Security under a Block Certification shall complete only such portions of the application referenced in § 25.9(a) as are specified in such Block Certification and shall submit such application to the Department in accordance with § 9(a). Applicants seeking to be qualified Sellers of an Approved Product for Homeland Security pursuant to a Block Certification will receive expedited review of their applications and shall not be required to provide information with respect to the technical merits of the Approved Product for Homeland Security that has received Block Certification. Within 60 days (or such other period of time as may be specified in the applicable Block Certification) after the receipt by the Department of a complete application, the Under Secretary shall take one of the following actions:

(i) Approve the application and notify the applicant in writing of such approval; or

(ii) Deny the application, and notify the applicant in writing of such decision, including the reasons for such denial.

(2) If the application is approved, commencing on the date of such approval, the applicant shall be deemed to be a Seller under the applicable Block Certification for all purposes under the SAFETY Act, this part, and such Block Certification. A Block Certification shall be valid and effective for the same period of time for which the related Block Designation is issued. A Block Certification may be renewed by the Under Secretary at his own initiative or in response to an application for

renewal submitted by a qualified Seller under such Block Certification in accordance with § 25.9(g). Except as otherwise specifically provided in this paragraph, a Block Certification shall be deemed to be a Certification for all purposes under the SAFETY Act and this part.

§ 25.10 Confidentiality and Protection of Intellectual Property.

(a) *General.* The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality procedures for safeguarding, maintenance and use of information submitted to the Department under this part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

(b) *Non-Disclosure.* Except as otherwise required by applicable law or regulation or a final order of a court of competent jurisdiction, or as expressly authorized in writing by the Under Secretary, no person, firm, or other entity may:

(1) Disclose SAFETY Act Confidential Information (as defined above) to any person, firm, or other entity, or

(2) Use any SAFETY Act Confidential Information for his, her, or its own benefit or for the benefit of any other person, firm, or other entity, unless the applicant has consented to the release of such SAFETY Act Confidential Information.

(c) *Legends.* Any person, firm, or other entity that submits data or information to the Department under this Part may place a legend on such data or information indicating that the submission constitutes SAFETY Act Confidential Information. The absence of such a legend shall not prevent any data or information submitted to the Department under this Part from constituting or being considered by the Department to constitute SAFETY Act Confidential Information.

Dated: June 2, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–5223 Filed 6–5–06; 2:16 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0033]

RIN 0579–AC05

Citrus Canker; Compensation for Certified Citrus Nursery Stock

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations to establish provisions under which eligible commercial citrus nurseries may, subject to the availability of appropriated funds, receive payments for certified citrus nursery stock destroyed to eradicate or control citrus canker. The payment of these funds will reduce the economic effects on commercial citrus nurseries that have had certified citrus nursery stock destroyed to control citrus canker.

DATES: This interim rule is effective June 8, 2006. We will consider all comments that we receive on or before August 7, 2006.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0033 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0033.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen R. Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family Rutaceae). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable, and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in §§ 301.75–1 through 301.75–14 of ''Subpart-Citrus Canker'' in Title 7 of the Code of Federal Regulations. These regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide conditions under which regulated fruit may be moved into, through, and from quarantined areas for packing. These regulations were promulgated pursuant to the Plant Protection Act (7 U.S.C. 7701–7772).

The regulations in §§ 301.75–15 and 301.75–16 (referred to below as the regulations) of ''Subpart-Citrus Canker'' provide for compensation to owners of commercial citrus groves for losses due to citrus canker eradication activities under certain conditions. Section 301.75–15 addresses compensation for commercial citrus trees and § 301.75–16 focuses on compensation for the recovery of lost production income. These regulations were promulgated to implement the appropriations statutes enacted in 2000.

In February 2003, Congress appropriated funds ''* * * to compensate commercial citrus and lime growers in the State of Florida for lost

production with respect to trees removed to control citrus canker, and with respect to certified citrus nursery stocks within the citrus canker quarantine areas, as determined by the Secretary.'' This appropriation and similar appropriations in 2004 and 2005 cover losses due to tree destruction occurring after September 30, 2001. The regulations currently cover compensation for losses of commercial citrus groves but do not address payments to commercial nurseries, since no appropriations acts prior to 2003 included these entities as eligible for payment. Therefore, we are amending the regulations to provide for the payment of compensation to commercial nurseries for losses of certified citrus nursery stock as described in the 2003, 2004, and 2005 appropriations statutes (Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447). The provisions for the nursery stock compensation program are contained in a new section, § 301.75–17, which is explained in detail below.

Definitions (§ 301.75–1)

We are amending § 301.75–1, which provides definitions for the terms used in the regulations, by adding new definitions for *commercial citrus nursery* and *certified citrus nursery stock*. We have also added new definitions for the various growth stages of plants covered by this rule, including definitions for *seedlings*, *liner or rootstock*, *budded citrus nursery stock*, *budded field grown citrus plants*, and *budded container/greenhouse grown citrus plants*. Each of these terms is used in the new § 301.75–17.

We have defined *commercial citrus nursery* as ''an establishment engaged in, but not limited to, the production of certified citrus nursery stock, including plants for planting or replanting in commercial groves or for wholesale or retail sales.'' We have defined *certified citrus nursery stock* as ''citrus nursery stock, such as trees or plants, grown at a nursery that is in compliance with State certification requirements and approved for producing citrus nursery stock for commercial sale.'' These definitions do not cover nurseries that were not registered with the State of Florida or for losses of citrus nursery stock that was not certified at the time of the State ordered destruction because of citrus canker.

Budded citrus nursery stock is defined as ''liners or rootstock citrus plants that have been grafted with a portion of a stem or branch with a vegetative bud (also known as budwood) that are maintained 1 month after grafting or until the plant reaches marketability.''

The term *budded container/greenhouse grown citrus plants* is defined as ''individual, budded citrus nursery stock maintained in climate-controlled green houses in 4-or 6-inch diameter pots until it is sold for commercial use.'' The term *budded field grown citrus plants* is defined as ''individual, budded citrus nursery stock maintained in the fields until it is sold for commercial use.''

We have defined *liner or rootstock* as ''culled seedlings in the growing stage prior to the budding process.'' Finally, the term *seedlings* is defined as ''certified citrus seeds densely planted in seed beds and allowed to germinate and grow until their viability as liners or rootstock can be assessed.''

Funds for the Replacement of Certified Citrus Nursery Stock

The introductory text of § 301.75–17 provides that the payment of funds for certified citrus nursery stock compensation is contingent upon the availability of funds appropriated by Congress for that purpose. The funding for the certified nursery stock replacement payments provided for by this rule comes from the consolidated appropriations acts from 2003 to 2005. Each of these acts direct the Secretary of Agriculture to use a specified amount of money, $18.2 million in 2003, $10 million in 2004, and $30 million in 2005, from the Commodity Credit Corporation (CCC) funds to pay for tree replacement and lost production with respect to trees removed to control citrus canker and for certified citrus nursery stock destroyed after September 30, 2001, with the distribution of funding to be determined by the Secretary.

Under the existing compensation program for tree replacement and lost production, applications have been considered and payments made in ''IFO order,'' *i.e.*, based on the date the immediate final order (IFO) was issued directing the destruction of trees in a claimant's grove. Because there have been no provisions in the regulations for the payment of claims for certified nursery stock, some grove claims based on IFOs issued later than IFOs issued for certified nursery stock have been paid. Any remaining unpaid nursery claims, whose IFO dates have not yet been reached for payments, will be folded into the current payment recipient list to make a combined, chronological payment list that covers payments to both groves and nurseries. These recipients will receive funds when and if more money is appropriated by Congress. We welcome any comments on the most appropriate method of distributing benefits should available funding be less than total needs or claims in a future situation (*i.e.*, any situation involving compensation, not just with respect to citrus canker). Alternatives include, but are not limited to, the proration of available resources to all claimants and ''first come, first served,'' in which claimants are paid in full based on when their claims were submitted.

Eligibility

Under paragraph (a) of new § 301.75–17, a commercial citrus nursery may be eligible to receive funds to compensate for lost certified citrus nursery stock if the nursery stock was destroyed pursuant to a public order after September 30, 2001, as directed by Congress in the appropriations acts cited above, and before January 10, 2006, which is the date that the Department announced its determination that the established eradication program was no longer a scientifically feasible option to address citrus canker. Prior to the effective date of this interim rule, no provision had been made to compensate commercial citrus nurseries for certified nursery stock destroyed due to citrus canker.

Payments for Certified Nursery Stock

The State of Florida has determined that certified citrus nursery stock infected with or exposed to citrus canker, because of the destructive nature of the disease, has no value. This is based on the fact that the State prohibits the planting of any nursery stock that is infected with citrus canker or that is present in a nursery where citrus canker has been found. In order to prevent the spread of citrus canker through the movement of nursery stock, when citrus canker is found in a commercial citrus nursery the State takes regulatory action to prevent the movement of any host plants from the nursery. The State also issues an IFO specifying what citrus plant material is required to be destroyed. Thus, the certified nursery stock compensation payments provided for by this interim rule are intended to compensate nurseries for the value lost from certified nursery stock destroyed because of citrus canker. In calculating the compensation rates for commercial citrus nursery stock, we considered the actual value of the nursery stock destroyed. However, the current regulations cap the cost of replacing a commercial citrus tree at $26. This number was determined while developing the Florida Fruit Tree Pilot

Crop Insurance Program, which includes coverage for the loss of commercial citrus trees due to citrus canker. Under this program, the U.S. Department of Agriculture's (USDA's) Risk Management Agency (RMA) calculated the cost of replacing commercial citrus trees to be $26 per tree, which was confirmed by industry sources as the cost of replanting commercial citrus trees. We have determined that, based on the values set by RMA, we will not make payments for nursery stock higher than the maximum currently provided in the RMA crop insurance program. The amounts to be paid for destroyed certified citrus nursery stock, which are discussed in greater detail in the economic analysis prepared for this rule (see ''Executive Order 12866 and Regulatory Flexibility Act'' below), are as follows:

Type of certified nursery stock	Payment (dollars)
Seedlings	0.18/plant.
Liners or rootstock	1.50/plant.
Budded field grown citrus plants.	4.00/plant.
Budded container/greenhouse citrus plants.	4.50/plant.
Citrus nursery stock in containers for wholesale or retail sale:.	
1 gallon	5.00/container.
3 gallon	10.00/container.
5 gallon	15.00/container.
7 gallon	20.00/container.
Larger than 7 gallon	26.00/container.

How To Apply

Paragraph (c) of § 301.75–17 provides information on how to apply for compensation for lost citrus nursery stock. This paragraph states that the form necessary to apply for compensation funds may be obtained from any local citrus canker program office or from the USDA Citrus Canker Eradication Program office in Plantation, FL. Completed claim forms must be sent to the USDA Citrus Canker Eradication Program office in Miami, FL, which is where the records necessary to validate claims are located. When the completed application is submitted, it should be accompanied by a copy of the public order-typically an IFO-that directed the destruction of the certified nursery stock and its accompanying inventory that describes the number of plants and type of the certified nursery stock removed. If the certified nursery stock was planted in pots, the inventory should specify the size of the container. If the certified nursery stock was bare root plants or in a temporary container, the inventory should specify whether the plant was non-budded or budded. Claims for certified nursery stock will have to be received by the Animal and Plant Health Inspection Service (APHIS) within 60 days after the effective date of this rule.

Miscellaneous

The regulations in § 301.75–16(c) have referred to the ''USDA Citrus Canker Project'' and the ''USDA Citrus Canker Eradication Project.'' We are changing both of those references to the ''USDA Citrus Canker Eradication Program'' for consistency.

Immediate Action

We believe that immediate action will reduce the economic effect on affected commercial citrus nurseries resulting from the destruction of certified citrus nursery stock due to citrus canker, thus ensuring the continued cooperation of commercial citrus nurseries with the survey and eradication activities that have been conducted by the State of Florida and APHIS and with any other program activity that may be established to manage citrus canker disease in the future. Under these circumstances, the Administrator has determined that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

This interim rule amends the citrus canker compensation regulations to establish provisions under which eligible commercial citrus nurseries may, subject to the availability of appropriated funds, receive payments for certified citrus nursery stock destroyed because of citrus canker. The payment of these funds will reduce the economic effects on commercial citrus nurseries that have had certified citrus nursery stock destroyed to control citrus canker.

For this rule, we have prepared an economic analysis. The economic analysis discusses the basis for the compensation rates and expected benefits and costs in accordance with requirements of the Office of Management and Budget for regulatory analysis and includes an initial regulatory flexibility analysis examining the potential economic effects of this rule on small entities, as required under 5 U.S.C. 603. The economic analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) and may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

This interim rule sets forth the compensation rates that will be used to pay commercial citrus nurseries in quarantined areas for certified citrus nursery stock destroyed due to citrus canker, in accordance with 2003, 2004, and 2005 appropriations statutes (Pub. L. 108–7, Pub. L. 108–199, and Pub. L. 108–447). Specified amounts of CCC funds are specified for tree replacement and lost production with respect to trees removed to control citrus canker and for certified citrus nursery stock destroyed after September 30, 2001: $18.2 million in 2003, $10 million in 2004, and $30 million in 2005. Affected commercial citrus nurseries have not yet been compensated from these appropriated funds.

The decision to pay compensation is implicitly guided by certain economic principles that center on the concept of externality. An externality occurs when one party's actions impose uncompensated benefits or costs on another party. Compensation of affected commercial citrus nurseries is in response to losses caused by the citrus canker emergency action. Destruction of nursery stock because of citrus canker lessens the risk of greater losses through disease spread.

Compensation of losses of citrus stock intended for residential use, including stock that would have been sold to retail outlets, will be compensated by container size at the following rates:

Container size	Rate per plant
1 Gallon	$5
3 Gallon	10
5 Gallon	15
7 Gallon	20
Larger than 7 gallon	26

These rates are based on prices shown in ''Betrock's Plant Finder: Wholesale Guide to Foliage and Ornamental Plants, Sept. 15, 2003.'' Citrus trees intended for residential use are selected from budded citrus nursery stock, and are often the more vigorous trees that stand

out from the rest. They are containerized and cared for over an extended period of time. As such, the additional cost of materials and labor devoted to their care increases the value of these citrus trees.

The rate established in § 301.75–15 of the regulations for tree replacement is $26 for replacement of mature, productive trees. Compensation for nursery plants will not exceed this rate.

The economic costs associated with endemic citrus canker include adverse production, marketing, and trade impacts. The citrus canker eradication program was established to prevent further spread of the disease in an attempt to prevent increased prices, reduced yields, increased production costs, and loss of market access. Benefits of the eradication program were derived from the prevention or mitigation of these adverse impacts. Costs to society of compensating affected commercial citrus nurseries are the appropriated public funds that are thereby unavailable for other public uses and programs.

The small business size standard for nurseries identified by the Small Business Administration, based upon the North American Industry Classification System (NAICS) code 111422 (nursery and tree production), is $750,000 or less in annual receipts. Of the 1,360 nursery operators in Florida in 2003, 57 were producers of fruit and nut plants. The fruit and nut plant category includes growers of citrus nursery stock. The number of fruit-and-nut nurseries that sell citrus stock is not known.

The average size of affected commercial citrus nurseries is also unknown. It is reasonable to assume that most are small since 88 percent of all nursery operations in Florida are considered to be small entities. Of the commercial citrus nurseries, only those located within citrus canker quarantined areas that experienced losses related to the eradication program would qualify for compensation—a relatively small subset of Florida's nurseries. Affected commercial citrus nurseries selling to commercial growers or to retail outlets will be eligible for compensation. APHIS welcomes information that the public may provide regarding the number and size of nursery operations that will be affected by this rule.

Alternatives to this rule would be to not provide rates for the compensation of affected nurseries (status quo), or provide rates other than those set forth in the interim rule. The first alternative was not chosen because the Secretary has determined that compensation should be provided in order to reduce the economic effects on those commercial citrus nurseries that have had nursery stock destroyed to control citrus canker. Compensation rates need to be established so that the appropriated funds can be disbursed.

With respect to alternative compensation rates, the rates set forth in this interim rule are based on market prices. We invite public comment on those rates, including comment on expected impacts on small entities. Comments suggesting changes to the intended compensation rates should be supported by an explanation of why the changes should be considered.

This rule contains certain reporting and recordkeeping requirements (see ''Paperwork Reduction Act'' below).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local elected officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number.

This rule amends the citrus canker regulations to establish provisions under which commercial citrus nurseries may be eligible to receive funds to replace certified citrus nursery stock removed to control citrus canker. Implementing this program will necessitate the use of an information collection activity in the form of an application for funds. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and type of the certified nursery stock removed.

We plan to request continuation of the emergency approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. APHIS–2006–0033, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. APHIS–2006–0033 and send your comments within 60 days of publication of this rule. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.16 hours per response.

Respondents: Eligible commercial citrus nursery owners in Florida.

Estimated annual number of respondents: 12.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 12.

Estimated total annual burden on respondents: 2 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option

of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this interim rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

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

■ Accordingly, we are amending 7 CFR part 301 to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 is revised to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.75–1 is amended by adding, in alphabetical order, definitions of *budded citrus nursery stock*, *budded container/greenhouse grown citrus plants*, *budded field grown citrus plants*, *certified citrus nursery stock*, *commercial citrus nursery*, *liner or rootstock*, and *seedlings* to read as follows:

§ 301.75–1 Definitions.

* * * * *

Budded citrus nursery stock. Liners or rootstock citrus plants that have been grafted with a portion of a stem or branch with a vegetative bud (also known as budwood) that are maintained 1 month after grafting or until the plant reaches marketability.

Budded container/greenhouse grown citrus plants. Individual, budded citrus nursery stock maintained in climate-controlled greenhouses in 4-or 6-inch diameter pots until it is sold for commercial use.

Budded field grown citrus plants. Individual, budded citrus nursery stock maintained in the fields until it is sold for commercial use.

* * * * *

Certified citrus nursery stock. Citrus nursery stock, such as trees or plants, grown at a nursery that is in compliance with State certification requirements and approved for producing citrus nursery stock for commercial sale.

* * * * *

Commercial citrus nursery. An establishment engaged in, but not limited to, the production of certified citrus nursery stock, including plants for planting or replanting in commercial groves or for wholesale or retail sales.

* * * * *

Liner or rootstock. Culled seedlings in the growing stage prior to the budding process.

* * * * *

Seedlings. Certified citrus seeds densely planted in seed beds and allowed to germinate and grow until their viability as liners or rootstock can be assessed.

* * * * *

§ 301.75–16 [Amended]

■ 3. In § 301.75–16, paragraph (c) is amended by removing the words ''Citrus Canker Project'' and adding the words ''Citrus Canker Eradication Program'' in their place, and by removing the words ''Project, Attn:'' and by adding the words ''Program, Attn:'' in their place.

■ 4. In Subpart—Citrus Canker, a new § 301.75–17 is added to read as follows:

§ 301.75–17 Funds for the replacement of certified citrus nursery stock.

Subject to the availability of appropriated funds, a commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock in accordance with the provisions of this section.

(a) *Eligibility.* A commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock removed to control citrus canker if the nursery stock was removed pursuant to a public order after September 30, 2001, and before January 10, 2006.

(b) *Certified citrus nursery stock payments.* A commercial citrus nursery that is eligible under paragraph (a) of this section to receive funds to replace certified citrus nursery stock will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Type of certified nursery stock	Payment (dollars)
Seedlings	0.18/plant.
Liners or rootstock	1.50/plant.
Budded field grown citrus plants.	4.00/plant.
Budded container/greenhouse citrus plants.	4.50/plant.
Citrus nursery stock in containers for wholesale or retail sale:	
1 gallon	5.00/container.
3 gallon	10.00/container.
5 gallon	15.00/container.
7 gallon	20.00/container.
Larger than 7 gallon	26.00/container.

(c) *How to apply for certified nursery stock replacement funds.* The form necessary to apply for funds to replace certified nursery stock may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and type of the certified nursery stock removed. If the certified nursery stock was planted in pots, the inventory should specify the size of the container. If the certified nursery stock was bare root plants or in a temporary container, the inventory should specify whether the plant was non-budded or budded. The completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Compensation, 10300 Sunset Dr., Suite 150, Miami, FL 33173. Claims for certified nursery stock must be received by August 7, 2006.

Done in Washington, DC, this 1st day of June 2006.

Charles D. Lambert,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–8809 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 03–048–3]

Importation of Fruits and Vegetables; Untreated Citrus From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. We believe the conditions under which untreated citrus from Mexico will be allowed importation to be sufficient for safeguarding fruit that are moving from Mexico to Texas. This action will relieve unnecessary restrictions while continuing to protect against the introduction of quarantine pests through imported fruits.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1228; (301) 734–4312.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56 through 319.56–8, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and spread of plant pests that are new to or not widely distributed within the United States.

On March 31, 2005, we published in the **Federal Register** (70 FR 16431–16445, Docket No. 03–048–1) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. We also proposed to recognize areas in several countries as free from certain fruit flies; add an alternative treatment for specified commodities; provide for the importation of untreated citrus from Mexico for processing under certain conditions; eliminate or modify existing treatment requirements for specified commodities; and to add, modify, or remove certain definitions and make other miscellaneous changes.

We solicited comments concerning our proposal for 60 days ending May 31, 2005. We received 29 comments by that date. They were from representatives of State governments, industry organizations, importers and exporters, producers, scientists, and individuals.

We addressed the majority of the comments in another final rule, which was published in the **Federal Register** on December 8, 2005 (70 FR 72881–72892, Docket No. 03–048–2). In that final rule, we took final action on all aspects of our March 2005 proposed rule except for the proposed provisions regarding the importation of untreated citrus from Mexico into the United States for processing, about which six commenters raised specific concerns (two other commenters supported the proposed provisions). In order to give ourselves additional time to consider the issues raised by those six commenters regarding those proposed provisions without delaying final action on the other aspects of the proposed rule, our December 2005 final rule stated that we would issue another document in the **Federal Register** in the future regarding the importation of untreated citrus from Mexico into the United States for processing.

In this final rule, we address the comments we received regarding the proposed provisions regarding the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing. The issues raised by the commenters are discussed below.

General Comments

Several commenters questioned the proposed program in general, asking why the Animal and Plant Health Inspection Service (APHIS) would consider allowing potentially infested fruit to be imported into areas of Texas where a substantial amount of money is being spent to maintain and upgrade the Mexican fruit fly (*Anastrepha ludens*) suppression program. These commenters stated that allowing untreated citrus fruit to be imported would exacerbate the Mexican fruit fly situation in Texas, a situation they noted has been complicated by Arizona and California denying market access for most Texas oranges and grapefruit due to the April 2005 detection of live Mexican fruit fly larvae in two truckloads of treated grapefruit shipped from Texas. The commenters stated that those detections highlight the need to review and expand the suppression activities in south Texas, and the absolute need to prevent, so far as possible, the introduction of additional flies from Mexico.

The protocol governing the fruit fly trapping activities in Mexican production areas required by this rule, monitored under an APHIS-approved quality control program, will provide a level of phytosanitary security that will be equivalent to the strengthened Texas Lower Rio Grande Protocol for 2005/2006. According to the trapping protocol, if just one Mexican fruit fly, sapote fruit fly (*A. serpentina*), or Mediterranean fruit fly (*Ceratitis capitata*, Medfly) is found, exports from the production site of origin will be prohibited until other measures have been taken to ensure the absence of fruit flies in the site. APHIS must approve these measures and consider them effective before permitting the production site to resume exports. Measures could include increased trapping densities, pesticide applications, or other measures that would correspond with conditions for interstate movement of fruit from production sites in the United States where fruit flies are detected. This requirement would ensure that imported untreated citrus originates from areas with low prevalence for Mexican fruit fly and freedom from sapote fruit fly and Medfly. In addition, this rule's requirements for packing the fruit in insect-proof cartons or covering the fruit with insect-proof mesh or a plastic tarpaulin for transit will further mitigate the pest risk. Lastly, because the citrus will be moving from Mexico to Texas for immediate juicing rather than consumption, it will present a significantly lower risk of pest introduction than fruit intended for consumption because the process of juicing itself is a mitigation measure.

One commenter stated that the Mexican fruit fly populations in Mexico are several times (sometimes even a hundredfold) greater than those in Texas and that lowering these populations to the levels in Texas would be an enormous task for Mexican growers. Similarly, another commenter stated that there are so many fruit flies of various species infesting wild and domestic citrus and other hosts in Mexican production areas that nothing short of a massive suppression program would have any practical hope of success. The first commenter stated that releasing sterile flies alone would not accomplish the goal of lowering Mexican fruit fly populations levels in Mexico's production areas and recommended that a systems approach be employed to reduce those population levels to the levels found in Texas. These commenters stated that until such a reduction is realized, which one of the commenters questioned as even being possible, the shipment of untreated fruit into Texas poses a serious risk of pest introduction.

Mexican fruit fly is native to Mexico and it is true that there are parts of Mexico that are heavily infested, but there are also parts of Mexico that have been recognized as free areas for Mexican fruit fly by APHIS (*see* § 319.56–2(h) of the regulations). It will be the obligation of the Mexican growers, in cooperation with the national plant protection organization (NPPO) of Mexico, to ensure that fruit destined to the United States for juicing meets all the requirements outlined in this rule to mitigate any pest risk. All of the independent requirements, including trapping and the preventative release program, need to be met before citrus for juicing is allowed entry into areas of the United States that are listed in 7 CFR 301.64–3 as quarantined areas for the Mexican fruit fly.

One of the commenters noted that while Mexico is seeking to export untreated citrus to the United States, Mexican authorities continue to require that shipments of citrus fruit from Texas to Mexico be treated.

Untreated citrus from Mexico will be exported to specific areas in the State of Texas for the sole purpose of processing (juicing). This scenario is not the same as citrus shipments from Texas destined to Mexico for consumption. In addition, untreated Mexican citrus will be packed in insect-proof cartons or containers or covered with insect-proof mesh or plastic tarpaulin during its movement to Texas to further mitigate the risk of introducing fruit flies.

One commenter asked if the activities called for under the proposed provisions would be paid for and supported by the Mexican Government, or if the U.S. Government intended to provide funding for the necessary activities in Mexican production areas and during the transport of the fruit into the United States.

Cost of the Mexican program will be borne by Mexico. In some cases, such as the preventative release program, costs will be shared by APHIS and Mexico. In this example, APHIS will pay for flies to be dropped in Mexico, which may aid in the certification of fruit for exportation into the United States. We note, however, that assisting Mexico in reducing fruit fly levels along the border will be beneficial in keeping our own fruit fly levels down as well.

One commenter stated that it was unclear as to whether Mexican producers wanted to export fruit year round or only into a zone in South Texas when trapping within a particular portion of the Mexican fruit fly quarantined area in Texas indicates an increase in fruit fly levels, thus triggering the application of additional suppression and mitigation measures in that area.

At this time we are unsure as to the exporting intentions of Mexican producers; however, there is nothing in this rule to prevent them from exporting citrus year round.

Several commenters viewed the proposed provisions as an erosion of U.S. phytosanitary security standards. One commenter, noting that the regulations already provide for the importation of fruits and vegetables from fruit-fly-free production areas, stated that APHIS should not lower its standards to require only a low prevalence of reproducing fruit flies in production areas, especially with respect to areas in Mexico where there is a variety of indigenous fruit fly populations.

We disagree with the assertion that there is an erosion of phytosanitary security standards. This rule requires that the fruit must originate from an area that has a low prevalence of Mexican fruit fly and is free of Medfly and sapote fruit fly, as is the case in the areas in Texas into which fruit will be allowed importation for processing. In addition, the preventative release program mirrors that which is required in areas quarantined for Mexican fruit fly in Texas. Because the entry of the fruit will be limited to an area with similar pest conditions, we have concluded that untreated Mexican citrus can be safely imported under the prescribed conditions. Further, fruits and vegetables imported into the United States from fruit-fly-free production areas are typically imported for fresh consumption and may be moved throughout the country, whereas the citrus imported under this rule must be sent directly to processing and may only enter areas of the United States where similar pest conditions prevail.

One commenter requested that if the proposal is adopted, APHIS provide his organization an opportunity to review the importation guidelines in order to evaluate the adequacy of the safeguarding measures.

Details of the program will be included in a bilateral workplan developed jointly with APHIS and the NPPO of Mexico. Once the final rule is effective and the workplan has been finalized, copies of the workplan may be obtained by contacting Dr. Ed Gersabeck, International Services, APHIS, 4700 River Road Unit 65, Riverdale, MD 20737–1228; (301) 734–7550.

One comment stated that the proposed rule was unnecessary because there is only one juice processing facility in operation in the three counties in Texas to which Mexican citrus could be transported and that facility will not process Mexican citrus.

While the commenter is correct that there is currently only one juice processing facility in the three Texas counties subject to this rule, we have no evidence that this facility will not process Mexican citrus. In addition, there is the possibility that other juice processing facilities will be established once this final rule becomes effective.

One commenter stated that the failure of a similar program established for Spanish clementine growers shows that allowing the entry of Mexican citrus into the United States is unwise.

We disagree with the commenter's evaluation of and comparisons between the Spanish clementine import regulations and this Mexican citrus rule. The Spanish clementine import program has functioned effectively. In any case, it is important to note again that the untreated Mexican citrus covered by this rule will only be allowed entry into three counties in Texas where it will be transported directly to a juice processing facility for juicing, and only under the conditions specified in this rule.

One commenter noted that two reports issued in the past 2 years by the Government Accountability Office (GAO) stated that the efficacy of APHIS' pest exclusion program has been reduced since these responsibilities were transferred to the Department of Homeland Security (DHS). The commenter added that inspection responsibilities should rest with APHIS inspectors until DHS inspectors can be properly and thoroughly trained.

We believe that the problems identified in the GAO reports cited by the commenter have been addressed. Following the creation of DHS, there was a need to provide pest exclusion training to those Immigration and Naturalization Service, U.S. Border Patrol, and U.S. Customs Service personnel who were transferred to DHS' Bureau of Customs and Border Protection (CBP), just as the mission of CBP dictated the need to provide cross-training in other specialties to those APHIS personnel who were transferred to CBP. Planning and delivering training for all these personnel necessarily had to be accomplished over time, but all CBP inspection personnel have now been fully and satisfactorily trained in pest exclusion.

One commenter stated that the California Department of Food and Agriculture discovered Mexican fruit fly larvae in fumigated grapefruit from Texas at a State border inspection station, and noted that APHIS was still investigating how the larvae were able to circumvent the existing system that is in place to prevent such incidents from occurring.

The citrus fruit that will be allowed entry into Texas under this rule will be going directly to a juice processing facility, and the processing that occurs there will eliminate any fruit fly risk with respect to the product that will be moved out of that facility. No whole fruit originating from Mexico that is imported under this program will be allowed entry into California or any other State.

Trapping

One commenter stated that the proposed trapping density of one trap per 10 hectares for Mexican fruit fly and sapote fruit fly was too high, especially considering that a sterile fly release program will be employed in production areas and the surrounding buffer areas. This commenter noted that a density of 1 trap per 10 hectares is equivalent to 10 traps per square

kilometer or 25 traps per square mile, which he stated is 2.5 times higher that the trapping density called for under the risk assessment criteria of the North American Plant Protection Organization (NAPPO) for a high-risk area, and higher than the 5 traps per square mile trapping density employed in the United States under preventive release programs in Florida, Texas, and California. The commenter further stated that such a high number of traps will result in the capture of numerous sterile flies, which could jeopardize the effectiveness of that aspect of the program. Based on these considerations, the commenter recommended that the trapping density be reduced to no more than two traps per square mile.

In response to this comment, we have reduced the trapping density in this final rule to two traps per square kilometer (one trap per 50 hectares) for *Anastrepha* spp. fruit flies. This trapping density is consistent with the levels called for in the International Atomic Energy Agency's (IAEA) guidelines [1] for the monitoring of suppression areas for *Anastrepha* spp. fruit flies.

Several commenters did not support allowing growers in Mexico to conduct the required trapping, even if the trapping is subject to monitoring under an APHIS-approved quality control program and the fruit has to be accompanied by a phytosanitary certificate issued by the Mexican Government attesting that the trapping and other requirements have been met. These commenters pointed out that U.S. growers do not conduct trapping and stated that such an activity must be a Government function.

Growers will not be solely responsible for conducting trapping as previously indicated. Traps will be set and monitored by employees of the Mexican NPPO and it will be the responsibility of the Mexican NPPO to ensure that growers are complying with the regulations. APHIS will review trapping records and will ultimately determine if the level of compliance is sufficient to provide an appropriate level of protection for the United States.

Some commenters noted that, while the proposed rule would require the use of APHIS-approved traps, it did not specify how often those traps must be checked, how the traps must be maintained, or how often trapping results must be reported to Mexican and U.S. authorities.

Such details of Mexico's fruit fly trapping program are included in APHIS's and Mexico's bilaterally agreed upon fruit fly management plans. The details of the trapping program will be determined upon a site review and included in a workplan to be signed by both APHIS and the NPPO of Mexico. As stated previously, once the final rule is effective and the workplan has been finalized, copies of the workplan may be obtained by contacting APHIS' International Services at the address provided the response to the earlier comment regarding workplans.

One commenter recommended that, at the very least, a fruit cutting component should be included to check for fruit fly larvae as a backup to field trapping.

Fruit cutting will not be necessary because the fruit will be going directly to processing plants for juicing in Texas. We believe that the additional safeguards against fruit fly infestation from the time of harvest until processing in the United States, such as packing the fruit in insect-proof cartons or containers or covering fruit with insect-proof mesh or plastic tarpaulin, will be sufficient at preventing the risk of pest introduction while the fruit is in transit through Mexico and into Texas.

Two commenters noted that under the proposed program, the capture of a Mexican fruit fly, sapote fruit fly, or Medfly in a production site or buffer area would result in exports from that production area being prohibited until APHIS determines that the phytosanitary measures taken have been effective to allow the resumption of exports from that production site. One commenter stated that the program must provide for the suspension of exports upon the capture of any *Anastrepha* spp. fruit fly, not just Mexican fruit fly or sapote fruit fly. The other commenter asked what specific criteria the Administrator would use to determine that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

The fruit fly prevalence requirements in Mexico mirror the low prevalence program currently in place in Texas and will ensure that low prevalence levels of reproducing Mexican fruit flies are maintained throughout production sites. The reason the program calls for suspension of imports upon capture of any Mexican fruit fly or sapote fruit fly, but no other *Anastrepha* spp., is because these two fruit flies are the only *Anastrepha* spp. fruit flies present in the Mexican production areas that infest citrus. Specific requirements and criteria which the Administrator will use to determine whether risk mitigation has been achieved will be agreed upon by APHIS and the NPPO of Mexico and included in the bilateral workplan for this program.

Fruit Fly Control

Several commenters were concerned that the suppression activities called for in the proposal were focused solely on Mexican fruit fly and would have no effect on Mediterranean fruit fly, sapote fruit fly, or any other of several potentially damaging fruit fly pests that are commonplace in Mexico. The commenters stated that all other economically important *Anastrepha* species, as well as Medfly, must be comprehensively addressed in the program's requirements.

In addition to the Mexican and sapote fruit fly systems approach, our proposal set forth specific provisions regarding Medfly. Our proposal also stated that APHIS-approved traps and lures be placed in the production sites and surrounding 1.5 mile buffer areas at a rate of one to four traps per 250 hectares. As stated previously, we will suspend imports from a production site if any Mexican fruit fly, sapote fruit fly, or Medfly is captured. We believe it is appropriate to adopt a trapping-only approach to monitor for Medfly because Medfly is largely confined to the southern part of Mexico, and there are ongoing Medfly suppression and eradication activities throughout Mexico. We are not conducting a preventative release program for the sapote fruit fly because we consider citrus to be a poor host of sapote fruit fly. Further, we are unaware of any governmental or non-governmental entities that are producing populations of sterile sapote fruit flies at this time. Nevertheless, the Mexican NPPO must ensure that production sites are free of sapote fruit fly to be eligible for the program under this final rule.

Several commenters questioned the commitment of Mexican authorities to pursuing an active and effective fruit fly control program. These commenters stated that before any untreated citrus can be exported to the United States, Mexico must construct and maintain an efficient, effective suppression program for all fruit flies—not just Mexican fruit fly—that produces proven results over time.

Before exports can begin, the NPPO of any of our trading partners wishing to export a commodity that was previously prohibited entry must submit an acceptable workplan to APHIS for review, and APHIS oversight is incorporated into those plans. In the

[1] *Trapping Guidelines for Area-Wide Fruit Fly Programmes*, published by the Insect Pest Control Section of the Joint FAO/IAEA Division, IAEA, Vienna, Austria, November 2003. Available at *http://www.iaea.org/programmes/nafa/d4/public/d4-trapping.html.*

case of untreated Mexican citrus, we believe that the mitigation measures we have prescribed are appropriate and will be effective. Because APHIS will conduct oversight of the program, if at any time it appears that a production site is not maintaining sufficient mitigation measures, APHIS will suspend exports from that site.

Use of Terms

One commenter recommended that, for the sake of clarity, the introductory text of the section should state that the fruit may be imported for ''extracting juice'' rather than the broader term ''processing.''

We agree with this commenter, therefore, in § 319.56–2rr, in the introductory text, we are replacing the word ''processing'' with the words ''extracting juice.''

One commenter disagreed with the statement in the proposed rule that the Mexican fruit fly quarantined areas in Texas are under an APHIS-approved preventative release program. This commenter stated that a preventative release program is used in areas with a high risk for an infestation but where an infestation does not exist.

The International Plant Protection Convention (IPPC) defines a preventative release program as a program that would prevent the indigenous fruit fly population from reaching a level to require a regulatory change. We consider the program in Texas to be a preventative release program because the goal of the preventative release program is to prevent the indigenous population from reaching a level to require regulatory action.

One commenter recommended that, to avoid ambiguity, phrases such as low prevalence zone, preventative release program, production site, and buffer zone should be defined. Another commenter stated that the United States and Mexico appear to have differing concepts of what constitutes a low prevalence zone, and until those concepts are reconciled, the proposal should not be finalized. On a similar note, a third commenter asked what the criteria would be for designating an area as a low prevalence zone and who would make that determination.

The IPPC defines an area of low prevalence as an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control, or eradication measures.

A buffer zone is defined as an area in which a specific pest does not occur or occurs at a low level and is officially controlled, that either encloses or is adjacent to an infested area, an infested place of production, an area of low prevalence, a pest-free area, a pest-free place of production, or a pest-free production site, and in which phytosanitary measures are taken to prevent spread of the pest.

Production site is defined in § 319.56–1 as a defined portion of a place of production utilized for the production of a commodity that is managed separately for phytosanitary purposes. This may include the entire place of production or portions of it. Examples of portions of places of production are a defined orchard, grove, field, or premises.

As stated previously, the IPPC defines preventative release program as a program that would prevent the indigenous fruit fly population from reaching a level to require a regulatory change.

The specific areas included in the low prevalence zone will be identified in the bilateral workplan between APHIS and Mexico.

Economic Analysis

Some of the commenters disputed the statements in the proposed rule's economic analysis that the proposed program would positively affect U.S. citrus processing plants and the U.S. trucking industry. The commenters stated that it is unlikely that new facilities would be built simply because Mexican citrus becomes available for processing, and noted that the operators of the only citrus processing plant in the area into which imports would be allowed have indicated that they do not need or want to process Mexican citrus. The commenters further stated that even if the processing plant did elect to accept the fruit, there would be no benefit to domestic trucking firms because that plant is only about 5 miles north of the primary port of entry at Pharr/Reynosa.

As stated previously, we have no evidence that the citrus processing facility in Texas will not process Mexican citrus. Our proposed rule stated that any positive effects on the U.S. citrus processing or trucking industries would depend upon the volume of citrus Mexico was exporting to the United States. However, the commenter is correct that we made a statement that the U.S. citrus processing industry would be positively affected by this final rule. While we expect citrus processing plants to benefit from increased citrus imported for processing, the benefits would depend upon the amount of citrus being imported from Mexico. However, in light of what the commenter said about the location of the citrus processing plant, we have revised the economic analysis in this final rule by removing the statement that the U.S. trucking industry will benefit from the imports of untreated citrus from Mexico.

Miscellaneous

In our May 2005 proposed rule, we proposed to add the conditions governing the importation of untreated citrus from Mexico as § 319.56–2nn. In this final rule, those conditions are added as § 319.56–2rr.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

This final rule amends the fruits and vegetables regulations to provide for the importation of untreated citrus (grapefruit, sweet oranges, and tangerines) from Mexico for processing under certain conditions. We believe the conditions under which untreated citrus from Mexico will be allowed importation to be sufficient for safeguarding fruit that are moving from Mexico to Texas. This action will relieve unnecessary restrictions while continuing to protect against the introduction of quarantine pests through imported fruits.

We used all available data to estimate the potential economic effects of allowing the fruits specified in this rule to be imported into the United States. However, some of the data we believe would have been helpful in making this determination was not available at the time the analysis for the proposed rule was prepared. We invited public comment on the potential effects of our proposed rule on small entities, in particular the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. We received one comment that raised issues specific to the economic considerations associated

with the provisions for the importation of untreated citrus from Mexico for processing. Those issues are discussed earlier in this document.

The total value of the citrus industry to the Texas economy is more than $200 million. The total crop value to the growers tops $50 million annually.[2] Three counties account for all the citrus acreage/production in Texas (about 27,000 acres total). Specifically, Hidalgo County accounts for 85 percent of the citrus acreage, Cameron County accounts for 14 percent of the acreage, while Willacy County accounts for only about 1 percent only. The Texas citrus industry is dominated by grapefruit and oranges, as less than 100 acres in the counties are dedicated to other citrus. Texas Citrus Exchange (TCX) is the only juice processor operating in the three counties. In some cases, local citrus production cannot fully supply the facility's production capacity. TCX uses local oranges to produce fresh orange juice; however, to satisfy the demand for frozen concentrated orange juice, TCX uses imported fruit. In 2005, Texas-produced oranges satisfied only 25 percent of TCX production capacity. At the same time, Texas grapefruit can fully satisfy the plant's grapefruit juice production capacity.[3]

TCX sells its concentrated citrus juice either to wholesale centers (U.S. and foreign) where it can be further mixed with citrus juice from other sources, or sent directly to grocery stores. The concentrate is commonly sold in bulk to Florida packers to be blended with Florida concentrate, and some is sold to out-of-State distributors for repacking under private labels. It is also repacked as frozen concentrate and single strength and blended juices marketed under the private labels of the respective processor.

The TCX juice processing plant employs more than 100 people but fewer than 500, and thereby qualifies as a small-entity fruit and juice manufacturing business (North American Industry Classification System [NAICS] category 311411).[4] Presently, there are about 12 independent and 3 cooperative shippers of citrus operating in the 3 Texas counties.[5] We do not have any information on their size.

This rule could be expected to have a positive effect on the TCX juice processing plant by providing it an additional source of citrus for juicing. Shippers could be expected to gain as well, due to the expected increase in the volume of citrus shipped in the area. The economic impact will depend on the volume of citrus imported from Mexico. We do not expect citrus producers in the area to be harmed by the rule, since most of the citrus processed by TCX into juice is already supplied by other sources.

Effects on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their regulations on small entities and to use flexibility to provide regulatory relief when regulations create economic disparities between differently sized entities.

We are amending the regulations to allow grapefruit, sweet oranges, and tangerines from areas of Mexico where certain fruit flies occur to be imported into the United States for processing under certain conditions. Those conditions include a requirement that the processing plants must be located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

This change in the regulations has the potential to positively affect U.S. citrus processing plants. These businesses and their surrounding areas are expected to benefit. However, the exact amount of financial gain and the extent of the expected economic impact will depend upon the volume of citrus fruit that enters the United States for processing.

Between 2000 and 2002, the United States produced an average of 15 million metric tons of citrus fruits annually. During that same period, Mexico produced an average of 4.9 million metric tons of citrus fruits annually. Mexican consumers greatly favor fresh citrus over processed citrus, thus the majority of Mexican citrus produced is consumed domestically, with around 6 percent of average annual production serving as exports. Therefore, given the relatively small amount of Mexican production when compared to U.S. production levels, coupled with the small percentage of Mexican production that is exported, the economic effects of this rule are expected to be small.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget (*see* ''Paperwork Reduction Act'' below).

Executive Order 12988

This final rule allows citrus to be imported into the United States from Mexico. State and local laws and regulations regarding citrus imported under this rule will be preempted while the fruit is in foreign commerce. Fresh citrus will be imported for immediate juicing in certain areas of Texas, and will remain in foreign commerce until it is processed. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0264.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. A new § 319.56–2rr is added to read as follows:

[2] The Texas Citrus Industry, Julian W. Sauls, Texas Cooperative Extension, July 2005. Web site *http://aggie-horticulture.tamu.edu/citrus/.*

[3] Personal communication with Jay Mudden, Texas Citrus Exchange (TCX-Juice Division), Mission, Hidalgo County, TX.

[4] Small Business Size Standards by NAICS Industry, Subsector 311—Food Manufacturing, Size Standards in number of employees, § 121.201, 13 CFR Ch. 1 (1–1–04 Edition), page 290.

[5] Taylor, Hall, and Molina. Texas Agricultural Extension Service. The Texas A&M University System. Texas Citrus Grower Marketing Outlets. Web site *http://aggie-horticulture.tamu.edu/citrus/.*

§ 319.56–2rr Administrative instructions; conditions governing the importation of untreated grapefruit, sweet oranges, and tangerines from Mexico for processing.

Untreated grapefruit (*Citrus paradisi*), sweet oranges (*Citrus sinensis*), and tangerines (*Citrus reticulata*) may be imported into the United States from Mexico for extracting juice if they originate from production sites in Mexico that are approved by APHIS because they meet the following conditions and any other conditions determined by the Administrator to be necessary to mitigate the pest risk that such fruits pose:

(a) *Application of sterile insect technique.* Production sites, and a surrounding 1.5 mile buffer area, must be administered under an APHIS-approved preventative release program using sterile insect technique for the Mexican fruit fly (*Anastrepha ludens*).

(b) *Fruit fly trapping protocol.* (1) *Trapping densities.* In areas where grapefruit, sweet oranges, and tangerines are produced for export to the United States, APHIS approved traps and lures must be placed in production sites and a surrounding 1.5 mile buffer areas as follows:

(i) For Mexican fruit fly (*Anastrepha ludens*) and sapote fruit fly (*A. serpentina*): One trap per 50 hectares.

(ii) For Mediterranean fruit fly (*Ceratitis capitata*): One to four traps per 250 hectares.

(2) *Fruit fly catches.* Upon trapping of a Mexican fruit fly, sapote fruit fly, or Mediterranean fruit fly in a production site or buffer area, exports from that production site are prohibited until the Administrator determines that the phytosanitary measures taken have been effective to allow the resumption of export from that production site.

(3) *Monitoring.* The trapping program must be monitored under an APHIS-approved quality control program.

(c) *Safeguarding.* Fruit must be safeguarded against fruit fly infestation using methods approved by APHIS from the time of harvest until processing in the United States.

(d) *Phytosanitary certificate.* Each shipment must be accompanied by a phytosanitary certificate issued by Mexico's national plant protection organization that contains additional declarations stating that the requirements of paragraphs (a), (b), and (c) of this section have been met.

(e) *Ports.* The harvested fruit may enter the United States only through a port of entry located in one of the Texas counties listed in § 301.64–3(c) of this chapter.

(f) *Route of transit.* Harvested fruit must travel on the most direct route to the processing plant from its point of entry into the United States as specified in the import permit. Such fruit may not enter or transit areas other than the Texas counties listed in § 301.64–3(c) of this chapter.

(g) *Approved destinations.* Processing plants within the United States must be located within an area in Texas that is under an APHIS-approved preventative release program using sterile insect technique for Mexican fruit fly.

(h) *Compliance agreements.* Processing plants within the United States must enter into a compliance agreement with APHIS in order to handle grapefruit, sweet oranges, and tangerines imported from Mexico in accordance with this section. APHIS will only enter into compliance agreements with facilities that handle and process grapefruit, sweet oranges, and tangerines from Mexico in such a way as to eliminate any risk that exotic fruit flies could be disseminated into the United States, as determined by APHIS.

(Approved by the Office of Management and Budget under control number 0579–0264)

Done in Washington, DC, this 2nd day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–8935 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV06–979–1 FR]

Melons Grown in South Texas; Termination of Marketing Order 979

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule, termination of order.

SUMMARY: This final rule terminates the Federal marketing order for melons grown in South Texas (order) and the rules and regulations issued thereunder. The Department of Agriculture (USDA) has determined the order should be terminated given the declining status of the industry.

DATES: *Effective Date:* June 9, 2006.

FOR FURTHER INFORMATION CONTACT: Martin J. Engeler, Senior Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, California 93721; telephone: (559) 487–5110, Fax: (559) 487–5906; or Kathleen M. Finn, Formal Rulemaking Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This action is being taken pursuant to § 608c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act'', and § 979.84 of the order.

USDA is issuing this rule in conformance with Executive Order 12866.

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

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

This rule terminates the Federal marketing order for melons grown in South Texas and the rules and regulations issued thereunder. The order contains authority to regulate the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (Committee). At a meeting held on September 7, 2005, the Committee recommended terminating the order.

USDA suspended indefinitely regulations under the order while it considered the Committee's recommendation for termination (70 FR 57995; October 5, 2005). USDA issued a proposed rule soliciting comments on proposed termination of the order on December 22, 2005 (70 FR 75984).

Section 979.84 of the order provides, in pertinent part, that the Secretary shall terminate or suspend any or all provisions of the order when he finds that it does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act provides that the Secretary shall terminate or suspend the operation of any order whenever the order or provision thereof obstructs or does not tend to effectuate the declared policy of the Act. Section 608c(16)(A) of the Act also requires the Secretary to notify Congress not later than 60 days before the date the order would be terminated.

The order has been in effect since 1979. It contains authority for grade, size, quality, maturity, pack, container, and reporting requirements. It also authorizes production research and marketing research and development activities. Grade, quality, maturity, container, and pack regulations have historically been utilized under the order, as well as mandatory inspection to ensure these requirements were met. Assessments have been collected to fund order operations, including production research and marketing research and promotion activities. Reporting requirements have also been implemented under the order.

The South Texas melon industry has been shrinking in recent seasons due to the inability to provide a dependable supply of good quality fruit, a lack of success in developing new varieties of improved quality melons, and intense domestic and foreign competition. Acreage decreased from a high of 27,463 acres in 1987 to 4,780 acres in 2004. The number of producers and handlers has decreased significantly as well.

Because of the declining status of the industry, on September 16, 2004, the Committee recommended suspending all regulatory and reporting requirements and assessment collections under the order for the 2004–05 season, except one reporting requirement regarding planted acreage. The suspension was recommended for one season with the hope that new melon varieties may be developed to help revive the industry, and to provide a period of time to allow the Committee to evaluate whether it believed the marketing order should be continued. An interim final rule suspending the regulatory and reporting requirements and assessment collections for the 2004–05 season, except for one reporting requirement regarding planted acreage, was published in the **Federal Register** on November 26, 2004 (69 FR 68761), followed by a final rule published on February 23, 2005 (70 FR 8709). The 2004–05 season began on October 1, 2004, and ended on September 30, 2005.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. Planted acreage continued to decline, from 4,780 acres in 2003–04 to 2,364 acres in 2004–05. The number of melon growers and handlers also continued to decline. During the 2003–04 season, there were 29 growers and 16 handlers; in 2004–05 the number of known growers decreased to 13 and handlers decreased to seven. In addition, no new varieties were introduced to improve the quality and make the product more competitive with product from other producing areas. In short, the industry situation continued to worsen. The Committee believed that there was no longer a need for the order, and therefore recommended its termination by unanimous vote.

USDA continued the suspension of regulations, reporting requirements, and assessment collections for an indefinite period, and also suspended the one remaining reporting requirement regarding planted acreage for an indefinite period to allow adequate time to collect additional information in order to determine if terminating the order was warranted. Suspension of regulations, reporting requirements, and assessment collections for an indefinite period was published in the **Federal Register** on October 5, 2005 (70 FR 57995). No comments were received as a result of that publication and a final rule was published in the **Federal Register** on December 7, 2005 (70 FR 72699). The rule continued to relieve handlers of regulatory requirements while USDA evaluated the Committee's recommendation for terminating the order.

In order to solicit input from interested parties regarding termination of the order, USDA issued a proposed termination order on December 22, 2005 (70 FR 75984). A 60-day comment period was provided to allow interested parties the opportunity to comment. No comments were received.

Pursuant to section 8c(16)(A) of the Act and § 979.84 of the order, USDA has determined that the order and all of its provisions should be terminated due to the declining status of the industry and lack of industry support for the program. Section 8c(16)(A) of the Act requires USDA to notify Congress at least 60 days before terminating a Federal marketing order program. Congress was so notified on March 16, 2006. USDA hereby appoints Committee Chairman Fred Schuster and Committee member Jimmy Pawlick as trustees to conclude and liquidate the affairs of the Committee and to continue in such capacity until discharged.

Initial Regulatory Flexibility Analysis

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

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

During the 2004–05 marketing year, there were approximately seven handlers of South Texas melons subject to regulation under the marketing order and approximately 13 melon growers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural growers are defined as those having annual receipts of less than $750,000.

Most of the handlers are vertically integrated operations involved in growing, shipping, and marketing melons. For the 2003–04 marketing year, the industry's 16 handlers shipped melons produced on 4,780 acres with the average and median volume handled being 89,012 and 10,655 containers, respectively. In terms of production value, total revenue for the 16 handlers was estimated to be $12,175,919, with the average and median revenues being $760,996 and $91,094, respectively. Complete comparable data is not available for the 2004–05 marketing year, but based on a reduction of acreage from 4,780 acres in 2003–04 to 2,364 acres in 2004–05, and the reduced number of growers and handlers, it follows that the volume handled and the value of production likely declined as well.

The South Texas melon industry is characterized by growers and handlers whose farming operations generally

involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternative crops, like onions.

Based on the SBA's definition of small entities, it is estimated that all of the seven handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises might push a number of these handlers above the $6,500,000 annual receipt threshold. Of the 13 growers within the production area, few have sufficient acreage to generate sales in excess of $750,000; therefore, the majority of growers may be classified as small entities.

The South Texas cantaloupe and honeydew melon industry has been shrinking. South Texas historically had enjoyed a marketing window of approximately six weeks beginning about May 1 each season. That window has steadily eroded in recent years due to strong competition from other melon producing areas, and quality problems with Texas melons. As a result, acreage has decreased dramatically from a high of 27,463 acres in 1987, to 4,780 in 2004, and 2,364 acres in 2005. The number of producers and handlers also has steadily declined.

Because of the declining status of the industry, the Committee recommended suspending all regulatory and reporting requirements and assessment collections under the order for the 2004–05 season, except one reporting requirement regarding planted acreage. The suspension was recommended for one season with the hope that new melon varieties may be developed to help revive the industry, and to provide a period of time to allow the Committee to evaluate whether it believed the marketing order should be continued. An interim final rule suspending the regulatory and reporting requirements and assessment collections for the 2004–05 season, except for one reporting requirement regarding planted acreage, was published in the **Federal Register** on November 26, 2004 (69 FR 68761), followed by a final rule published on February 23, 2005 (70 FR 8709).

Suspending the regulations enabled handlers to ship melons without regard to the minimum grade, quality, maturity, container, pack, inspection, and related requirements for the 2004–05 fiscal period. It decreased industry expenses associated with inspection and payment of assessments. During the 2003–04 season, inspection costs associated with the order were estimated at $46,000 and assessments collected were $102,988. These costs were not incurred during the 2004–05 season as a result of the suspension of regulations and assessment obligations.

The Committee met on September 7, 2005, to evaluate the industry situation since the regulations were suspended. As previously discussed, planted acreage continued to decline and the number of melon growers and handlers also continued to decline during the 2004–05 season. In addition, no new varieties were introduced to improve the quality and make South Texas melons more competitive with other producing areas. The Committee believed that there was no longer a need for the order, and therefore unanimously recommended its termination.

Suspension of regulations, reporting requirements, and assessment collections was continued for an indefinite period, and the one remaining reporting requirement regarding planted acreage was also suspended indefinitely pursuant to publication in the **Federal Register** on October 5, 2005 (70 FR 57995). No comments were received as a result of that publication and a final rule was published in the **Federal Register** on December 7, 2005 (70 FR 72699). The rule continued to relieve handlers of regulatory requirements while USDA evaluated the Committee's recommendation for terminating the order.

In order to solicit input from interested parties regarding termination of the order, USDA issued a proposed termination order on December 22, 2005 (70 FR 75984). A 60-day comment period was provided to allow interested parties the opportunity to comment. No comments were received. After evaluating all available information, USDA has determined that the order should be terminated.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements being terminated by this rule were approved previously by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. Termination of all the reporting requirements under the order is expected to reduce the reporting burden on small or large South Texas melon handlers by 24.90 hours, and should further reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

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

A proposed rule inviting comments on the proposed termination of Marketing Order 979 covering melons grown in South Texas was published in the **Federal Register** on December 22, 2005 (70 FR 75984). Copies of the rule were mailed by the Committee's staff to handlers and growers. In addition, the rule was made available through the Internet by the USDA and the Office of the **Federal Register**. The rule provided a 60-day comment period which ended on February 21, 2006. No comments were received.

As previously discussed, the South Texas melon industry has continually declined. Currently, there are 7 handlers, 13 growers, and a relatively small 2,364 acres. Further, the Committee recommended unanimously to terminate the program, and no comments were received concerning the proposed termination published in the **Federal Register**. Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 979.84 of the order, it is hereby found that Federal marketing order 979 covering melons produced in South Texas does not tend to effectuate the declared policy of the Act, and is therefore terminated.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553 because: (1) This action relieves restrictions on handlers by terminating the requirements of the Texas melon marketing order; (2) regulations under the order have been suspended for the past two crop years; (3) the Committee unanimously recommended termination, and all handlers and growers in the industry have been notified and have been provided the opportunity to comment; and (4) no useful purpose would be served by delaying the effective date.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

PART 979—[REMOVED]

■ For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, 7 CFR part 979 is removed.

Dated: June 2, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–8895 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

7 CFR Parts 1980 and 4279

RIN 0570–AA49

Business and Industry Guaranteed Loans—Tangible Balance Sheet Equity

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Final rule.

SUMMARY: In this final rule the Rural Business-Cooperative Service (the Agency) amends existing regulations relating to Business and Industry (B&I) loans made or guaranteed by the Agency by modifying the provisions that address the evaluation of credit quality. Changes to these underwriting provisions were originally proposed on January 16, 2004. The scope of this final rule is more limited than originally proposed but also implements a change not originally discussed in the proposed rule. Specifically, in the case of the refinancing of USDA or other Federal agency debt only, the Agency is modifying the definition of tangible balance sheet equity to include the off balance sheet value of tangible assets to the extent of the difference between the depreciated book value of real property assets and their current market value supported by an appraisal or the original book value, whichever is less. In these limited cases, the adjusted tangible balance sheet equity will also include qualified subordinated debt owed to the owner. As stated above, these adjustments to the equity calculation will apply only in cases where the Agency is asked to guarantee a refinancing of outstanding debt currently owed to or guaranteed by a Federal agency, including the Small Business Administration. The intended effect of this action is to facilitate Agency guarantees of certain refinancing loans that otherwise would not meet the equity requirements because the financial statements prepared in accordance with generally accepted accounting principles do not reflect the current market value of real property assets owned by the borrower. In the case of all direct or guaranteed loan applications, the tangible net equity calculation may include a restricted universe of qualified intellectual property. The Agency is also increasing the equity requirements applicable to energy businesses.

EFFECTIVE DATE: July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Fred Kieferle, Rural Business-Cooperative Service, USDA, Stop 3224, Room 6845, 1400 Independence Ave., SW., Washington, DC 20250–3224, Telephone (202) 720–7818, Fax (202) 720–6003, or E-mail: *fred.kieferle@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Classification

This final rule has been determined to be not significant for purposes of Executive Order (E.O.) 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Programs Affected

The Catalog of Federal Domestic Assistance Program number assigned to the applicable programs is 10.768, Business and Industry Loans.

Program Administration

These programs are administered through the Business and Industry Division of the Rural Business-Cooperative Service within the Rural Development mission area of USDA and delivered via the USDA Rural Development State Directors.

Executive Order 12372

As stated in the Notice related to 7 CFR part 3015, subpart V, the programs and activities within this rule are subject to E.O. 12372 which requires intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V. Accordingly, agency personnel advise all prospective applicants of whether their state has elected to participate in the consultation process by designating a single point of contact and name of that contact point.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in this regulation have been approved by OMB under control numbers 0570–0014 and 0570–0017.

Government Paperwork Elimination Act

The Agency is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

Environmental Impact Statement

It is the determination of the Agency that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document

that this rule will not have a significant economic impact on a substantial number of small entities. Some provisions published as a part of this rule are, in fact, a benefit to small entities.

The modified equity test in the case of refinancing applies equally to large and small entities, but in practice, the Agency expects it to benefit smaller entities disproportionately more than larger businesses. In the Agency's experience, the largest single component of off balance sheet value in a small firm is the real property it owns. Small firms that are real property rich, but cash flow constrained, may find this change to be the only means to achieve flexibility in refinancing, while larger businesses may have other ways, i.e., other assets to work with, to achieve the same result. The scope of the final rule is such that a larger number of small firms, particularly those with loans guaranteed by the Small Business Administration, may be expected to benefit. To the extent that any business has qualified intellectual property, the benefits of the change proposed for qualified intellectual apply across the board, and as such is estimated to have no disproportionate impact, positive or negative, accruing to one size of business or another.

The change in equity requirements for energy loans may make it more difficult for small firms to qualify. The energy business is a capital intensive business and the corresponding risk is greater when it is undertaken by undercapitalized firms. It may be more difficult for small firms to raise the necessary equity for one project, whereas a larger business can spread the risk across more than one project.

The net effect of this rulemaking is expected to be neutral in its overall impact on smaller firms. Accordingly, a regulatory flexibility analysis was not performed.

Executive Order 13132, Federalism

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. This rule is intended to foster cooperation between the Federal Government and the states and local governments, and reduces, where possible, any regulatory burden imposed by the Federal Government that impedes the ability of states and local governments to solve pressing economic, social and physical problems in their state.

I. Background

The current loan processing regulations for the B&I Guaranteed Loan Program provide that the lender is primarily responsible for determining credit quality and must address all of the elements of credit quality in a written credit analysis. The Agency assumes this responsibility for the B&I Direct Loan Program. One of the elements of credit quality required in the regulation is that borrowers demonstrate a minimum level of tangible balance sheet equity. The threshold level of required tangible balance sheet equity is higher for new businesses than for existing businesses.

Conventional accounting policies and procedures provide for a distinction between tangible and intangible assets. The net equity on a balance sheet reflects the net book value of all assets, after depreciation, less total liabilities. The current regulations take a conservative approach in evaluating the equity component of a balance sheet, specifying that acceptable equity for credit quality purposes be restricted to tangible balance sheet equity, as defined in the regulation.

Where the accounting terms used in the regulation coincide with terms used in generally accepted accounting principles (GAAP),[1] the GAAP definitions are presumed in the regulation. Tangible balance sheet equity is not a term used in GAAP; there is no commonly held definition. It is perhaps more accurate to call it an artificial construct than a term. It is nevertheless a concept familiar to many financial analysts and regulators who craft customized definitions, tailored to a specific industry or application, using the commonly understood terms found in GAAP as the basic building blocks.[2]

In this final rule, the Agency has elected to allow some credit for off balance sheet appreciation in real property as well as certain subordinated debt in this agency-defined formula for tangible balance sheet equity. This final rule provides that a restricted universe of intellectual property assets may be included in this adjusted equity calculation as well. Whereas the real property asset appreciation and subordinated owner debt provisions will apply only in the case of refinancing loans, the adjustment for qualified intellectual property assets will apply in the case of all applications.

Tangible balance sheet equity is a refinement of the GAAP concept of equity, typically arrived at by reducing balance sheet equity by the book value assigned to intangible assets, including but not limited to assets such as goodwill, going concern value, organizational start up expenses, etc. These items are recognized as capital assets for purposes of GAAP but may or may not be assets that can be readily liquidated or pledged as security for loans.

The modification proposed in this rulemaking acknowledges that the market value of real property assets may increase at the same time the net book value of such assets decrease. The net book value of real property usually decreases over time due to depreciation, whereas the market value of real property may stay the same or appreciate over time.

In a lower interest rate environment, refinancing is a reasonable business strategy. The current regulation, however, does not contemplate that any credit can be given for a positive difference between net book value and market value for purposes of evaluating the equity component of credit worthiness when a borrower seeks Agency-guaranteed refinancing at a lower interest rate. It has happened that borrowers that could have met a modified balance sheet equity test have been foreclosed from this option because the equity ratio calculated using the conventional GAAP values reported on the balance sheet do not meet the equity test in the current regulation at the time the refinancing is of interest to the borrower. When this happens, the borrower is tied to the existing lender that is the beneficiary of the original Agency guarantee on what has become

[1] The meaning of the term generally accepted accounting principles (GAAP) has evolved over time. It used to refer to widely used, but uncodified, accounting policies and procedures. With time, standard-setting bodies and professional organizations came into being and became more involved in recommending preferred practices by means of issued pronouncements. Over the past fifty years, principles were promulgated by different groups, some of which were no longer in existence, and some conflicts exist between the various pronouncements. The American Institute of Certified Public Accountants issued a statement of auditing standards (SAS–69) to better organize and clarify what is meant by GAAP. This statement instructs financial statement preparers, auditors and users of financial statements concerning the relative priority of the different sources of GAAP (past and present pronouncements by the many standard-setting entities) used by auditors to judge the fairness of presentation in financial statements.

[2] See, for example, Cal. Admin. Code title 28, section 1300.76, where the state requires licensed health care service plans to maintain a minimum tangible net equity and another, Federal, example at 12 CFR 208.41 where tangible net equity is incorporated into the capital adequacy requirements required of state chartered banks that are members of the Federal Reserve system.

an above market rate loan. This lender has minimal incentive to refinance the above market rate loan, and unless the Agency can guarantee another lender willing to refinance the first lender's exposure, the borrower is locked into the higher interest rate. It is not able to ''shop'' for a lower interest rate. When the loan in question is already guaranteed by a Federal agency, the taxpayer is in a position of guaranteeing the higher interest rate when a lower exposure could otherwise be affected and there is a corresponding increased risk of default under the guarantee. The increased risk of default comes about when these higher interest rates undermine the financial health of the borrowers and lead to what otherwise could be avoidable financial defaults.

This final rule provides refinancing flexibility to borrowers with Federal direct or Federally guaranteed debt when the market value of the real property on the balance sheet justifies a more flexible approach to the equity requirement than is allowed by the current regulation. The definition of a refinancing loan in this rule provides that all of the proceeds must be used to extinguish pre-existing debt. Accordingly, the amount of the refinancing loan may not exceed the outstanding balance of the loan(s) to be refinanced. Where a refinancing request is coupled with a ''new money'' guarantee application, the conventional, unadjusted, tangible balance sheet equity test will be applied to the combined guarantee request. The modified equity calculation does not apply to all refinancing requests, only those pertaining to debt that is directly owed to a Federal agency or guaranteed by a Federal agency. This limitation is primarily due to policy considerations relating to the relative economic impact of refinancing actions versus new loans and how the Agency's use of its obligational authority is accounted for as a result of the Federal Credit Reform Act of 1990 (Pub. L. 101–508). Further elaboration on this may be found in the comments section of this preamble wherein the modified tangible balance sheet equity calculation is discussed at greater length.

In order to provide for an alternate equity calculation in determining whether the credit requirement is met for refinancing loans, the Agency has modified existing regulations to define ''tangible balance sheet equity'' and added two new definitions that build directly and indirectly on this term—''adjusted tangible net worth'' and ''allowed tangible asset appreciation.'' The term ''subordinated owner debt'' is also added. These new terms apply only in the case of refinancing requests. ''Subordinated owner debt'' is defined as subordinated debt owed to one or more of the owners of the borrower.

An example that demonstrates the practical effect of this change is as follows. XYZ Company is capitalized with $200,000 cash on day 1 and uses $200,000 cash and $800,000 Agency guaranteed debt to purchase a building for $1,000,000 on day 2. Assume (1) the building is depreciated at 10 percent a year, (2) the market value of the building at the end of year 2 has appreciated to $1,200,000, (3) there are no other assets on the balance sheet at the end of year 2 for purposes of this simplified example, (4) the mortgage does not begin to amortize until the end of year 4, and (5) the income statement reflects a cumulative net loss of ($200,000) for the first two years of operations. At the end of year 2 the company would like to refinance the mortgage debt. Under the existing regulation, at this point in time tangible balance sheet equity is $ -0-. Per the revised regulation, however, the tangible balance sheet can be adjusted upwards by an increment equal to the difference between the net book value of the property ($800,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be $-0-plus $200,000, or $200,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 200,000/1,000,000, or 20 percent.

A second refinement to the GAAP concept of equity in this rulemaking for this credit evaluation criterion is to include in the equity calculation subordinated debt contributed to the borrower by the business owner(s). In order for this subordinated debt to count as equity for purposes of the equity criterion, the subordinated note must be expressly subordinate to the Agency's B&I loan exposure, whether that exposure is direct or guaranteed. Moreover, the loan documentation must provide that repayment of this subordinated debt may not commence until the earlier of the full repayment of the B&I loan exposure or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the B&I loan exposure. The partial repayment schedule in the case of the latter scenario may not be more accelerated than the debt repayment schedule in effect for the Agency's B&I loan exposure.

To carry our earlier example one step further, assume (1) that an owner provides $100,000 of subordinated debt to XYZ Company in year 3 so that it can purchase a patent. Also assume (2) the market value of the building at the end of year 3 remains at $1,200,000, (3) there are no other assets on the balance sheet at the end of year 3 for purposes of this simplified example, and (4) the income statement reflects a cumulative net loss of ($300,000) for the first three years of operations. Instead of refinancing at the end of year two as described above, the Company seeks a refinancing loan guarantee at the end of year three. Total liabilities equal the $800,000 mortgage debt plus $100,000 in subordinated owner debt. Tangible balance sheet equity as defined in the current rule equals total equity less the book value of intangible assets, or ($100,000) minus $100,000 = ($200,000). Per the revised regulation, however, the tangible balance sheet equity can be adjusted upwards by an increment equal to the difference between the net book value of the property ($700,000) and the lesser of (1) its original book value ($1,000,000) or (2) an appraisal supported current market value ($1,200,000). Thus, the adjusted tangible balance sheet equity in that case would be ($200,000) plus $300,000, or $100,000 for purposes of determining eligibility for a refinancing loan guarantee. In order to calculate the equity ratio, (equity as a percentage of equity plus total liabilities), the result would be 100,000/1,000,000, or 10 percent. Assuming the 10 percent equity requirement for existing businesses would apply and this borrower would qualify for a refinancing loan as a result of this regulatory change, then the income statement shows three years of consecutive accrual losses, but breakeven cash flows.

In this final rule, the Agency has also elected upon consideration to include another refinement of the tangible balance sheet equity computation, applicable to all applications, not just refinancing loans, whereby qualified intellectual property may count as well. Intellectual property falls within the definition of intangible assets, and as such, would not ordinarily be included in a conventional tangible balance sheet equity computation. But this formula is subject to Agency definition in the final analysis, and the Agency has elected to recognize that the liquidity arguments for tangible assets that gave rise to the development of the adjusted equity

calculation in the first place, may also apply to a restricted universe of qualified intellectual property as well. In modern rural businesses, credit should be given for these reasonably liquid intangible assets in the adjusted equity calculation.

The narrow universe of qualified intellectual property that will count as equity under the adjusted computation consists of trademarks, patents or copyrights that are included on current (within one year) audited balance sheets, for which an audit opinion has been received that states the financial reports fairly represent the values therein, and the value of which has been arrived at in accordance with GAAP standards for valuing intellectual property. Also, the work papers supporting this valuation of intellectual property must be satisfactory to the Administrator in order for the asset to be considered qualified for this purpose.

This final rule also increases the equity requirement for certain energy projects and provides that financing will be guaranteed for energy projects only when they have met certain performance criteria. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the design levels projected in the application for purposes of underwriting the loan or loan guarantee. Based on comments received, the Agency slightly lowered the equity requirements for energy loans, but continued to require higher equity levels than other industries. The higher equity requirements reflect the Agency's determination that energy projects are riskier than the average B&I portfolio loan and an intent to apply equity criteria that more closely conform to conventional lender practice. The Agency's energy borrowers are typically not utilities in the conventional sense. As a general rule, conventional utilities have other sources of financing and higher capital requirements than can practicably be met by Agency programs.

The final rule requires that energy projects must demonstrate two complete operating cycles at design performance levels projected in the application. A complete operating cycle consists of the purchase of raw material inputs, their input into the manufacturing process and transformation into a design specified number of output units for a given level of raw material input within a specified period of time and at a design-specified quality level. In the case of projects that produce steam or electricity as an output, there is an additional requirement that they be successfully interconnected with the purchaser of the output. This is not the same as being connected to the power grid alone. Being connected to the grid, without enforceable wheeling agreements and physical interconnection with the buyer at the other end of the transmission route, does not satisfy this requirement. Successful interconnection with the purchaser of the steam or electricity means that everything is in place that is required for the purchaser to receive the steam or electricity output in accordance with the contractual terms specified and such delivery by the seller and acceptance by the purchaser has been demonstrated.

The Agency revised the definition for energy projects to include both 'power' and 'energy.' The term 'power plant' is commonly used to describe a facility that uses fuels to produce electricity or high pressure steam. In these type plants, power and energy are intrinsically related. The change in definition makes it clear that electric or steam facilities are also considered ''energy projects,'' as are facilities that produce fuels such as ethanol or biodiesel. The Agency also decided to narrow the scope of energy projects that require increased equity by removing the production of batteries and fuel cells from the definition based on comments received.

II. Comments on the Proposed Rule and Responses

The following paragraphs summarize the comments received and the Agency responses. We received 15 responses of which, one is from an elected state official, six are from borrowers or borrower representatives (a producer association, business consultants, etc.), and eight are from the lender community (two of the lender comments are from the same bank).

A. Comments on the Modified Tangible Balance Sheet Equity Test

All comments received regarding the modified tangible balance sheet equity requirement were positive. Eight of the comments claimed we did not go far enough; they urged that the new equity test be applied to new loan guarantee requests as well.

The most significant change in this final rule from the proposed rulemaking is the result of additional deliberation within the Agency. The proposed regulatory text applied to the refinancing of any loan, whether or not it is currently USDA guaranteed. Upon further reflection, concern developed with respect to the risk that an existing lender, not presently guaranteed by USDA, can get the equivalent of a ''bailout'' if the more flexible equity test is applied. There is also sensitivity within USDA as to the proportion of obligational authority used for refinancing. It is true that if USDA issues a guarantee to Lender A for a loan, the proceeds of which pay off a USDA guaranteed loan held by Lender B, there is no increase in risk or exposure to the taxpayer. However (and this may not be fully realized or appreciated by the private sector community), under federal budget rules, in this circumstance the Agency's available obligational authority is reduced as if a new loan guarantee had been issued to Lender A. A refinancing action is scored against the Agency's budget the same as a new loan action, even though the net incremental risk to the taxpayer differs significantly as between the two scenarios.

The Agency must concern itself with maximizing the economic benefit that can be achieved in rural America with limited Federal funding and recognize that net new capital invested in rural America has a greater economic impact than the incremental cash flow improvements associated with refinancing loan guarantees.

We ultimately believe that a policy of conforming the modified equity test to recognize off balance sheet values inherent in the appreciation of real property is rooted in common sense. However, the expectation is that this rule could well result in a situation where the Agency is presented with a significant increase in the proportion of refinancing requests relative to new loan requests, with a concomitant reduction in the net economic benefit per dollar of budget authority. Therefore, this final rule does not expand the scope of the tangible balance sheet equity test beyond direct Federal debt and Federally guaranteed debt. It does not go as far as many of those providing comments would have wished, but it reflects a balanced approach to the issue in the current budget environment.

As explained in the preamble to the proposed rule, the Agency considered, but elected not to propose, revising the tangible balance sheet equity test to apply across the board, for all borrowers, and not restrict its availability to refinancing loan applications. It may be that the Agency's experience with the limited applicability of this rulemaking will lead to proposing its wider application in the future. For now, it was determined to proceed with a more limited applicability in order to bring relief to at least some borrowers in a more rapid period of time. The final rule

is narrower in scope than was the proposed rule. The proposed rule applied the modified equity calculation to all refinancing loans; the final rule limits its application to the refinancing of debt owed to a Federal agency.

The Agency also considered allowing full market value refinancing in the proposed rulemaking. The potential for abuse of market appraisals for purposes of full market value refinancing is thought to be greater than the potential benefit of liberalizing the related equity criterion to this maximum degree. In the alternative, the Agency has opted to allow consideration of market value only with respect to the equity test calculation; the amount of the refinancing loan itself may not exceed the outstanding balance of the loan to be refinanced. Market value must be determined by appraisals using arms-length methodologies to arrive at an unbiased ''fair or current market value.''

Allowing flexibility in the equity requirement for refinancing loans where the market value of real property assets supports such flexibility will serve to enhance the financial health of Agency-guaranteed borrowers and promote rural development.

B. Comments on the Modified Equity Requirement for Energy Projects

Seven of the 15 comments addressed the increased equity requirements proposed for energy loans—all were critical, arguing that the equity requirement should be no different than for other types of businesses. One argued for preferential treatment for non profit borrowers. One lender, while critical of the differentiated equity requirement, nevertheless observed that the requirement that energy projects demonstrate two complete operating cycles would ''weed out'' bad projects. A commodity producer association pointed out that many private sector lenders require 50 percent equity, and if the Agency implements the modifications the Business and Industry program will offer very little advantage over private lender options already available for producer owned businesses.

We expect that most of the energy loan applications will continue to be for ethanol or similar projects. The Agency's experience in lending for ethanol projects from the mid 1970s to 1990 was not good. This was due to the combined factors of weak underwriting criteria, underdeveloped technologies and inexperienced managers. As of 1990, credit criteria were tightened up and the technology has developed to the point where it is now commercially proven. The Agency is somewhat conforming its equity requirement to those found in the private sector inasmuch as the technology is now quite established and needs less support. Agency-guaranteed loans will still enjoy a better interest rate and the available term may be advantageous when compared to the non-guaranteed private sector alternative.

As for energy projects that are not ethanol or biodiesel, we observe that many renewable energy projects find it difficult to impossible to obtain private sector financing even when project equity ratios are high. Thus, while the equity ratios implemented for energy projects are higher than the requirements for other industries, we believe that Agency financing under those circumstances nevertheless represents a source of capital often unavailable for these technologies elsewhere. The higher equity ratios strike a balance between no capital available at all and the risk to the taxpayer in providing support for renewable energy projects. However, in response to these comments, the Agency modified the equity requirement for energy projects, but still will require higher equity levels than other industries.

Several comments observe that project risks can be mitigated by means other than increased equity. The following examples of possible risk mitigation vehicles were suggested: a strong contract for the purchase of the output (off take agreement), the use of established technologies, or performance guarantees combined with surety bonds to mitigate construction risk. All of these address a particular kind of risk—either the project doesn't get built, it doesn't operate as expected or the market for the output doesn't materialize at the price forecast. These vehicles are all worthwhile underwriting tools, but only increased equity protects against unforeseen risks. The lower the debt burden on a project, the more likely the project will be able to surmount any of these risks and pay off the debt as and when due. With respect to off take agreements in particular, if the projected cash flow stream associated with the off take agreement is strong, it will cover both debt service and an equity return. If the imputed equity return is sufficient, this should be attractive to third party investors such that the equity requirement can be met. If the off take agreement is not sufficient for this, it cannot be said that it is a substitute for increased equity.

List of Subjects

7 CFR Part 1980

Loan programs—Business and industry—Rural development assistance, Rural areas.

7 CFR Part 4279

Loan programs—Business and industry—Rural development assistance, Rural areas.

■ Accordingly, Chapters XVIII and XLII, title 7, of the Code of Federal Regulations are amended as follows:

CHAPTER XVIII—RURAL HOUSING SERVICE, RURAL BUSINESS-COOPERATIVE SERVICE, RURAL UTILITIES SERVICE, AND FARM SERVICE AGENCY, DEPARTMENT OF AGRICULTURE

PART 1980—GENERAL

■ 1. The authority citation for part 1980 is revised to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989. Subpart E also issued under 7 U.S.C. 1932(a).

Subpart E—Business and Industrial Loan Program

■ 2. Section 1980.402 is revised to read as follows:

§ 1980.402 Definitions.

(a) The following general definitions are applicable to the terms used in this subpart. *Adjusted tangible net worth.* Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Area of high unemployment. An area in which a B&I loan guarantee can be issued, consisting of a county or group of contiguous counties or equivalent subdivisions of a State which, on the basis of the most recent 12-month average or the most recent annual average data, has a rate of unemployment 150 percent or more of the national rate. Data used must be those published by the Bureau of Labor Statistics, U.S. Department of Labor.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses,

fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. A borrower may be a cooperative organization, corporation, partnership, trust or other legal entity organized and operated on a profit or nonprofit basis; an Indian Tribe on a Federal or State reservation or other Federally recognized tribal group; a municipality, county or other political subdivision of a State; or an individual. Such borrower must be engaged in or proposing to engage in improving, developing or financing business, industry and employment and improving the economic and environmental climate in rural areas, including pollution abatement and control.

Business and Industry Disaster Loans. Business and Industry loans guaranteed under the authority of the Dire Emergency Supplemental Appropriations Act, 1992, Public Law 102–368. These guaranteed loans cover costs arising from the direct consequences of natural disasters such as Hurricanes Andrew and Iniki and Typhoon Omar that occur after August 23, 1992, and receive a Presidential declaration. Also included are the costs to any producer of crops and livestock that are a direct consequence of at least a 40 percent loss to a crop, 25 percent loss to livestock, or damage to building structures from a microburst wind occurrence in calendar year 1992.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Community facilities. For the purposes of this subpart, community facilities are those facilities designed to aid in the development of private business and industry in rural areas. Such facilities include, but are not limited to, acquisition and site preparation of land for industrial sites (but not for improvements erected thereon), access streets and roads serving the site, parking areas extension or improvement of community transportation systems serving the site and utility extensions all incidental to site preparation. Projects eligible for assistance under Subpart A of Part 1942 of this chapter are not eligible for assistance under this subpart.

Development cost. These costs include, but are not limited to, those for acquisition, planning, construction, repair or enlargement of the proposed facility; purchase of buildings, machinery, equipment, land easements, rights of way; payment of startup operating costs, and interest during the period before the first principal payment becomes due, including interest on interim financing.

Disaster Assistance for Rural Business Enterprises. Guaranteed loans authorized by section 401 of the Disaster Assistance Act of 1989 (Pub. L. 101–82), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, freeze, storm, excessive moisture, earthquake, or related conditions occurring in 1988 or 1989, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters. See this subpart and its appendices, especially Appendix K, containing additional regulations for these loans.

Drought and Disaster Guaranteed Loans. Guaranteed loans authorized by section 331 of the Disaster Assistance Act of 1988 (Pub. L. 100–387), providing for the guarantee of loans to assist in alleviating distress caused to rural business entities, directly or indirectly, by drought, hail, excessive moisture, or related conditions occurring in 1988, and providing for the guarantee of loans to such rural business entities that refinance or restructure debt as a result of losses incurred, directly or indirectly, because of such natural disasters.

Energy projects. Commercially available projects that produce or distribute energy or power and/or projects that produce biomass or biogas fuel.

Farmers Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Hurricane Andrew. A hurricane that caused damage in southern Florida on August 24, 1992, and in Louisiana on August 26, 1992.

Hurricane Iniki. A hurricane that caused damage in Hawaii on September 11, 1992.

Letter of conditions. Letter issued by Rural Development under Public Law 103–354 to a borrower setting forth the conditions under which Rural Development will make a direct (insured) loan from the Rural Development Insurance Fund.

Loan classification system. The process by which loans are examined and categorized by degree of potential for loss in the event of default.

Microburst wind. A violently descending column of air associated with a thunderstorm which causes straight-line wind damage.

Problem loan. A loan which is not performing according to its original terms and conditions or which is not expected in the future to perform according to those terms and conditions.

Public body. A municipality, political subdivision, public authority, district, or similar organization.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Seasoned loan. A loan which:

(1) Has a remaining principal guaranteed loan balance of two-thirds or less of the original aggregate of all existing B&I guaranteed loans made to that business.

(2) Is in compliance with all loan conditions and B&I regulations.

(3) Has been current on the B&I guaranteed loan(s) payments for 24 consecutive months.

(4) Is secured by collateral which is determined to be adequate to ensure there will be no loss on the B&I guaranteed loan.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced

operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Typhoon Omar. A typhoon that caused damage in Guam on August 28, 1992.

Working capital. The excess of current assets over current liabilities. It identifies the relatively liquid portion of total enterprise capital which constitutes a margin or buffer for meeting obligations within the ordinary operating cycle of the business.

(b) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under generally accepted accounting principles (GAAP).

■ 3. Section 1980.411 is amended by adding new paragraphs (a)(11)(iv) and (a)(11)(v) and by adding a new paragraph (a)(16) to read as follows:

§ 1980.411 Loan purposes.

* * * * *

(a) * * *

(11) * * *

(iv) It does not refinance subordinated owner debt; or

(v) (Except where the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed) the amount to be refinanced by the Agency is a secondary part (less than 50 percent) of the overall loan requested.

* * * * *

(16) *Energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

* * * * *

■ 4. Section 1980.441 is revised to read as follows:

§ 1980.441 Borrower equity requirements.

(a) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing loan or guarantee request with a new loan or guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (a)(1) or (a)(2) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(1) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(i) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible, and

(ii) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(2) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(b) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(c) The equity requirement must be determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the loan is closed; a certification to this effect is required of all guaranteed lenders.

(d) The modified formula for determining whether the equity requirement is met, ''adjusted tangible net worth,'' may be used only in cases where the guarantee requested is for a loan, the proceeds of which are to be used entirely to refinance a debt owed to the Federal government or Federally guaranteed debt. In all other situations, the equity requirement must be determined using tangible net worth.

CHAPTER XLII—RURAL BUSINESS-COOPERATIVE SERVICE AND RURAL UTILITIES SERVICE, DEPARTMENT OF AGRICULTURE

PART 4279—GUARANTEED LOANMAKING

■ 5. The authority citation for part 4279 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 7 U.S.C. 1932(a).

Subpart A—General

■ 6. Section 4279.2 is revised to read as follows:

§ 4279.2 Definitions and abbreviations.

(a) *Definitions.*

Adjusted tangible net worth. Tangible balance sheet equity plus allowed tangible asset appreciation and subordinated owner debt.

Agency. The Rural Business-Cooperative Service or successor Agency assigned by the Secretary of Agriculture to administer the B&I program. References to the National Office, Finance Office, State Office or other Agency offices or officials should be read as prefaced by ''Agency'' or ''Rural Development'' as applicable.

Allowed tangible asset appreciation. The difference between the current net book value recorded on the financial statements (original cost less cumulative depreciation) of real property assets and the lesser of their current market value or original cost, where current market value is determined using an appraisal satisfactory to the Agency.

Arm's-length transaction. The sale, release, or disposition of assets in which the title to the property passes to a ready, willing, and able disinterested third party that is not affiliated with or related to and has no security, monetary or stockholder interest in the borrower or transferor at the time of the transaction.

Assignment Guarantee Agreement (Business and Industry). Form RD 4279–6, the signed agreement among the Agency, the lender, and the holder containing the terms and conditions of an assignment of a guaranteed portion of a loan, using the single note system.

Biogas. Biomass converted to gaseous fuel.

Biomass. Any organic material that is available on a renewable or recurring basis including agricultural crops, trees grown for energy production, wood waste and wood residues, plants, including aquatic plants and grasses, fibers, animal waste and other waste materials, fats, oils, greases, including recycled fats, oils and greases. It does not include paper that is commonly recycled or unsegregated solid waste.

Borrower. All parties liable for the loan except for guarantors.

Commercially available. Energy projects utilizing technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Conditional Commitment (Business and Industry). Form RD 4279–3, the Agency's notice to the lender that the loan guarantee it has requested is approved subject to the completion of all conditions and requirements set forth by the Agency.

Deficiency balance. The balance remaining on a loan after all collateral has been liquidated.

Deficiency judgment. A monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Energy projects. Commercially available projects that produce or distribute energy or power and/or produce biomass or biogas fuel. Commercially available energy projects that utilize technology that has a proven operating history, and for which there is an established industry for the design, installation, and service (including spare parts) of the equipment.

Existing lender debt. A debt not guaranteed by the Agency, but owed by a borrower to the same lender that is applying for or has received the Agency guarantee.

Fair market value. The price that could reasonably be expected for an asset in an arm's-length transaction between a willing buyer and a willing seller under ordinary economic and business conditions.

Farmer's Home Administration (FmHA). The former agency of USDA that previously administered the programs of this Agency. Many Instructions and forms of FmHA are still applicable to Agency programs.

Finance Office. The office which maintains the Agency financial accounting records located in St. Louis, Missouri.

High-impact business. A business that offers specialized products and services that permit high prices for the products produced, may have a strong presence in international market sales, may provide a market for existing local business products and services, and which is locally owned and managed.

Holder. A person or entity, other than the lender, who owns all or part of the guaranteed portion of the loan with no servicing responsibilities. When the single note option is used and the lender assigns a part of the guaranteed note to an assignee, the assignee becomes a holder only when the Agency receives notice and the transaction is completed through the use of Form RD 4279–6 or predecessor form.

Interim financing. A temporary or short-term loan made with the clear intent that it will be repaid through another loan. Interim financing is frequently used to pay construction and other costs associated with a planned project, with permanent financing to be obtained after project completion.

Lender. The organization making, servicing, and collecting the loan which is guaranteed under the provision of the appropriate subpart.

Lender's Agreement (Business and Industry). Form RD 4279–4 or predecessor form between the Agency and the lender setting forth the lender's loan responsibilities when the Loan Note Guarantee is issued.

Loan Agreement. The agreement between the borrower and lender containing the terms and conditions of the loan and the responsibilities of the borrower and lender.

Loan Note Guarantee (Business and Industry). Form RD 4279–5 or predecessor form, issued and executed by the Agency containing the terms and conditions of the guarantee.

Loan-to-value. The ratio of the dollar amount of a loan to the dollar value of the collateral pledged as security for the loan.

Natural resource value-added product. Any naturally occurring product that is processed to add value to the product. For example, straw is processed into particle board.

Negligent servicing. The failure to perform those services which a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act, but also not acting in a timely manner, or acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Parity. A lien position whereby two or more lenders share a security interest of equal priority in collateral. In the event of default, each lender will be affected on a *pro rata* basis.

Participation. Sale of an interest in a loan by the lender wherein the lender retains the note, collateral securing the note, and all responsibility for loan servicing and liquidation.

Poor. A community or area is considered poor if, based on the most recent decennial census data, either the county, city, or census tract where the community or area is located has a median household income at or below the poverty line for a family of four; has a median household income below the nonmetropolitan median household income for the State; or has a population of which 25 percent or more have income at or below the poverty line.

Promissory Note. Evidence of debt. ''Note'' or ''Promissory Note'' shall also be construed to include ''Bond'' or other evidence of debt where appropriate.

Qualified Intellectual Property. Trademarks, patents or copyrights included on current (within one year) audited balance sheets for which an audit opinion has been received that states the financial reports fairly represent the values therein and the reported value has been arrived at in accordance with GAAP standards for valuing intellectual property. The supporting work papers must be satisfactory to the Administrator.

Refinancing loan. A loan, all of the proceeds of which are applied to extinguish the entire balance of an outstanding debt.

Rural Development. The Under Secretary for Rural Development has policy and operational oversight responsibilities for RHS, RBS and RUS.

Spreadsheet. A table containing data from a series of financial statements of a business over a period of time. Financial statement analysis normally contains spreadsheets for balance sheet items and income statements and may include funds flow statement data and commonly used ratios. The spreadsheets enable a reviewer to easily scan the

data, spot trends, and make comparisons.

State. Any of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

Subordinated owner debt. Debt owed by the borrower to one or more of the owner(s) that is subordinated to debt owed by the borrower to the Agency or guaranteed by the Agency (aggregate B&I loan exposure) pursuant to a subordination agreement satisfactory to the Agency. The debt must have been issued in exchange for cash loaned to the borrower for the benefit of the borrower's business. The terms of the subordination agreement must provide that repayment will not commence until the earlier of the date all aggregate B&I loan exposure has been repaid or when a period of three consecutive years has passed during which the borrower has met all loan covenants and evidenced operating profit sufficient to commence partial repayment of this subordinated debt after giving effect to the annual debt service requirements of the aggregate B&I loan exposure. The partial repayment schedule in the case of the latter scenario is subject to annual Agency concurrence and may not be more accelerated than the rate of the debt repayment schedule in effect for the Agency's aggregate B&I loan exposure.

Subordination. An agreement between the lender and borrower whereby lien priorities on certain assets pledged to secure payment of the guaranteed loan will be reduced to a position junior to, or on parity with, the lien position of another loan in order for the Agency borrower to obtain additional financing, not guaranteed by the Agency, from the lender or a third party.

Tangible balance sheet equity. Total equity less the value of intangible assets recorded on the financial statements, as determined from balance sheets prepared in accordance with generally accepted accounting principles (GAAP), plus qualified intellectual property.

Veteran. For the purposes of assigning priority points, a veteran is a person who is a veteran of any war, as defined in section 101(12) of title 38, United States Code.

(b) *Abbreviations.*

B&I—Business and Industry
CF—Community Facilities
CLP—Certified Lenders Program
FSA—Farm Service Agency
FMI—Forms Manual Insert
NAD—National Appeals Division
OGC—Office of the General Counsel
RBS—Rural Business-Cooperative Service
RHS—Rural Housing Service
RUS—Rural Utilities Service
SBA—Small Business Administration
USDA—United States Department of Agriculture

(c) Accounting terms not otherwise defined in this part shall have the definition ascribed to them under GAAP.

Subpart B—Business and Industry Loans

■ 7. Section 4279.113 is amended by revising paragraph (r) and by adding a paragraph (cc) to read as follows:

§ 4279.113 Eligible loan purposes.

* * * * *

(r) To refinance outstanding debt when it is determined that the project is viable and refinancing is necessary to improve cash flow and create new or save existing jobs. Except as provided for in § 4279.108(d)(4) of this subpart, existing lender debt may be included provided that, at the time of the application, the loan has been current for at least the past 12 months (unless such status is achieved by the lender forgiving the borrower's debt) and the lender is providing better rates or terms. Subordinated owner debt is not eligible under this paragraph. Unless the amount to be refinanced is owed directly to the Federal government or is Federally guaranteed, the refinancing must be a secondary part (less than 50 percent) of the overall loan.

* * * * *

(cc) *To finance energy projects.* Commercially available energy projects that produce biomass fuel or biogas as an output must have completed two operating cycles at design performance levels submitted to the Agency. Projects that produce steam or electricity as an output must have met or exceeded acceptance test performance criteria submitted to the Agency and be successfully interconnected with the purchaser of the output. Performance or acceptance test requirements for all other energy projects will be determined by the Agency on a case by case basis. Financing for energy projects will only be allowed when the facility has been constructed according to plans and specifications and is producing at the quality and quantity projected in the application.

■ 8. Section 4279.131 is amended by revising paragraph (d) to read as follows:

§ 4279.131 Credit quality.

* * * * *

(d) *Equity.* (1) A minimum of 10 percent tangible balance sheet equity will be required for existing businesses at loan closing. A minimum of 20 percent tangible balance sheet equity will be required for new businesses at loan closing. For energy projects, the minimum tangible balance sheet equity requirement range will be between 25 percent and 40 percent. Criteria for considering the minimum equity required for an individual application will be based on: existing businesses with successful financial and management history vs. start-up businesses; personal/corporate guarantees offered; contractual relationships with suppliers and buyers; credit rating; and strength of the business plan/feasibility study. Where the application is a request to refinance outstanding Federal direct or guaranteed loans, without any new financing, the equity requirement may be determined using adjusted tangible net worth. An application that combines a refinancing guarantee request with a new loan guarantee request is subject to the standard, unadjusted, equity requirement except as provided in paragraphs (d)(1)(i) or (d)(1)(ii) of this section. Increases or decreases in the equity requirements may be imposed or granted as follows:

(i) A reduction in the equity requirement for existing businesses may be permitted by the Administrator. In order for a reduction to be considered, the borrower must furnish the following:

(A) Collateralized personal and corporate guarantees, including any parent, subsidiary, or affiliated company, when feasible and legally permissible (in accordance with § 4279.149 of this subpart), and

(B) Pro forma and historical financial statements that indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, debt coverage ratio, and working capital.

(ii) The approval official may require more than the minimum equity requirements provided in this paragraph if the official makes a written determination that special circumstances necessitate this course of action.

(2) The equity requirement must be met in the form of either cash or tangible earning assets contributed to the business and reflected on the balance sheet.

(3) The lender must certify that the equity requirement was determined using balance sheets prepared in accordance with GAAP and met upon giving effect to the entirety of the loan in the calculation, whether or not the loan itself is fully advanced, as of the date the guaranteed loan is closed.

* * * * *

Dated: May 30, 2006.

Thomas C. Dorr,

Under Secretary, Rural Development.

[FR Doc. E6–8891 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–XY–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN: 3150–AH83

Revision of Fee Schedules; Fee Recovery for FY 2006; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on May 30, 2006 (71 FR 30722) concerning the licensing, inspection, and annual fees charged to NRC applicants and licensees in compliance with the Omnibus Budget Reconciliation Act of 1990, as amended. This action is necessary to correct typographical and printing errors.

DATES: *Effective Date:* July 31, 2006.

FOR FURTHER INFORMATION CONTACT: Tammy Croote, telephone 301–415–6041; Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

■ 1. On page 30735, in the third column, in the last line of the continued paragraph, the reference to ''Section III.B.3.a–'' is corrected to read ''Section III.B.3.a–h''.

■ 2. On page 30741, under Table XIV.—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS, in the first column, in the fourth line, the phrase ''60 prorated annual fee'' is corrected to read ''60 percent prorated annual fee''.

§ 171.16 [Corrected]

■ 3. On page 30755, the second sentence of footnote 1 is corrected to read, ''However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2005, and permanently ceased licensed activities entirely by September 30, 2005.''

§ 171.19 [Corrected]

■ 4. On page 30756, in the first complete paragraph, the third sentence is corrected to read, ''The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1D, 2(A)(2), 2(A)(3), 2(A)(4), 2B, 2C, 3A through 3P, and 4B through 9D.''

Dated at Rockville, Maryland, this 2nd day of June, 2006.

For the Nuclear Regulatory Commission.

Peter J. Rabideau,

Acting Chief Financial Officer.

[FR Doc. E6–8923 Filed 6–7–06; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 109

[Notice 2006–10]

Coordinated Communications

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations regarding communications that are coordinated with Federal candidates and political party committees. The Commission's rules set out a three-prong test for determining whether a communication is ''coordinated'' with, and therefore an in-kind contribution to, a Federal candidate or a political party committee. These final rules implement the recent decision of the Court of Appeals in *Shays* v. *Federal Election Commission,* in which the court determined that the Commission needs to provide a more complete explanation and justification for its rules pursuant to the Administrative Procedure Act. To comply with the court's decision, and to address other issues involving the coordinated communication rules, the Commission is issuing these Final Rules and Explanation and Justification. Further information is provided in the supplementary information that follows.

DATES: Effective July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, Mr. Ron B. Katwan, Ms. Margaret G. Perl, or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Scope of Regulatory Changes

The Commission is revising its regulations regarding communications that are coordinated with Federal candidates and political party committees. The Commission is: (1) Revising the fourth content standard at 11 CFR 109.21(c)(4) to establish separate time frames for communications referring to political parties, Congressional and Presidential candidates; (2) creating a safe harbor for certain endorsements and solicitations by Federal candidates; (3) revising the temporal limit of the common vendor and former employee conduct standards; (4) creating a safe harbor for the use of publicly available information; (5) creating a safe harbor for the establishment and use of a firewall; (6) clarifying that the payment prong of the coordinated communication test is satisfied if an outside person pays for only part of the costs of a communication; and (7) revising 11 CFR 109.37 to include the applicable time frame and safe harbor revisions in 11 CFR 109.21.

Transmission of Final Rules to Congress

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on June 2, 2006.

Explanation and Justification

I. Background

A. Bipartisan Campaign Reform Act and 2002 Coordination Rulemaking

The Bipartisan Campaign Reform Act of 2002,[1] (''BCRA''), repealed the Commission's pre-BCRA regulations regarding ''coordinated general public political communications'' and directed the Commission to promulgate new regulations on ''coordinated communications'' in their place.[2] Congress specified in BCRA that the Commission's new regulations ''shall not require agreement or formal collaboration to establish coordination.''

[1] Pub. L. 107–155, 116 Stat. 81 (2002); amending the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act'' or ''FECA'').

[2] Pub. L. 107–155, sec. 214(b), (c) (2002).

BCRA, sec. 214(c), 116 Stat. 81 at 95. ''Apart from this negative command—'shall not require'—BCRA merely listed several topics the rules 'shall address,' providing no guidance as to how the FEC should address them.'' *Shays* v. *FEC,* 414 F.3d 76, 97–98 (D.C. Cir. 2005). On December 17, 2002, the Commission promulgated regulations as required by BCRA. *See* 11 CFR 109.21; *see also, Final Rules and Explanation and Justification on Coordinated and Independent Expenditures,* 68 FR 421 (Jan. 3, 2003) (''*2002 Coordination Final Rules*'').

The Commission's 2002 coordinated communication regulations set forth a three-prong test for determining whether a communication is a coordinated communication, and therefore an in-kind contribution to, and an expenditure by, a candidate, a candidate's authorized committee, or a political party committee. *See* 11 CFR 109.21(a). First, the communication must be paid for by someone other than a candidate, a candidate's authorized committee, a political party committee, or their agents (the ''payment prong''). *See* 11 CFR 109.21(a)(1). Second, the communication must satisfy one of four content standards (the ''content prong''). *See* 11 CFR 109.21(a)(2) and (c). Third, the communication must satisfy one of five conduct standards (the ''conduct prong''). *See* 11 CFR 109.21(a)(3) and (d). A communication must satisfy all three prongs to be a ''coordinated communication.''

B. Content Prong Challenged in Shays v. *FEC*

In 2003, Representatives Shays and Meehan brought suit in Federal District Court challenging, among other Commission regulations, the content prong of the Commission's coordination regulations. *See Shays* v. *FEC,* 337 F. Supp. 2d 28 (D.D.C. 2004) (''*Shays District*''), *aff'd, Shays* v. *FEC,* 414 F.3d 76 (D.C. Cir. 2005) (''*Shays Appeal*'') (*pet. for reh'g en banc denied* Oct. 21, 2005) (No. 04–5352). The content prong is comprised of four sub-categories of communications. A communication that falls in any of the four categories satisfies the prong. The purpose of the content prong is to ''ensure that the coordination regulations do not inadvertently encompass communications that are not made for the purpose of influencing a Federal election,'' and therefore are not ''expenditures'' subject to regulation under the Act. *See 2002 Coordination Final Rules* at 426. Accordingly, each of the four content standards that comprise the ''content prong'' identifies a category of communications whose ''subject matter is reasonably related to an election.'' *Id.* at 427.

The first content standard is satisfied if the communication is an electioneering communication. *See* 11 CFR 109.21(c)(1).[3] This content standard implements the statutory directive that disbursements for coordinated electioneering communications be treated as in-kind contributions to, and expenditures by, the candidate or political party supported by the communication.

The second content standard is satisfied by a public communication[4] made at any time that disseminates, distributes, or republishes campaign materials prepared by a candidate, a candidate's authorized committee, or agents thereof. *See* 11 CFR 109.21(c)(2). This content standard implements Congress's mandate that the Commission's rules on coordinated communications address the ''republication of campaign materials.'' *See* Pub. L. 107–155, sec. 214(c)(1) (2002). The Commission concluded that communications that disseminate, distribute, or republish campaign materials, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.

The third content standard is satisfied if a public communication made at any time expressly advocates[5] the election or defeat of a clearly identified candidate for Federal office. See 11 CFR 109.21(c)(3). The Commission concluded that express advocacy communications, no matter when such communications are made, can be reasonably construed only as for the purpose of influencing an election.

The fourth content standard in the 2002 rule is satisfied if a public communication (1) refers to a political party or a clearly identified Federal candidate; (2) is publicly distributed or publicly disseminated 120 days or fewer before an election;[6] and (3) is directed to voters in the jurisdiction of the clearly identified Federal candidate or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot. *See* 11 CFR 109.21(c)(4) (2002).

In incorporating the 120-day time frame into the fourth content standard, the Commission sought to create a bright-line rule that provided clear guidance for those seeking to produce and distribute public communications that do not republish campaign materials and do not contain express advocacy, communications that are already covered by the second and third content standards, respectively. The 120-day time frame ''focuses the regulation on activity reasonably close to an election, but not so distant from the election as to implicate political discussion at other times.'' *2002 Coordination Final Rules* at 430. The Commission noted that its intent was ''to require as little characterization of the meaning or the content of the communication, or inquiry into the subjective effect of the communication on the reader, viewer, or listener as possible.'' Id. (citing *Buckley* v. *Valeo,* 424 U.S. 1, 42–44 (1976)). The Commission emphasized that the regulation ''is applied by asking if certain things are true or false about the face of the public communication or with limited reference to external facts on the public record.'' *Id.*

In adopting this time frame, the Commission relied in part on the fact that, in BCRA, Congress defined ''Federal election activity'' (''FEA'') as, *inter alia,* voter registration activity ''during the period that begins on the date that is 120 days'' before a Federal election. The Commission concluded that, in doing so, Congress ''deem[ed] that period of time before an election to be reasonably related to that election.'' Id. (citing 2 U.S.C. 431(20)(A)(i)).

1. Shays District Court Decision

The District Court held that the ''content prong'' of the Commission's coordinated communication regulations satisfied the first step of *Chevron* analysis, but did not satisfy the second

[3] The Act and Commission regulations define an ''electioneering communication'' as any broadcast, cable, or satellite communication that (1) refers to a clearly identified candidate for Federal office; (2) is publicly distributed within 60 days before a general election or 30 days before a primary election for the office sought by the candidate referenced in the communication; and (3) can be received by 50,000 or more persons within the geographic area that the candidate referenced in the communication seeks to represent. *See* 2 U.S.C. 434(f)(3); 11 CFR 100.29.

[4] 11 CFR 100.26 defines a ''public communication'' as ''a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term general public political advertising shall not include communications over the Internet, except for communications placed for a fee on another person's Web site.'' *See Final Rules and Explanation and Justification: Internet Communications,* 71 FR 18589 (published April 12, 2006; effective May 12, 2006); *see also* 2 U.S.C. 431(22).

[5] The term ''expressly advocating'' is defined in the Commission's regulations at 11 CFR 100.22.

[6] The term ''election'' includes general elections, primary elections, runoff elections, caucuses or conventions, and special elections. *See* 11 CFR 100.2.

step of *Chevron* review.[7] *Shays District* at 62–65. The District Court concluded that limiting the coordinated communication definition to communications that satisfy the content standards at 11 CFR 109.21(c)(1) through (4), ''undercuts FECA's statutory purposes and therefore these aspects of the regulations are entitled to no deference.'' *Shays District* at 65. The District Court reasoned that communications that have been coordinated with a candidate, a candidate's authorized committee, or a political party committee have value for, and therefore are in-kind contributions to, that candidate or committee, regardless of the content, timing, or geographic reach of the communications. *Id.* at 63–64. Therefore, the Commission's exclusion of communications under the 120-day test failed the second step of Chevron review. *Id.* at 64–65.

2. Shays Court of Appeals Decision

The Commission appealed the District Court's decision. In 2005, a three-judge panel of the Court of Appeals for the D.C. Circuit considered the Commission's appeal. *See Shays Appeal* at 97–102. The Court of Appeals found that the Commission's regulations satisfied *Chevron* step one, and, contrary to the District Court's opinion, satisfied *Chevron* step two as well. *Shays Appeal* at 99–100. The Court of Appeals concluded: ''Accordingly, we reject Shays's and Meehan's argument that FECA precludes content-based standards under *Chevron* step one. And for the same reasons, we disagree with the district court's suggestion that any standard looking beyond collaboration to content would necessarily 'create an immense loophole,' thus exceeding the range of permissible readings under *Chevron* step two.'' *Shays Appeal* at 99–100.

In reaching its holding, the Court of Appeals found that Congress provided the Commission with an ''open-ended directive'' under which to promulgate coordination regulations. *Shays Appeal* at 97–98. ''[I]n the BCRA provision most clearly on point—the directive calling for new regulations—Congress studiously avoided prescribing any specific standard, save abrogation of the 'collaboration or agreement' test. Given this 'lack of guidance in the statute,' we cannot say that BCRA clearly forecloses the FEC's approach. Nor do we see clearly contrary intent, as do Shays and Meehan, in FECA's preexisting 'expenditure' and 'contribution' definitions.'' *Id.* at 99 (internal citation omitted).

The Court of Appeals noted that under the statute, a communication that is a coordinated expenditure ''shall be considered to be a contribution,'' and the Commission ''lacks discretion to exclude that communication from its coordinated communication rule.'' *Id.* at 99. ''Yet to qualify as [an] 'expenditure' in the first place, *spending must be undertaken 'for the purpose of influencing' a federal election* (or else involve 'financing' for redistribution of campaign materials).'' *Id.* (emphasis added). The Court of Appeals emphasized that ''time, place, and content may be critical indicia of communicative purpose.'' *Shays Appeal* at 99. The Court of Appeals recognized, ''Insofar as such statements may relate to political or legislative goals independent from any electoral race—goals like influencing legislators' votes or increasing public awareness—we cannot conclude that Congress unambiguously intended to count them as 'expenditures' (and thus as 'contributions' when coordinated). To the contrary, giving appropriate *Chevron* deference, we think the FEC could construe the expenditure definition's purposive language as leaving space for collaboration between politicians and outsiders on legislative and political issues involving only a weak nexus to any electoral campaign. Moreover, we can hardly fault the FEC's efforts to develop an 'objective, bright-line test [that] does not unduly compromise the Act's purposes,' considering that we approved just such a test for 'contribution' in *Orloski.* 795 F.2d at 165.'' *Id.* Accordingly, the Court of Appeals concluded that the Commission's regulation satisfied *Chevron* steps one and two. *Id.* at 99–100.

While finding the content prong was a permissible construction of Congressional intent, the Court of Appeals held that the content prong was inadequately explained under the Administrative Procedure Act. *Id.* at 100. The Court of Appeals stated, ''while we accept the FEC's premise that time, place, and content may illuminate communicative purpose and thus distinguish FECA 'expenditures' from other communications, we detect no support in the record for the specific content-based standard the Commission has promulgated.'' *Id.* at 102. In response to this finding by the Court of Appeals, the Commission opened the present rulemaking.

C. Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking

The Commission published a Notice of Proposed Rulemaking (*''NPRM''*) on December 14, 2005, in which it sought comment on a number of alternatives for retaining or revising the content standard of the coordinated communication regulations and on several other issues involving the coordinated communication rules. *See* 70 FR 73946 (December 14, 2005). The comment period closed on January 13, 2006. The Commission received written comments from 28 commenters. The Commission held a public hearing on January 25 and 26, 2006, at which 18 witnesses testified. The comments and a transcript of the public hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml#coordinated*.[8]

In the *NPRM,* the Commission specifically requested that commenters submit empirical data showing the time period before an election during which campaign communications generally occur. *NPRM* at 73949. None of the commenters provided empirical data in response to the Commission's request, either in written comments or at the public hearing. One joint comment did provide a compilation of selected advertisements run during recent election cycles.

Because no commenters provided empirical data in response to the Commission's request, the Commission licensed data from TNS Media Intelligence/CMAG (''CMAG'') regarding television advertising spots run by Presidential, Senate, and House of Representatives candidates during the 2004 election cycle. CMAG is a leading provider of political advertising tracking and provides media analysis services to a wide variety of clients, including national media organizations, foundations, academics, and Fortune 100 companies. *See* www.tnsmi-cmag.com. CMAG also provided data to the Brennan Center in conjunction with its 2000 study ''Buying Time,'' which was cited by BCRA's principal sponsors

[7] The District Court described the first step of the Chevron analysis, which courts use to review an agency's regulations: ''a court first asks 'whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.' '' *See Shays District* at 51 (quoting *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council,* 467 U.S. 837, 842–43 (1984)). According to the District Court, in the second step of the *Chevron* analysis, the court determines if the agency's interpretation is a permissible construction of the statute that does not ''unduly compromise'' the Act's purposes by ''creat[ing] the potential for gross abuse.'' *See Shays District* at 91 (citing *Orloski* v. *FEC,* 795 F.2d 156, 164–65) (D.C. Cir. 1986) (internal citations omitted).

[8] For purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.

in support of BCRA's provisions. *See, e.g.*, 148 Cong. Rec. S2141 (daily ed. March 20, 2002) (statement of Sen. McCain) (''According to the Brennan Center's 'Buying Time 2000' study, less than one percent of the group-sponsored soft-money ads covered by this provision of the bill were genuine issue discussion, more than 99 percent of these ads were campaign ads. This degree of accuracy is more than sufficient to overcome any claim of substantial overbreadth.'').

The Commission produced graphical representations derived from the CMAG data and made these graphs and the underlying data available on its Web site. The Commission then published a Supplemental Notice of Proposed Rulemaking (*''SNPRM''*) in the **Federal Register** on March 15, 2006, that re-opened the comment period for this rulemaking. 71 FR 13306 (March 15, 2006). The graphs and data are available at the Commission's Web site at *http://www.fec.gov/pdf/nprm/coord_commun/suppNPRMmaterials.shtml*.[9] In the *SNPRM*, the Commission sought additional comment, in light of the information presented by the data, on the issues and questions raised in the *NPRM* regarding the content prong time frame.

The reopened comment period for the *SNPRM* closed on March 22, 2006. The Commission received written comments on the *SNPRM* from 12 commenters, which are also available at *http://www.fec.gov/law/law_rulemakings.shtml#coordinated.*

II. Revised Time Frames for Coordinated Communications (11 CFR 109.21(c)(4))

A. The Commission Has Determined To Retain the Content Prong With Revised Time Frames

The *Shays* Court of Appeals emphasized that retaining a time frame as part of the fourth content standard requires the Commission to undertake a factual inquiry to determine whether the temporal line it draws ''reasonably defines the period before an election when non-express advocacy likely relates to purposes other than 'influencing' a federal election.'' *Shays Appeal* at 101–02. The Court presented three questions to guide the Commission's inquiry: (1) ''Do candidates in fact limit campaign-related advocacy to the four months surrounding elections, or does substantial election-related communication occur outside that window?''; (2) ''Do congressional, senatorial, and presidential races—all covered by this rule—occur on the same cycle, or should different rules apply to each?''; and (3) ''[T]o the extent election-related advocacy now occurs primarily within 120 days, would candidates and collaborators aiming to influence elections simply shift coordinated spending outside that period to avoid the challenged rules' restrictions?'' *Id.* at 102.

Based on its inquiry into the Court of Appeals' questions, the Commission has decided to retain the existing content prong, but revise the applicable time frames in the fourth content standard at 11 CFR 109.21(c)(4). The revision creates separate time frames for communications based on whether they refer to (1) Congressional candidates, (2) Presidential candidates, or (3) political parties. For those communications that refer to Senate and House of Representatives candidates in Congressional primary [10] and general elections, the revised time frame begins 90 days before each candidate's election and ends on the date of that candidate's election. For communications that refer to Presidential candidates, the revised time frame covers, on a State-by-State basis, the period of time from 120 days before the date of a Presidential primary up to and including the date of the general election.[11]

For those communications that reference political parties and do not reference a clearly identified Federal candidate, when such communications occur in a non-Presidential election cycle, the revised time frame period begins 90 days before each election and ends on the date of that election; when such communications occur in a Presidential election cycle, the revised time period covers, on a State-by-State basis, the period of time from 120 days before the date of a primary through the general election. For communications that reference a political party and a clearly identified Federal candidate, the applicable time frame is either the Congressional or Presidential candidate time period, depending upon (1) whether the communication is coordinated with the political party committee or the candidate, (2) whether the upcoming general election is a Presidential or non-Presidential election, and (3) whether the communication is aired in the referenced candidate's jurisdiction.

1. Senate and House Candidates Conduct Nearly All Campaign-Related Advocacy Within 60 Days of an Election

The data obtained by the Commission respond directly to the first question posed by the Court of Appeals: ''Do candidates in fact limit campaign-related advocacy to the four months surrounding elections, or does substantial election-related communication occur outside that window?'' *Shays Appeal* at 102. This question is relevant to the Commission's inquiry because the purpose of the content standard is to provide a bright-line delineation between those coordinated advertisements that are for the purpose of influencing an election—and therefore are ''expenditures'' regulated by the Act—and those that are not. As the *Shays* Court of Appeals stated, ''Insofar as such statements may relate to political or legislative goals independent from any electoral race—goals like influencing legislators' votes or increasing public awareness—we cannot conclude that Congress unambiguously intended to count them as ''expenditures'' (and thus as 'contributions' when coordinated).'' *Shays Appeal* at 99 (''[T]o qualify as [an] 'expenditure' in the first place, spending must be undertaken 'for the purpose of influencing' a federal election.'').

Any time a candidate uses campaign funds to pay for an advertisement, it can be presumed that this advertisement is aired for the purpose of influencing the candidate's election. Additionally, candidates and their campaign staff are experienced and knowledgeable in matters of advertising strategy and are highly motivated to run advertisements at a time when they are likely to influence voters. Thus, data showing when candidates spend their own campaign funds on advertisements

[9] Available at *http://www.fec.gov/pdf/nprm/coord_commun/suppNPRMmaterials.shtml* are ten graphs covering Presidential election data, four graphs covering Senate election data, and four graphs covering House election data, as well as an explanation of the methodology used for each graph. These graphs are titled, and referenced herein, as P1–P10, S1–S4, and H1–H4, respectively. An additional chart regarding Presidential spending in individual ''battleground'' States, *see* note 21, below, is available at *http://www.fec.gov/pdf/nprm/coord_commun/chart_20060407.pdf.* This chart is referenced herein as Chart P11.

[10] The method of choosing nominees for election to Federal office, either by a primary or a preference election, a caucus, or a convention, differs from State to State. This document uses the term ''primary election'' to refer to any election that chooses a nominee for the general election. *See also* note 6, above.

[11] Thus, if State A conducts its Presidential primary on February 1st of the Presidential election year, the time frame in State A for Presidential candidates would begin on approximately October 1st of the year preceding the Presidential election and would end on the date of the Presidential general election. Similarly, if State B held its Presidential primary on June 1st of the Presidential election year, the time frame in State B for Presidential candidates would begin on approximately February 1st of the Presidential election year and end on the date of the Presidential general election.

provide an empirical basis for predicting when advertising that has the purpose of influencing a Federal election occurs. Moreover, in the context of coordination, a candidate has an incentive to ask an outside group to pay for advertisements to be aired precisely during the time period when the candidate believes these advertisements would be effective. Advertisements run outside of the effective time frame are of little value to the candidate, and therefore do not present the potential for corruption or the appearance of corruption that BCRA and the Act intend to prevent.

Commenters agreed that a time frame is helpful in identifying communications that are made for the purpose of influencing an election. As one commenter noted: ''The Commission is reasonable in its belief that election-influencing communications are generally susceptible of temporal definition and limitation. The Commission should continue to determine where that temporal limitation is.'' Moreover, commenters generally agreed that proximity to an election factors into the value of the communication.

The data analyzed by the Commission show that nearly all Senate and House candidate advertising takes place within 60 days of an election. Senate candidates aired 91.60 percent and 94.73 percent of their advertisements within 60 days of the primary and general election, respectively.[12] This represented 93.32 percent and 97.20 percent of the estimated costs of advertisements the Senate candidates ran before the primary and general elections, respectively.[13] House candidates aired 88.16 percent and 98.09 percent of their advertisements within 60 days of the primary and general elections, respectively.[14] This represented 92.68 percent and 98.75 percent of the estimated costs of the advertisements House candidates ran before the primary and general elections, respectively.[15]

The data show that a minimal amount of activity occurs between 60 and 90 days before an election, and that beyond 90 days, the amount of candidate advertising approaches zero. Senate candidates aired only 0.87 percent and 0.39 percent of their advertisements more than 90 days before their primary and general elections, respectively,[16] which represented 0.66 percent and 0.15 percent of the total estimated costs of advertisements run by Senate candidates before the primary and general elections, respectively.[17] Similarly, House candidates aired only 8.56 percent and 0.28 percent of their advertisements more than 90 days before their primary and general elections, respectively.[18] This represented 3.79 percent and 0.13 percent of the total estimated costs of advertisements run by House candidates before the primary and general elections, respectively.[19]

The data are consistent with the comments received by the Commission. Commenters stated that a 60-day time frame comports with the practical reality of when candidates run advertisements. Comments submitted by the Democratic National Committee, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, the National Republican Senatorial Committee, and the National Republican Congressional Committee (''NRCC'') all stated that in their experience, coordinated activities occurred within 60 days of the 2004 elections. The NRCC further stated that both its coordinated and independent expenditures for the 2004 general election were all made within 60 days of that election.

A 60-day time frame is also consistent with past Congressional, Supreme Court, and Commission findings. As one commenter stated, ''this time period [60 days] would be consistent with Congressional line-drawing in the context of electoral and political speech in the BCRA itself.'' Comments submitted by the BCRA Congressional sponsors in 2002 stated, ''Title II of BCRA reflects congressional judgment that communications concerning federal elected officials during the 60 day period prior to a general election and the 30 day period prior to a primary is usually campaign related.'' In *McConnell* v. *FEC*, the Supreme Court upheld the 30- and 60-day time frames for electioneering communications, concluding that Congress had adequately explained its decision to regulate the ''virtual torrent of televised election-related ads during the periods immediately preceding federal elections' and that ''[t]he record amply justifies Congress' line drawing.'' *McConnell* v. *FEC*, 540 U.S. 93, 207–08 (2003). As the FEC successfully argued in *McConnell*:

> The timing requirement is also directly tied to Congress's objective of capturing advertisements that are likely to influence the outcome of federal elections. The record 'overwhelmingly demonstrate[s] the appropriateness of BCRA's sixty and thirty day benchmarks,' and confirms with remarkable clarity the common-sense conclusion 'that issue advertisements aimed at influencing federal elections are aired in the period right before an election. Supp. App. 725sa–728sa, 847sa–848sa (Kollar-Kotelly) (discussing evidence); *see id.* at 851sa ('The sixty and thirty day figures are not arbitrary numbers selected by Congress, but appropriate time periods tied to empirically verifiable data.')

Brief for the Federal Election Commission *et al.* at 94, *McConnell* v. *FEC*, 540 U.S. 93 (2003) (discussing the timing requirement under the definition of electioneering communication).

The record before Congress when passing BCRA and before the Supreme Court in *McConnell* included the Brennan Center's ''Buying Time'' study, which further supports the conclusion that the vast majority of election related advocacy occurs immediately before an election. The Brennan Center found that, ''[i]n the 2000 election, genuine issue ads are rather evenly distributed throughout the year, while group-sponsored electioneering ads make a sudden and overwhelming appearance immediately before elections.'' Craig B. Holman and Luke P. McLoughlin, ''Buying Time 2000: Television Advertising in the 2000 Federal Elections,'' 56 (2002). Another study supported the 60-day time frame and was entered into the Congressional Record by Senator Snowe. Jonathan Krasno and Kenneth Goldstein, ''The Facts About Television Advertising and the McCain-Feingold Bill,'' 35(2) PS: Political Science and Politics 207 (2002); *see also* 147 Cong. Rec. S3070–01, S3074. This study found that in 1998 and 2000 ''the greatest deluge of issue ads began appearing after Labor Day.'' *Id.* at S3075.

The 60-day time frame is also consistent with existing Commission regulations. As a commenter stated, ''Setting the time period at 60 days is also supported by the FEC's regulatory time periods for the depreciation of polling data in 11 CFR 106.4(g), under which the FEC has determined that on the 61st day after the polling event, the data is worth only 5% of its original value.''

Therefore, in response to the Court of Appeals' first question, the data analyzed and comments reviewed by the Commission establish that Senate and House candidates focus their campaign advocacy not during the last 120 days before an election, but during

[12] *See* Graphs S1 and S3.

[13] *See* Graphs S2 and S4.

[14] *See* Graphs H1 and H3.

[15] *See* Graphs H2 and H4.

[16] *See* Graphs S1 and S3.

[17] *See* Graphs S2 and S4.

[18] *See* Graphs H1 and H3.

[19] *See* Graphs H2 and H4.

the last 60 days before an election. Moreover, beyond 90 days from an election, Senate and House candidate advertising nearly ceases. As suggested by the Court of Appeals' second question, however, the data on Presidential candidates show a different advertising pattern, and are discussed below.

2. Campaign Advertising in Presidential Races Occurs on a Different Cycle Than in Senate and House Races

The data and comments examined by the Commission respond directly to the second question posed by the Court of Appeals: ''Do congressional, senatorial, and presidential races—all covered by this rule—occur on the same cycle, or should different rules apply to each?'' *Shays Appeal* at 102. The data show that advertising in the Presidential race does in fact occur on a different cycle than advertising in Senate and House races. Appreciable spending occurred outside of the 120-day time frame with regard to the Presidential general election.[20] Specifically, in the media markets contained within individual ''battleground'' States,[21] the 120-day time frame before the general election covered less than 75 percent of the estimated spending.[22]

Under the Commission's 2002 regulations, the general election coordinated communication window effectively extended further back than 120 days before the general election because the Presidential nominating conventions of the political parties are also elections for purposes of determining whether a communication satisfies the fourth content standard in former 11 CFR 109.21(c)(4). *See* 11 CFR 100.2(e). Accordingly, in 2004, the general election coordinated communication window overlapped with the coordinated communication windows before the Presidential nominating conventions and therefore the coordination regulations applied for the entire 184 days before the general election for Republican Presidential candidates and for 219 days before the general election for Democratic Presidential candidates.[23] Even with this extended general election window, however, in several States there was still a time period between the primary elections and the start of the extended window during which public communications were not covered by the 120-day time frame in the 2002 rules (''gap period''). Moreover, the length of the gap period was solely a function of the parties' selection of convention dates. To the extent advertising was continuous during the time period between the primary and general elections, the amount that was subject to the existing 120-day rule depended on the dates the parties set for their conventions, rather than on the purposeful application of the rule.

The Commission received several comments addressing the issue of communications made during the Presidential gap periods. Some commenters were in favor of regulating communications run during this gap period, noting that post-primary communications are ''overwhelmingly likely to be for the purpose of influencing the candidate's election.'' One joint commenter submitted voluminous appendices and argued that a significant amount of campaign advertising occurs during this gap period.[24] As another commenter argued, ''a period starting 120 days prior to a primary and running all the way to the general election would be appropriate to capture ads that are most likely to influence an election.'' In contrast, other commenters argued against extending the regulation into this gap period, asserting that campaigns do not advertise significantly during this time, and therefore, according to some, regulation would unnecessarily infringe on constitutionally protected speech. A commenter representing a political party committee argued that political party committees would already be covered by Federal reporting and spending limitations and that covering this gap period is therefore unnecessary.

The CMAG data show that, in 2004, Presidential candidates spent appreciable amounts on advertisements run during the gap period between the State primaries and the beginning of the 184-day Republican and the 219-day Democratic extended general election windows, respectively. Specifically, in media markets contained fully within individual ''battleground'' States, the Republican Presidential candidate spent a total of $9,475,679 on television advertisements run during the gap period, which amounted to 14 percent of the total costs of media spots aired by the Republican Presidential candidate in those media markets after the State primaries.[25] In some of these media markets, the percentage was significantly higher.[26] For example, in the Seattle, WA, media market, 38 percent of the post-primary Republican spending occurred during the gap period, and, in the Madison and Milwaukee, WI, media markets, 20 percent of the post-primary Republican spending occurred during the gap period.[27] Democratic Presidential candidates spent $1,221,045 on post-primary television advertisements that occurred during the gap period.[28] Thus, nearly $10.7 million was spent by Presidential candidates on television advertisements during the gap periods.[29]

In response to the Court of Appeals' second question, the data and comments confirm that campaign advertising in Presidential races does in fact take place on a different cycle than Senate and House races. Rather than the 60-day cycle in Senate and House races, the data and comments confirm that nearly all Presidential advertisement spending took place during the time period from 120 days before the primary elections up through the date of the general election. According to the data, in the 2004 election cycle, over 99 percent of the estimated media spot spending by Presidential candidates in media markets fully contained within individual ''battleground'' States occurred during this time period.[30] This time period is now fully covered by the Commission's revised content standard at 11 CFR 109.21(c)(4).

[20] *See* Graphs P2 and P4.

[21] The Commission decided to limit the data appearing in these graphical representations to those States in which the 2004 Presidential race was the most highly contested. The States determined to be the 2004 ''battleground'' States are: Arizona, Arkansas, Colorado, Florida, Iowa, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Washington, West Virginia, and Wisconsin. A list of ''battleground'' States was determined from the following sources: *Cook Political Report* (*http://www.cookpolitical.com/column/2004/021704.php*); *ABC News/Washington Post* (*http://www/abcnews.go.com/sections/us/WorldNewsTonight/battlegrounds_poll_040422.html*); *National Journal* (*http://nationaljournal.com/members/campaign/2004/swingstates/*); *Wall Street Journal/Zogby International* (*http://online.wsj.com/public/resources/documents/info-battleground04-print.html*).

[22] *See* Graph P10.

[23] The general election coordinated communication window began on July 5, 2004, for all candidates. The Republican National Convention was held on August 30–September 2, 2004, and the coordinated communication window for that convention began on May 2, 2004, which was 184 days before the general election. The Democratic National Convention was held on July 27–29, 2004, and the coordinated communication window for that convention began on March 28, 2004, which was 219 days before the general election.

[24] Some of the advertisements presented by the commenter were run during the pre-convention window, and therefore, were covered by the Commission's existing coordination regulations.

[25] *See* Chart P11.

[26] *See* Chart P11.

[27] *See* Chart P11.

[28] *See* CMAG Data.

[29] *See* Chart P11 and CMAG Data.

[30] *See* Graphs P8 and P10.

3. The Minimal Value of Advertising Outside of the Revised Time Frames Limits the Risk of Corruption From Candidates and Collaborators Shifting Coordinated Spending to Outside the Time Frames

The data and comments reviewed by the Commission also respond to the third question posed by the Court of Appeals: ''[T]o the extent election-related advocacy now occurs primarily within 120 days, would candidates and collaborators aiming to influence elections simply shift coordinated spending outside that period to avoid the challenged rules' restrictions?'' *Shays Appeal* at 102. As discussed above, candidates have little incentive to ask outside groups to pay for advertisements aired outside of periods where the candidates' own spending indicates they would be effective. Therefore, outside of those time periods where candidate advertising occurs, there is little risk that coordinated activity presents the risk or appearance of corruption.

As discussed above, the data and comments analyzed in response to the Court of Appeals' first question overwhelmingly support a 60-day time frame for Congressional candidate communications. However, in order to foreclose the possibility that candidates and groups will shift spending outside the applicable time frame, the Commission has determined to set the Congressional time frame at 90 days. Congressional candidates aired a minimal percentage of their advertisements more than 60 days before an election, and beyond 90 days aired virtually no advertisements.[31] Candidates have little or no incentive to shift spending beyond 90 days. The limited value of advertising beyond 90 days is reflected in the data, with Senate candidates spending less than a quarter of one percent of their television advertising budgets on spots that aired between 90 and 120 days before either a primary or a general election.[32] Similarly, House candidates spent less than three percent of their television advertising budgets on spots that aired between 90 and 120 days before a primary election [33] and less than a quarter of one percent of their television advertising budgets on spots that aired between 90 and 120 days before a general election.[34]

For Presidential candidates, while the data show that the existing 120-day time frames captured a majority of Presidential spending, some appreciable spending occurred in the gap period not covered by the current 120-day rule.[35] Accordingly, the Commission has determined to close the gap period and extend the applicable time frame from 120 days before the primary election in a State continuously through the day of the general election in that State. This revised time frame would have covered more than 99 percent of Presidential advertising spending in 2004.[36]

One group of commenters, including plaintiffs in the *Shays* litigation, argued that the 120-day time frame was under-inclusive and should be supplemented with a complex, multi-factored approach that would use a different test, based not on time but instead on the identity of the entity paying for any communication made outside of the 120-day time period. The commenters proposed the Commission adopt the following regulation:

(4) A public communication, as defined in 11 CFR 100.26, made by a political committee, which is an expenditure directed to voters in the jurisdiction of the candidate with whom the communication is coordinated, or if coordinated with a political party, is an expenditure directed to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot.

(5) A public communication, as defined in 11 CFR 100.26, made by an organization described in section 527 of the Internal Revenue Code and not registered as a political committee, which:

(i)(A) Is distributed or disseminated during the period beginning 30 days prior to the primary election or 60 days prior to the general election of the federal candidate with whom the communication is coordinated, or, if coordinated with a political party, during the period beginning 30 days prior to the primary election or 60 days prior to the general election in which one or more candidates of the political party appear on the ballot, and (B) is directed to voters in the jurisdiction of that candidate or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot, regardless of whether the communication refers to a clearly identified candidate for federal office, or party; or

(ii)(A) Is distributed or disseminated during the period beginning 120 days prior to the primary election and ending on the day of the general election, (B) refers to a clearly identified candidate for federal office or to a political party, and (C) is directed to voters in the jurisdiction of the clearly identified candidate, or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot; or

(iii)(A) Is distributed or disseminated more than 120 days prior to the primary election, (B) promotes, attacks, supports or opposes a clearly identified candidate for federal office, or if the ad is coordinated with a political party, promotes, attacks, supports or opposes the party or its candidates, and (C) is directed to voters in the jurisdiction of the clearly identified candidate, or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot.

(6) A public communication, as defined in 11 CFR 100.26, made by any person other than a political committee or other organization described in section 527 of the Internal Revenue Code which:

(i)(A) Is distributed or disseminated during the period beginning 30 days prior to the primary election or 60 days prior to the general election of the federal candidate with whom the communication is coordinated, or, if coordinated with a political party, during the period beginning 30 days prior to the primary election or 60 days prior to the general election in which one or more candidates of the political party appear on the ballot, and (B) is directed to voters in that candidate's jurisdiction, regardless of whether the communication refers to a clearly identified candidate for federal office, or party; or

(ii)(A) Is distributed or disseminated during the period beginning 120 days prior to the primary election and ending on the day of the general election, (B) refers to a clearly identified candidate for federal office or to a political party, and (C) is directed to voters in the jurisdiction of the clearly identified candidate, or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot; or

(iii)(A) Is distributed or disseminated more than 120 days prior to the primary election, (B) refers to the character or the qualifications or fitness for office of a clearly identified candidate for federal office, or if the ad is coordinated with a political party, refers to the character or the qualifications or fitness for office of the party generically or of candidates of that party, and (C) is directed to voters in the jurisdiction of the clearly identified candidate, or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot.

The Commission believes the record does not support the time frames in the commenters' proposed regulation, nor the disparate regulatory schemes for various entities. Moreover, the Commission agrees with other witnesses at the hearing that if the Commission were to adopt the proposed regulation, its complexity would likely place an extreme burden upon the regulated community. The commenters also submitted summaries of advertisements from recent election cycles that, according to the commenters, were run more than 120 days before the primary or general election they were intended to influence. However, at the hearing, these commenters acknowledged that there was no evidence that any of these advertisements had been coordinated with a candidate or a political party

[31] *See* Graphs S1, S3 and H1, H3.

[32] *See* Graphs S2 and S4.

[33] *See* Graph H2.

[34] *See* Graph H4.

[35] *See* Chart P11.

[36] This figure represents Presidential spending in media markets fully contained within individual ''battleground'' States. *See* Graphs P8 and P10.

committee. The lack of evidence that these advertisements were coordinated with candidates comports with the conclusion drawn from the CMAG data and comments; specifically, that candidates perceive little value in airing advertisements beyond 90 days from an election, and have little incentive to seek such advertising in exchange for political favoritism.

4. Communications That Refer to Political Parties

As set forth in new 11 CFR 109.21(c)(4)(iii) and (iv), communications that refer to political parties are now subject to different time periods depending upon: (1) Whether the communication is coordinated with a candidate or political party committee; (2) whether the upcoming general election is a midterm or Presidential election; and (3) if the communication also refers to a clearly identified Federal candidate, whether it is run in the clearly identified candidate's jurisdiction.

When communications are paid for by outside groups, refer to a political party, are coordinated with a *candidate*, and are publicly distributed or otherwise disseminated in that candidate's jurisdiction, they can generally be presumed to be for the purpose of influencing that candidate's election whether or not they also refer to the candidate with whom they are coordinated. Accordingly, it is appropriate to use the time frame established for communications that refer to a House or Senate candidate (90 days before a primary, special, or general election) where the communications refer only to a political party and not to a clearly identified Federal candidate, but are coordinated with a House or Senate candidate and distributed in that candidate's jurisdiction, even if such communications are distributed during a Presidential election cycle. *See* 11 CFR 109.21(c)(4)(iii)(A). Similarly, if a communication were coordinated with a Presidential candidate, it would be appropriate to use the same 120-day time period established for communications referring to Presidential candidates. *See* 11 CFR 109.21(c)(4)(iii)(A).

A communication that refers to a political party without referring to a clearly identified Federal candidate, otherwise satisfies the content prong, is paid for by an outside group, and is coordinated with a *political party*, can generally be presumed to be for the purpose of influencing the elections of all of the party's candidates within that jurisdiction during the relevant time period before an election. During a midterm election cycle (in which only House and Senate candidates are on the ballot), new 11 CFR 109.21(c)(4)(iii)(B) provides that communications referring to political parties are subject to the same 90-day time period as communications referring to House and Senate candidates. Likewise, the new rules provide that during a Presidential election cycle, communications referring to political parties are presumed to be for the purpose of influencing the elections of all of the party's candidates, including the party's Presidential candidate. Accordingly, such communications are subject to the same 120-day time period as communications referring to Presidential candidates. *See* new 11 CFR 109.21(c)(4)(iii)(C).

If the communication refers to both a political party and a clearly identified Federal candidate, the communication is subject to the time frame applicable to that clearly identified candidate under 11 CFR 109.21(c)(4)(i) or (ii) when the communication is coordinated with either a candidate or a political party and is distributed or disseminated within the clearly identified candidate's jurisdiction. *See* 11 CFR 109.21(c)(4)(iv)(A) and (B). Such communication is subject to the applicable time frames for party references when coordinated with a political party and distributed and disseminated outside the candidate's jurisdiction. *See* 11 CFR 109.21(c)(4)(iv)(C). Any such communication coordinated with a candidate, but distributed outside that candidate's jurisdiction, would not constitute a coordinated communication.

5. Other Considerations

In the Commission's judgment, the foregoing time frames encompass the periods in which effective political party, Congressional, and Presidential election-related advertising occurs, and therefore political parties, candidates, and collaborators will have little incentive to shift spending outside of these time frames. None of the commenters submitted any evidence that, during the recent election cycles during which the Commission's 2002 coordination rules were in effect, House or Senate candidates asked outside groups to run advertisements more than 90 days before House or Senate primary or general elections. Since the 2002 rule took effect, the Commission has received very few complaints alleging that House or Senate candidates or their agents coordinated with outside groups to produce or distribute communications that ran between 90 and 120 days before a House or Senate primary or general election. Moreover, commenters did not submit any evidence that during the recent election cycles in which the Commission's 2002 coordination rules were in effect, Presidential candidates or their agents asked outside groups to run advertisements more than 120 days before Presidential primaries or the general election.

Retaining a longer time frame that is not supported by the record could potentially subject political speech protected under the First Amendment to Commission investigation. Subjecting activity to investigation that the evidence shows is unlikely to be for the purpose of influencing Federal elections could chill legitimate lobbying and legislative activity. As the Supreme Court has emphasized, where First Amendment rights are affected, ''[p]recision of regulation must be the touchstone,'' *Edenfield* v. *Fane*, 507 U.S. 761, 777 (1993).

The Court of Appeals emphasized that it ''can hardly fault the [Commission's] effort to develop an objective, bright-line test.'' *Shays Appeal* at 99. As the D.C. Circuit noted in an analogous context, ''a subjective test based on a totality of the circumstances * * * would inevitably curtail permissible conduct.'' *Orloski* v. *FEC*, 795 F.2d 156 (D.C. Cir. 1986). In *Orloski*, the D.C. Circuit further warned that:

> [A] subjective test would also unduly burden the FEC with requests for advisory opinions * * * and with complaints by disgruntled opponents who could take advantage of a totality of the circumstances test to harass the sponsoring candidate and his supporters. It would further burden the agency by forcing it to direct its limited resources toward conducting a full-scale, detailed inquiry into almost every complaint, even those involving the most mundane allegations.

Id. at 165.

Considering the political, expressive, and associational rights at stake, the Commission has determined not to extend the time frame beyond that period supported by the record.

B. Revised 11 CFR 109.21(c)(4)

The Commission continues to believe that an objective, bright-line coordination test provides the clearest guidance to candidates, political party committees, and outside organizations. Moreover, as discussed above, the CMAG data show that in the 2004 election cycle, nearly all television advertisements paid for by candidates were aired within certain time frames before an election. These data, therefore, provide empirical support for the

Commission's decision to use time frames as part of a bright-line test for determining whether a communication is made for the purpose of influencing Federal elections.

Accordingly, as set forth in new 11 CFR 109.21(c)(4)(i), public communications that refer to a Senate or House of Representatives candidate are subject to two 90-day time periods. One time period runs from 90 days before any primary in which the Congressional candidate is on the ballot through the date of the primary. Then, another time period starts 90 days before any general election in which the candidate is on the ballot and runs through the date of the general election. In some States, these periods will overlap if a primary election is held fewer than 90 days before a general election.

Under new 11 CFR 109.21(c)(4)(ii), communications that refer to a candidate for President or Vice President are subject to a single time period that begins 120 days before a State's primary election up to and including the date of the general election.

Under new 11 CFR 109.21(c)(4)(iii), communications that refer to a political party but not to a clearly identified Federal candidate are subject to different time periods under different circumstances. For those communications that are coordinated with a candidate and reference a political party, but do not reference a clearly identified Federal candidate, the time frame that would be applicable if that candidate were clearly identified in the communication under 11 CFR 109.21(c)(4)(i) or (ii) applies when the communication is distributed or disseminated within that candidate's jurisdiction. *See* 11 CFR 109.21(c)(4)(iii)(A). For communications coordinated with a political party committee and distributed during the two-year election cycle ending in a non-Presidential general election, one time period runs from 90 days before any primary in which a candidate of that party is on the ballot through the date of the primary. *See* 11 CFR 109.21(c)(4)(iii)(B). Then, another time period begins 90 days before any general election in which a candidate of that party is on the ballot and runs through the date of the general election. In some States, these periods will overlap if a primary election is held fewer than 90 days before a general election. For communications coordinated with a political party committee and distributed during the two-year election cycle ending in a Presidential general election, a single time period begins 120 days before a candidate of that party's primary election in a State up to and including the date of the general election. *See* 11 CFR 109.21(c)(4)(iii)(C).

Under new 11 CFR 109.21(c)(4)(iv), communications that refer to both a political party and a clearly identified candidate are subject to the time frame applicable to that clearly identified candidate under 11 CFR 109.21(c)(4)(i) or (ii) when the communication is distributed or disseminated within the clearly identified candidate's jurisdiction. *See* 11 CFR 109.21(c)(4)(iv)(A) and (B). However, communications that refer to both a political party and a clearly identified candidate, are coordinated with a political party committee, and are distributed outside the clearly identified candidate's jurisdiction are subject to the time period that would apply to communications that refer only to a political party. *See* 11 CFR 109.21(c)(4)(iv)(C).

C. Clarification of Time Frame Requirement

The Commission is also taking this opportunity to clarify that a public communication satisfies the content standards in 11 CFR 109.21(c)(4)(i) and (ii) with respect to a candidate for Federal office only if the public communication is publicly distributed or otherwise publicly disseminated during the relevant time periods before an election in which that candidate or another candidate seeking election to the same office is on the ballot.

This clarification addresses the situation presented in Advisory Opinion 2004–01 (Bush-Cheney/Kerr). This advisory opinion concerned President Bush's appearance in a television advertisement paid for by a Congressional candidate in which President Bush endorsed that Congressional candidate. The Commission determined that any airing of the advertisement that occurred more than 120 days before the Presidential primary in a State in which the advertisement aired was not an in-kind contribution to President Bush because it did not satisfy the fourth content standard (*i.e.*, 11 CFR 109.21(c)(4)). Thus, in determining whether the Congressional candidate's payment for the communication would be an in-kind contribution to President Bush, the Commission looked at whether the communication was aired within 120 days before President Bush's election rather than whether it was aired within the time period applicable to the paying Congressional candidate.

In the *NPRM*, the Commission sought comment on whether it should clarify its coordinated communication rules to incorporate the approach taken in Advisory Opinion 2004–01 and to make clear that a public communication satisfies the content prong with respect to a Federal candidate only if it is distributed within the applicable time period before that candidate's election. For example, a Senator whose reelection is not until 2008 appears in an advertisement with a 2006 candidate for the House of Representatives. The advertisement is aired within 90 days of the House candidate's election, is paid for by the House candidate's campaign committee, and is disseminated in the State where the Senator will seek reelection in 2008. The proposed clarification of the rule would explain that the advertisement would not be an in-kind contribution to the Senator because the advertisement was not aired within 90 days of the Senator's 2008 election. Two commenters supported the proposed clarification and no commenters opposed it. Accordingly, the Commission is revising 11 CFR 109.21(c)(4)(i) and (ii) to make clear that the public communication at issue must be publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction before the clearly identified candidate's election in that jurisdiction. Read in conjunction with the ''payment prong'' at 11 CFR 109.21(a), which requires that the communication be paid for by someone other than the candidate at issue, this revision codifies the Commission's decision in Advisory Opinion 2004–01. *See also* Advisory Opinion 2005–18 (Reyes) (Concurring opinion of Commissioners Thomas, Toner, Mason, McDonald, and Weintraub).

The Commission notes that 11 CFR 109.21(c)(4)(i) and (ii) also cover advertisements coordinated with a candidate and disseminated within the applicable time period before an election of that candidate's opponent or potential opponent.[37] For example, Candidate Smith has already won the Democratic nomination for the U.S. Senate in State A, but the Republican Party has not yet held its primary in that State. At the request or suggestion of Candidate Smith, Organization X pays to run advertisements a week before the Republican primary attacking Candidate Jones, who is the frontrunner in the Republican primary race for U.S. Senate in State A and hopes to compete in the subsequent general election against Smith. Although Candidate Smith is not on the ballot in the Republican primary

[37] *See* note 44, below (defining ''potential opponent'' and identifying criteria that must be met for a person to be a ''candidate'' under the Act.).

in State A and his general election is more than 90 days away, the advertisement attacking Candidate Jones is an in-kind contribution to Candidate Smith because its purpose is to oppose Candidate Smith's potential opponent in the general election and thus influence Smith's election.

III. Alternative Proposals for Revising the Content Prong Not Adopted

The *NPRM* presented seven alternatives for retaining or revising the ''content prong'' of the 2002 coordination rules at 11 CFR 109.21(c). The Commission sought comment on each of these alternatives, as well as on whether a combination of components from different alternatives would be appropriate. Alternative 1 was to retain the 120-day time frame and Alternative 2 was to replace it with another time frame. In light of the Court of Appeals' rejection of the District Court's conclusion that ''FECA precludes content-based standards,'' (*Shays Appeal*, 414 F.3d at 99), and in light of the Court of Appeals' ruling that ''time, place, and content may be critical indicia of communicative purpose,'' (*Id.* at 99) the Commission has decided to adopt a combination of Alternative 1 and Alternative 2 based on a careful review of the comments and the CMAG data on candidate advertising during the 2004 election cycle. The Commission has therefore decided not to adopt any of the remaining five alternatives, each of which is discussed briefly below.

Alternative 3

Alternative 3 was to eliminate the time frame from the fourth content standard altogether. Commenters generally opposed this approach because they believed it would be unconstitutionally overbroad and would unnecessarily sweep into the area of ''grassroots lobbying'' efforts. One group of commenters argued that such an approach was adequate for political committees, but was overbroad with regard to speakers other than political committees.

The Commission agrees with the majority of the commenters who believe that eliminating the time frame from the fourth content standard in 11 CFR 109.21(c)(4) would unnecessarily capture a substantial amount of speech that is unrelated to elections, thereby raising substantial First Amendment issues. This alternative would apply to *any* public communication that refers to a Federal candidate and is publicly disseminated in the jurisdiction of the Federal candidate, even if the communication is made years before any election in which the candidate participates and is made without any purpose of influencing a Federal election. Such an approach is inconsistent with the Court of Appeals' recognition that ''to qualify as [an] 'expenditure' in the first place, spending must be undertaken 'for the purpose of influencing' a federal election.'' *Shays Appeal* at 99. Such an approach also runs counter to the Court of Appeals' conclusion that the Commission may appropriately apply a content standard to determine which communications are made for the purpose of influencing a Federal election and that the timing of a communication may be a critical indicium of an election-influencing purpose. *Shays Appeal* at 99. Such an approach is not justified by the need to prevent circumvention of the Act's contribution limits because, as discussed above, the CMAG data show that public communications made by candidates for the purpose of influencing a Federal election overwhelmingly take place within certain limited time frames before elections (*i.e.*, 90 days before House and Senate elections and 120 days before Presidential primaries through the day of the general election).

Alternative 4

Alternative 4 proposed to replace the time frame in the fourth content standard with a test based on whether a communication promotes, supports, attacks, or opposes (''PASOs'') [38] a political party or clearly identified Federal candidate. No commenter fully supported Alternative 4. One group of commenters argued that a PASO standard should not be applied to political committees but should be applied to entities described in section 527 of the Internal Revenue Code that are not registered with the Commission as political committees. Other commenters proposed combining the PASO standard with a time restriction, namely, the 30/60-day time frame used in the ''electioneering communication'' regulations.[39] Other commenters opposed adoption of a PASO standard, arguing that a PASO standard in place of a time frame is unworkable, inadequate, and overly broad. One joint commenter asserted that the legislative history in BCRA's coordination provisions implies that the Commission lacks the authority to use a PASO standard as part of the coordinated communication test. In rejecting a PASO standard, most commenters agreed that the Commission should continue to use a bright-line rule to determine whether a communication satisfies the content prong of the coordinated communication test. As one commenter stressed, ''We agree with the Court of Appeals when it said it could 'hardly fault the [Commission's] effort to develop an objective, bright-line test [that] does not unduly compromise the Act's purpose.' Thus, we urge the Commission to maintain a bright-line test in the area of coordination.''

The Commission agrees with the commenters that an objective, bright-line test, based on a sound evidentiary record, provides the clearest guidance to those seeking to comply with the coordination regulations. The Commission also invited comment on whether under Alternative 4, instead of using a PASO standard, the Commission should create a safe harbor exemption from the coordinated communication rules for certain types of communications that are not made for the purpose of influencing Federal elections. Several commenters supported the creation of such a safe harbor. One joint commenter argued that adopting a more focused safe harbor is both ''the most supportive [approach] of political speech and the most consistent with the legislative history of BCRA's coordination provisions.'' In this vein, as discussed below, the Commission is adding a safe harbor for public communications in which a Federal candidate endorses another candidate, or solicits contributions for certain tax-exempt organizations, candidates, and political committees. *See* Section V, below, and new 11 CFR 109.21(g). The Commission, however, has determined that a temporal standard, rather than a PASO standard, best effectuates the purposes of the Act, while providing clear guidance to the regulated community.

[38] The PASO standard is found in BCRA and applies to candidates and political party committees with respect to Federal Election Activity (''FEA''). *See* 2 U.S.C. 431(20)(A)(iii). Congress also applied the PASO standard to the activity of certain tax-exempt organizations. For example, BCRA prohibits party committees from soliciting funds for, or making or directing donations to, certain tax-exempt organizations that make expenditures or disbursements for FEA, which includes public communications that PASO a Federal candidate. *See* 2 U.S.C. 431(20)(A)(iii) and 441i(d)(1). In addition, BCRA directed the Commission not to exempt any communications that PASO a clearly identified Federal candidate from the electioneering communication provisions. *See* 2 U.S.C. 434(f)(3)(B)(iv). The Supreme Court, in rejecting a constitutional vagueness challenge to the PASO standard, held that ''the words 'promote,' 'oppose,' 'attack,' and 'support' * * * provide explicit standards for those who apply them and 'give the person of ordinary intelligence a reasonable opportunity to know what is prohibited.' '' *McConnell* v. *FEC*, 540 U.S. 93, 170 n.64 (2003) (quoting *Grayned* v. *City of Rockford*, 408 U.S. 104, 108–109 (1972)).

[39] *See* note 3, above.

Alternative 5

Alternative 5 proposed to eliminate the time frame from the fourth content standard for political committees only. Many of the commenters opposed this approach. Several commenters argued that by eliminating a time frame only for political committees, the Commission would be presuming that communications paid for by political committees are made solely for the purpose of influencing Federal elections, when they believed that many of a political committee's communications are made for other purposes, such as issue advocacy. Another commenter objected that such an approach would retain the existing time frame for organizations that are not subject to the prohibitions and limitations of the Act while tightening regulation for organizations that are already subject to numerous regulations because of their status as political committees. As that commenter pointed out, political committees are subject to the Act's contribution limits and prohibitions, are required to disclose their activities to the Commission, and receive relatively small contributions, mostly from individuals. In addition, several commenters opposed this alternative because it is not supported by empirical evidence. One joint commenter, however, supported Alternative 5 based on the assertion that groups whose 'major purpose' is to influence elections should be subject to broader regulatory standards. Accordingly, the joint commenter concluded that under Alternative 5, ''an 'expenditure' by a political committee should satisfy the 'content' test without regard to a time frame.'' For the same reason, the commenter also urged the Commission to abolish the time frame for public communications made by entities described in section 527 of the Internal Revenue Code.

The Commission has decided not to adopt Alternative 5 because, as discussed above, the Court of Appeals rejected the argument that ''FECA precludes content-based standards'' and concluded that ''time, place, and content may be critical indicia of communicative purpose.'' *Shays Appeal* at 99. As discussed above, the CMAG data provide overwhelming empirical support for the Commission's decision to use time frames as part of a bright-line test for determining whether a communication is made for the purpose of influencing Federal elections. In contrast, there is no evidence that political committees are more likely than other groups to coordinate communications outside of these time frames.

Alternative 6

In Alternative 6, the Commission proposed to replace the fourth content standard with a test that simply relies on the statutory language ''made for the purpose of influencing a Federal election.'' The majority of commenters were opposed to this standard because they believe it would require the Commission to determine whether a public communication is a coordinated communication based on a totality of the circumstances test and would fail to give those subject to the Commission's regulations adequate notice of what behavior will come within the coordination regulations. One joint commenter believed that adoption of this alternative would deter individuals and organizations from making public communications regarding policy matters because ''they would have no idea whether their subsequent public communication would be covered by the prohibition on coordinated expenditures.''

On the other hand, some commenters argued that modified versions of Alternative 6 might be acceptable. For example, one commenter suggested that the alternative should include the 30/60-day temporal limit used in the electioneering communication regulations.[40] Another joint commenter supported the use of a ''for the purpose of influencing a Federal election'' test as part of a complex, tiered approach that would apply different content standards depending on the identity of the entity paying for the communication.

The Commission has decided not to adopt Alternative 6 because a bright-line test based on proximity to an election provides the clearest guidance to those seeking to comply with the regulations and provides a more manageable standard for enforcement than the more general ''for the purpose of influencing a Federal election'' standard.

Alternative 7

Alternative 7 proposed to eliminate the entire content prong in 11 CFR 109.21(c) and replace it with the requirement that the communication be a public communication as defined in 11 CFR 100.26. This approach was universally rejected by commenters. Some commenters disapproved of this alternative on the grounds that it would be overbroad, was not supported by any evidence in the record or indication of Congressional intent, would have unintended consequences, and would unnecessarily chill constitutionally protected speech. Another commenter asserted that this proposal was in direct contradiction with the legislative history of BCRA, which demonstrated that Congress ''affirmatively intended that any coordination regulation issued by the Commission should protect against interference with lobbying and similar activities.''

When the Commission promulgated the *2002 Coordination Final Rules,* it stated ''the Commission believes that a content standard provides a clear and useful component of a coordination definition in that it helps ensure that the coordination regulations do not inadvertently encompass communications that are not made for the purpose of influencing a federal election.'' *2002 Coordination Final Rules,* 68 FR at 426. In order to ensure that the coordination regulations do not inadvertently encompass communications not made for the purpose of influencing a Federal election, the Commission is rejecting Alternative 7.

IV. The ''Directed to Voters'' Requirement in 11 CFR 109.21(c)(4)

The 2002 rules provided that to satisfy the fourth content standard, a public communication must be directed to voters in the jurisdiction where the clearly identified Federal candidate is on the ballot or where one or more candidates of the political party are on the ballot. *See* former 11 CFR 109.21(c)(4)(iii). The Commission is removing the phrase ''directed to voters in the jurisdiction.'' In the revised rule, to satisfy the content standard in 11 CFR 109.21(c)(4), a public communication must be ''publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction'' or, if the public communication refers to a political party, but not to a clearly identified Federal candidate, in a jurisdiction in which one or more candidates of a political party appear on the ballot. These revisions clarify that a communication is potentially for the purpose of influencing a Federal election where the persons receiving the communication that is coordinated can vote for or against the referenced candidate or candidate's opponent in that election, or in the case of a general party reference, a candidate of the referenced party in that election. The revisions also clarify that for communications that refer solely to a political party and are coordinated with a candidate, the analysis turns on whether the communication is publicly distributed or otherwise publicly

[40] *See* note 3, above.

disseminated in the jurisdiction of the candidate with whom it is coordinated.[41]

The *NPRM* also sought comment on whether the fourth content standard at former 11 CFR 109.21(c)(4)(iii) should be changed to specify a minimum number of persons that must be able to receive a communication and, if so, what the required minimum number of persons should be. The Act and Commission regulations defining ''electioneering communication'' require that 50,000 or more persons be able to receive an ''electioneering communication'' in the jurisdiction where the clearly identified Federal candidate is on the ballot.[42] Similarly, the definitions of ''mass mailing'' and ''telephone bank'' contained in the Act and Commission regulations as part of the definition of ''public communication'' contain a minimum threshold of 500. *See* 2 U.S.C. 431(23) and (24); 11 CFR 100.27, 100.28, and 100.29 (defining ''mass mailing'' as a mailing of more than 500 pieces of mail of an identical or substantially similar nature sent within a 30-day period and ''telephone bank'' as more than 500 telephone calls of an identical or substantially similar nature made within a 30-day period). In contrast, the fourth content standard does not specify how many persons must be able to receive a communication for it to be classified as a coordinated communication. *See* 2 U.S.C. 434(f)(3)(C); 11 CFR 100.29(b)(3)(ii)(A) and (b)(5).

The Commission has decided not to specify a minimum number of persons that must be able to receive a communication for the fourth content standard to apply. While the 50,000 threshold for ''electioneering communication'' and the 500 threshold for mass mailings and telephone banks are contained in BCRA, there is no analogous statutory provision to suggest that Congress intended either of these thresholds, or any other threshold, for coordinated communications. Moreover, because the coordinated communication rules apply to different types of communications, no single minimum threshold is appropriate for all communications. For example, unlike the ''electioneering communication'' provisions, which cover only broadcast, cable, and satellite communications (*i.e.*, television and radio advertisements), the coordinated communication rules apply to print media and telephone banks as well. Adopting, for instance, a 50,000 or even 30,000-person threshold could have the effect of creating a blanket exemption for print advertisements placed in small town newspapers with a relatively low circulation.

In the *NPRM,* the Commission also invited comment on whether a ''directed to voters in the candidate's jurisdiction'' requirement should be added to the second and third content standards, which cover the republication of campaign materials and express advocacy. Three commenters supported adding the requirement to the second and third content standards because, in the words of one of these commenters, a communication ''cannot be said to influence the outcome of an election if the people cannot vote in that particular election.'' In contrast, a different commenter argued that BCRA does not permit the Commission to add a ''directed to voters'' requirement for the republication of campaign materials content standard.

The Commission has decided not to add a ''directed to voters in the candidate's jurisdiction'' requirement to the second and third content standards. The purpose of the content prong of the coordinated communication test is to determine whether a communication has the purpose of influencing a Federal election. Communications that expressly advocate the election or defeat of a Federal candidate or republish campaign materials are by their very nature for the purpose of influencing a Federal election and therefore are in-kind contributions if their creation or distribution is coordinated with a candidate or political party committee.

V. Safe Harbor for Endorsements and Solicitations by Federal Candidates (New 11 CFR 109.21(g))

A. Endorsements of, and Solicitations for, Federal or Non-Federal Candidates, Political Committees, and Certain Tax-Exempt Organizations

The Commission is creating a new safe harbor in 11 CFR 109.21(g) for endorsements by Federal candidates of other Federal and non-Federal candidates, and for solicitations by Federal candidates for other Federal and non-Federal candidates, political committees, and certain tax-exempt organizations described in section 501(c) of the Internal Revenue Code as permitted by 11 CFR 300.65.[43] Specifically, the new regulation provides that a public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office, or solicits funds for another candidate, or for a political committee or section 501(c) organization as permitted by 11 CFR 300.65, is not a coordinated communication with respect to the endorsing or soliciting Federal candidate unless the public communication PASOs the endorsing or soliciting candidate, or another candidate who seeks election to the same office as the endorsing or soliciting candidate.[44] This safe harbor applies regardless of the timing and proximity to an election of the endorsement or solicitation.

Most commenters who addressed this issue supported the creation of a safe harbor on the grounds that such communications are not intended to benefit the endorsing or soliciting candidate's election and are not made for the purpose of influencing the endorsing or soliciting candidate's election. *See Shays Appeal* at 99 (''[T]o qualify as [an] expenditure in the first place, spending must be undertaken ''for the purpose of influencing'' a federal election.''). One commenter stated ''solicitations are regularly directed to individuals who are not even eligible to vote for the soliciting candidate.'' Another commenter observed that ''often the solicitation is directed to an audience whose members include few, if any, of the candidate's own electorate.'' In the context of endorsements, one commenter argued that ''[a] coordinated expenditure,

[41] For communications coordinated between a candidate and a political party and paid for by a political party, *see* 11 CFR 109.37.

[42] *See* note 3, above.

[43] 11 CFR 300.65 permits a Federal candidate or officeholder to make certain solicitations of funds on behalf of any organization described in 26 U.S.C. 501(c) and exempt from taxation under 26 U.S.C. 501(a). *See also* 2 U.S.C. 441i(e)(4). The Commission notes that those organizations not covered by this safe harbor are not subject to a coordination finding, unless their activities separately meet the conduct, content, and payment prongs.

[44] The phrase ''another candidate who seeks election to the same office as the endorsing or soliciting candidate'' covers not only a candidate's actual opponent but also a candidate's potential opponent, *i.e.*, a candidate who seeks election to the same office as the endorsing or soliciting candidate but who has not yet secured his or her party's nomination and therefore is not yet the endorsing or soliciting candidate's actual opponent. *See* 11 CFR 100.3(a) and 2 U.S.C. 431(2) (setting forth the criteria that must be met for a person to be a ''candidate'' under the Act). Thus, for example, an advertisement in which a Presidential candidate endorses a candidate for Senate but that also attacks one of the opposing party's candidates for nomination for President would satisfy the fourth content standard at 11 CFR 109.21(c)(4) because it attacks a candidate seeking election to the same office as the endorsing Presidential candidate. In Subpart C of 11 CFR Part 109 the term ''opponent'' includes a candidate's potential opponent. The term ''candidate's opponent'' turns on whether the opponent will be an opponent of the soliciting or endorsing candidate during the two-year election cycle and whether the opponent qualifies as a candidate for the same office.

treated as a contribution subject to the limits and source restrictions, must meet the test of benefiting a candidate. This is not true of an endorsement, which is a speech act performed for the benefit of another.'' Similarly, another commenter noted that the ''purpose of a federal candidate's endorsement message is to aid the *endorsed* candidate * * * not to aid the *endorsing* candidate's own election,'' (emphasis in original) while another commenter observed that ''endorsements are seldom, if ever, of electoral value to the endorsing candidate.''

The *NPRM* invited comment on whether any safe harbor for endorsements and solicitations by Federal candidates should be limited to communications that do not PASO or, alternatively, do not expressly advocate, the endorsing or soliciting candidate or the candidate's opponent or potential opponent. Most commenters, including two who had opposed the proposed safe harbors in their written comments, agreed that it would be appropriate for the Commission to create the proposed safe harbors so long as they do not extend to communications intended to influence the election of the endorsing or soliciting candidate. Moreover, at the hearing, most commenters agreed that the PASO standard would be an appropriate and workable standard for determining whether communications containing endorsements or solicitations have the purpose of influencing the endorsing or soliciting candidates' elections. Congress has already determined that a State candidate who wishes to sponsor an advertisement featuring a Federal candidate is prohibited by 2 U.S.C. 441i(f) from promoting or supporting the Federal candidate with non-Federal funds. *See* 2 U.S.C. 441i(f) and 11 CFR 300.71. A witness from a reform organization stated that ''if the endorsement doesn't promote the candidate doing the endorsement, then it should be okay * * * [T]here should be a standard, whether it's a PASO standard or for the purpose of influencing.''

The coordinated communication regulation identifies communications that are for the purpose of influencing a Federal election. *See* 2 U.S.C. 431(9) and 11 CFR 109.21. Because the Commission agrees that endorsements and solicitations are not made for the purpose of influencing the endorsing or soliciting candidate's own election, the Commission is adopting a safe harbor for endorsements of Federal and non-Federal candidates and solicitations made by a Federal candidate for Federal or non-Federal candidates, certain tax-exempt organizations as permitted by 11 CFR 300.65, and for political committees. There is no evidence that Congress intended to restrict the established practice of candidate endorsements and solicitations when the endorsements and solicitations do not PASO the endorsing or soliciting candidate. To the contrary, in floor statements regarding BCRA, Senator Feingold explained that the relevant BCRA provisions would not prohibit ''spending non-Federal money to run advertisements that mention that [State candidates] have been endorsed by a Federal candidate * * * so long as those advertisements do not support, attack, promote, or oppose the Federal candidate.'' 148 Cong. Rec. S2143 (daily ed. Mar. 20, 2002). The Commission's safe harbor for candidate endorsements is fashioned consistent with this legislative history.

The new rule at 11 CFR 109.21(g) provides that a communication is eligible for the safe harbor only if it does not PASO the endorsing or soliciting candidate or another candidate seeking election to the same Federal office as the endorsing or soliciting candidate.[45] When the safe harbor is applicable, the endorsing or soliciting candidate (and the candidate's agents) may be involved in the development of the communication, in determining the content of the communication, as well as determining the means or mode and timing or frequency of the communication.

The new regulation addresses issues presented in Advisory Opinions 2004–01 (Bush-Cheney/Kerr) and 2003–25 (Weinzapfel). As discussed above, in Advisory Opinion 2004–01, the Commission considered a television advertisement that featured President Bush endorsing a Congressional candidate. The Commission determined that, for any advertisement distributed within 120 days of the Presidential primary in the State in which the advertisement aired, the advertisement's production and distribution costs paid for by the Congressional candidate's committee but attributable to the President's authorized committee were contributions to the President's authorized committee from the Congressional candidate's committee. Similarly, in Advisory Opinion 2003–25, the Commission considered an advertisement featuring a U.S. Senator endorsing a mayoral candidate and concluded that the communication did not satisfy the fourth content standard because it was not distributed within 120 days of a Federal election.[46]

These advisory opinions are superseded to the extent they concluded that communications containing endorsements by Federal candidates are in-kind contributions to the endorsing Federal candidate if they otherwise satisfy the coordinated communication test, irrespective of whether the communication PASOs the endorsing candidate.

B. Endorsements of, and Solicitations for, State Ballot Initiatives

In the *NPRM,* the Commission also sought comment on whether a similar safe harbor should apply to a Federal candidate's appearance in communications that endorse, or solicit funds for, State ballot initiatives. Only two commenters addressed the safe harbor proposal and both supported such a safe harbor, arguing that, like endorsements of other candidates, endorsements of State ballot initiatives are not made for the purpose of influencing the election of the endorsing candidate, but rather to influence the outcome of the State ballot initiative. No other commenters addressed the proposal. In light of the limited record produced by the commenters regarding a safe harbor for ballot initiatives, the Commission has decided not to extend a safe harbor for endorsements and solicitations for State ballot initiatives at this time.

VI. Amendments to the Conduct Prong (11 CFR 109.21(d) and (h))

The conduct prong of the Commission's coordinated communication regulations was not challenged in *Shays* v. *FEC.* Nonetheless, in the *NPRM,* the Commission took the opportunity to seek comment on how certain aspects of the conduct prong have worked in practice since the coordination regulations were promulgated in 2002. Several issues regarding the conduct prong are addressed below.

A. The ''Request or Suggest'' Conduct Standard (11 CFR 109.21(d)(1))

In the *NPRM,* the Commission invited comment on whether a communication that is paid for by a person other than a candidate, authorized committee, political party committee, or their agents and that satisfies the first

[45] The Act, as amended by BCRA, generally prohibits Federal candidates and officeholders from soliciting funds on behalf of other Federal or non-Federal candidates, unless the funds are subject to the limitations and prohibitions of the Act. 2 U.S.C. 441i(e)(1)(A) and (B). *See also* 11 CFR 300.61 and 300.62.

[46] The Commission also determined in Advisory Opinion 2003–25 that the proposed advertisement did not PASO the endorsing Federal candidate.

conduct standard (*i.e.*, it is made at the request or suggestion of a candidate or a political party) should automatically qualify as a coordinated communication without also having to satisfy one of the content standards. Specifically, the Commission asked whether a public communication paid for by another person that is made at the request or suggestion of a candidate or a political party committee presumptively has value to that candidate, or political party, regardless of its timing or content.

One commenter supported this proposal generally, while all other commenters addressing this issue opposed it. This latter group of commenters asserted that the proposal could turn ''grassroots lobbying,'' or issue advocacy communications, into in-kind contributions solely because the communication was created at the request or suggestion of a candidate or political party committee. One commenter stated that ''[a]n officeholder that suggests that his constituents engage in grassroots lobbying is not suggesting that the constituents engage in communications that are for the purpose of influencing an election.'' Another commenter asserted that a request or suggestion by a candidate should not be enough to show that a communication is a coordinated communication under the Commission's regulations because ''[a]bsent some other indicia of an electoral nexus, the fact that a communication is made at the request or suggestion of a candidate is not sufficient to demonstrate that it is the functional equivalent of a campaign contribution.'' Additionally, another commenter stated that ''interactions between members of Congress or staff with citizens and citizens groups on legislative issues, strategies, and policies do NOT automatically taint subsequent public communications regarding that issue, legislation or matter by the citizens or citizens group.'' (emphasis in original).

The Commission agrees with these commenters that the ''request or suggestion'' conduct prong should not be amended. In BCRA floor debate, Senator McCain clarified that:

> [N]othing in the section 214 should or can be read to suggest * * * that lobbying meetings between a group and a candidate concerning legislative issues could alone lead to a conclusion that ads that the group runs subsequently concerning the legislation that was the subject of the meeting are coordinated with the candidate * * *. We do not intend for the FEC to promulgate rules, however, that would lead to a finding of coordination solely because the organization that runs such ads has previously had lobbying contacts with a candidate.

148 Cong. Rec. S2145 (daily ed. Mar. 20, 2002) (statement of Sen. McCain).

When the Commission promulgated the *2002 Coordination Final Rules,* it stated that ''the Commission believes that a content standard provides a clear and useful component of a coordination definition in that it helps ensure that the coordination regulations do not inadvertently encompass communications that are not made for the purpose of influencing a federal election.'' *2002 Coordination Final Rules,* 68 FR 421, 426. The Court of Appeals recognized that ''statements may relate to political or legislative goals independent from any electoral race—goals like influencing legislators'' votes or increasing public awareness'' and that ''the FEC could construe the expenditure definition's purposive language as leaving space for collaboration between politicians and outsiders on legislative and political issues involving only a weak nexus to any electoral campaign.'' *Shays Appeal* at 99. Therefore, consistent with the Court of Appeals' observations and the comments received in this proceeding, and in order to ensure that the coordination regulations are tailored to reach only communications made for the purpose of influencing a Federal election, the Commission is not amending the ''request or suggest'' conduct standard.

B. ''Common Vendor'' and ''Former Employee'' Conduct Standards (11 CFR 109.21(d)(4) and (5))

The fourth and fifth conduct standards involve common vendors and former employees, respectively. *See* 11 CFR 109.21(d)(4) and (5). These two conduct standards implement the requirement of BCRA that the Commission address ''the use of a common vendor'' and ''persons who previously served as an employee of a candidate or a political party'' in the context of coordination. *See* BCRA, Pub. L. 107–155, sec. 214(c)(2) and (3) (2002).

The ''common vendor'' conduct standard in the 2002 coordination rules is satisfied if (1) the person paying for a communication contracts with, or employs, a ''commercial vendor'' to create, produce, or distribute the communication; (2) the commercial vendor has provided one or more specified types of services, within the ''current election cycle,'' [47] to the clearly identified candidate, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee or political party committee; and (3) the commercial vendor uses or conveys information about the campaign plans, projects, activities, or needs of the candidate or political party committee that is material to the creation, production, or distribution of the communication obtained from the work done for the candidate or political party committee when working for the person paying for the communication. See former 11 CFR 109.21(d)(4).

Similarly, the ''former employee'' conduct standard in the 2002 coordination rules is satisfied if (1) the person paying for a communication was, or is, employing a person who was a former employee or independent contractor, within the ''current election cycle,'' of the clearly identified candidate or the political party committee referred to in the communication; and (2) the former employee uses or conveys material information about the plans, projects, activities, or needs of the candidate or political party committee obtained from work done for the candidate or political party committee when working for the person paying for the communication. *See* former 11 CFR 109.21(d)(5).

The *NPRM* sought comment on whether these two conduct standards should be limited to cover only common vendors and former employees who are agents of a candidate or political party, and whether the Commission should change the temporal limit of the ''current election cycle'' in the standards. The Commission has decided not to limit these conduct standards to agents, but to revise the temporal limit in the common vendor and former employee conduct standards to encompass 120 days rather than the entire ''current election cycle.''

1. Agents

First, the Commission sought comment on whether it should change the coordinated communication regulations to cover common vendors and former employees only if they are agents of the candidate or political party committee under the Commission's definition of ''agent'' in 11 CFR 109.3. The *NPRM* also asked if the Commission should instead eliminate the common vendor and former employee conduct standards since restricting these standards to agents would render these standards superfluous because, if limited to agents, the conduct of former employees and common vendors would already be covered by the first three

[47] The term ''election cycle'' is defined in 11 CFR 100.3(b) (''An election cycle shall begin on the first day following the date of the previous general election for the office or seat which the candidate seeks * * * The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.'').

conduct standards at 11 CFR 109.21(d)(1) through (d)(3).

The commenters were divided as to whether restricting these conduct standards to agents, or eliminating the standards completely, was within the Commission's statutory authority. Some commenters argued that BCRA sections 214(c)(2) and (3) did not mandate that the Commission restrict common vendors and former employees, but only that the Commission consider these issues when deciding what coordination rules to adopt. These commenters argued that the Commission is authorized to restrict or eliminate these standards after proper consideration of the issue. In contrast, other commenters argued that limiting the common vendor and former employee conduct standards would ''fundamentally compromise'' the purpose and intent of BCRA's requirement.

After consideration of the comments and the BCRA provisions regarding common vendors and former employees, the Commission has decided not to change the conduct standards in this manner at this time. The Commission recognizes that these conduct standards focus on the conduct of third party vendors and former employees who might no longer be the candidate's or political party committee's agents, and therefore apply to some persons not covered by the other conduct standards. However, under 11 CFR 109.21(b)(2), a candidate or a political party committee with whom a communication is coordinated does not receive or accept an in-kind contribution if the coordination only results from conduct under the common vendor and former employee standards. *See* 11 CFR 109.21(b)(2). Coupled with this pre-existing safeguard, these conduct standards continue to apply regardless of whether the common vendor or former employee would be considered an agent under 11 CFR 109.3.

2. Election Cycle Temporal Limit

The *NPRM* also sought comment regarding whether the Commission should revise the current ''election cycle'' temporal limit in the common vendor and former employee conduct standards. Many commenters suggested that including the entire election cycle in the conduct standard was over-inclusive, especially with regard to six-year Senate election cycles. One commenter noted that the ''revolving door'' ethics rules for Congress limit subsequent employment for only one year, and argued that no other ethics rule included as long a period as the current rule in these conduct standards. One commenter observed that a ''temporal limit of an entire election cycle creates significant and unnecessary legal risks for individuals who are not in a position to violate the coordination rules.'' Many commenters observed that information relevant to the common vendor and former employee conduct standards, such as campaign strategy, tends to have a ''very short shelf life,'' that is, it becomes irrelevant quickly during an election year. Some commenters suggested revising the temporal limit to a 60-day period based upon the Commission's long-standing rule at 11 CFR 106.4(g) regarding the valuation of polling information, which treats poll results that are between 61 to 180 days old as ''worth'' only 5 percent of their initial value. Poll results more than 180 days old need not be reported as having any value. *See* 11 CFR 106.4(g).

In contrast, other commenters opposed any shortening of the temporal limit for these conduct standards. These commenters argued that the 2002 rule properly addresses the danger of coordination presented by candidates' campaign committees and political party committees using common vendors and by individual employees moving back and forth between different candidates and political party committees during the same election cycle. These commenters stated that the ''election cycle'' temporal limit was a bright-line rule appropriately drawn by the Commission to avoid the dangers of coordination.

The Commission explained in the *2002 Coordination Final Rules* that the temporal limit in the common vendor and former employee standards was not intended to serve as a ''cooling off'' period where employment was forbidden. *2002 Coordination Final Rules* at 438. Nevertheless, many commenters noted that the ''election cycle'' temporal limit operated in practice as a ''period of disqualification'' in which a vendor or former employee may not work on any particular matter for particular clients merely because that vendor or employee once worked with a candidate or political party at some point during the election cycle. These commenters stated that the rule had a ''chilling effect'' on the retention of consultants and employees because organizations want to avoid the speculative allegations of improper coordination. One commenter asserted that the ''election cycle'' temporal limit ''caused substantial harm to individuals who lacked any material information that could be used for coordination purposes, and yet who were targeted in FEC complaints.'' These commenters described the difficult process that political committees use to interview and investigate commercial vendors, many of whom are in short supply, to determine if the commercial vendor is ''tainted'' under these standards before contracting with these vendors for political work. The record also indicates that some commercial vendors feel compelled under this rule to refuse work from political committees near the beginning of an election cycle in order to preserve the ability to work for a political party or a candidate as the election approaches.

After considering the comments, which reflect experience in the recent election cycles under these rules, the Commission concludes that an ''election cycle'' limit is overly broad and unnecessary to the effective implementation of the coordination provisions. The more appropriate temporal limit for the common vendor and former employee conduct standards is 120 days. This temporal limit begins on the last day of the most recent employment or provision of services, not on the dates when the communication is publicly distributed or is paid for. Therefore, the 120-day period starts on the last day of an individual's employment with a candidate or political party committee, or on the last day when a commercial vendor performed any of the services listed in 11 CFR 109.21(d)(4)(ii) for a candidate or political party committee. If the former employee or commercial vendor performs any work for the candidate or political party committee after the official termination of employment or contract, including any projects or plans formulated during the employment or contractual relationship to be performed after official termination, the calculation of the 120-day period will restart from that date. Thus, under the Commission's revised rule, the 120-day period begins on the last day that goods or services are provided.

Reducing the temporal limit to 120 days will not undermine the effectiveness of the conduct standards and will not lead to circumvention of the Act. The record in this rulemaking indicates that material information regarding candidate and political party committee ''campaigns, strategy, plans, needs, and activities''—the information that is central to the common vendor and former employee conduct standards—does not remain ''material'' for long periods of time during an election cycle. Indeed, both national and local events tend to render campaign plans and strategy obsolete on

a very rapid basis. Moreover, as some commenters noted, much of the information gained working for candidates during primary races becomes largely irrelevant for general elections. As one commenter noted:

> If you're involved in a primary race and you've got a competitive primary, you are totally focused on how to win the nomination. And all your polling and all the information that you're getting; all the strategy that you're working out is basically focused on how do you win that election. It is an entirely different process when you get into the general election * * * The information you had about a primary is [largely] irrelevant * * * [W]hat is happening in the world in June could be very different by the time you get to October or September * * * [Y]ou're not going to have a lot of relevant information that's going to make a difference anyway.

Thus, the Commission agrees that it is unlikely that participation in early strategy decisions for a Senate candidate in the beginning of a six-year election cycle provides material information that is relevant and useful to a communication created five years later in the final stages of the general election campaign, or even six months later. This approach is consistent with the Commission's polling regulations, which recognize that polling information quickly loses its value with the passage of time. *See* 11 CFR 106.4(g).

Based on all the evidence and comments received by the Commission and the Commission's experience in enforcing the common vendor regulations in prior enforcement actions, the Commission concludes that a limit of 120 days is more than sufficient to reduce the risk of circumvention of the Act.

C. Safe Harbor for the Use of Publicly Available Information (11 CFR 109.21(d)(2)–(5))

In the *NPRM,* the Commission sought comment on whether to create a safe harbor for the use of publicly available information. Specifically, the safe harbor was proposed to ensure that the use or conveyance of publicly available information in creating, producing, or distributing a communication would not, in and of itself, satisfy any of the conduct standards in 11 CFR 109.21(d).

All commenters addressing this issue supported a safe harbor to some extent. The Commission agrees and is adding a safe harbor for the use of publicly available information. Although the safe harbor proposed in the *NPRM* would have applied to all five conduct standards and would have been set forth in a new paragraph, the Commission has decided that the new safe harbor more appropriately applies to only four of the five conduct standards, and is being added to the paragraphs currently containing those four conduct standards.

Some commenters expressed concern that the safe harbor proposed in the *NPRM* would preclude certain communications from satisfying the coordinated communications test simply because a portion of a given communication was based on publicly available information, even if a candidate privately conveyed a request that a communication be made. To address this concern, the new safe harbor does not apply to the ''request or suggestion'' conduct standard in 11 CFR 109.21(d)(1). Moreover, the four conduct standards that are being revised to include a safe harbor for the use of publicly available information all concern conduct that conveys material information that is subsequently used to create a communication, whereas the ''request or suggestion'' conduct standard concerns only a candidate's or political party's request or suggestion that a communication be created, produced or distributed, and is not dependent upon the nature of information conveyed. *See* 11 CFR 109.21(d)(2) (requiring *material involvement* regarding the communication's content, intended audience, means or mode, specific media outlet, timing or frequency, and size, prominence, or duration); 109.21(d)(3) (requiring a *substantial discussion* about campaign plans, projects, activities, or needs); and 109.21(d)(4) and (5) (requiring use or conveyance by a *common vendor* or *former employee* of information about campaign plans, projects, activities, or needs). Thus, new language in paragraphs 109.21(d)(2), (d)(3), (d)(4)(iii), and (d)(5)(ii) explains that the conduct standards contained in 11 CFR 109.21(d)(2) through (d)(5) are not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source.

Under the new safe harbor, a communication created with information found, for instance, on a candidate's or political party's Web site, or learned from a public campaign speech, is not a coordinated communication if that information is subsequently used in connection with a communication. The Commission emphasizes that this treatment of the use of publicly available information is consistent with the Commission's historical treatment of the use of such information. *See 2002 Coordination Final Rules,* 68 FR at 432–434 (noting that the conduct standards would not apply to ''a speech at a campaign rally'' and could not be satisfied by ''a speech to the general public''); *see also FEC* v. *Public Citizen,* 64 F. Supp. 2d 1327 (N.D. Ga. 1999) (finding that an organization's expenditures for communications supporting a candidate did not qualify as coordinated expenditures because the organization used information disseminated to the public by the candidate's campaign). This treatment is also consistent with legislative history indicating that certain conduct does not amount to coordination. *See* H.R. Conf. Rep. No. 94–1057, at 38 (April 28, 1976) (''[A] general request for assistance in a speech to a group of persons by itself should not be considered to be a ''suggestion'' that such persons make an expenditure to further such election or defeat.'').

To qualify for the safe harbor, the person paying for the communication bears the burden of showing that the information used in creating, producing, or distributing the communication was obtained from a publicly available source. The person paying for the communication may meet this burden in a wide variety of ways. For example, the person paying for a communication may demonstrate that media buying strategies regarding a communication were based on information obtained from a television station's public inspection file, and not on *private* communications with a candidate or political party committee.[48] Other sources of public information for the purposes of the safe harbor include, but are not limited to: Newspaper or magazine articles; candidate speeches or interviews; materials on a candidate's Web site or other publicly available Web site; transcripts from television shows; and press releases.

The Commission emphasizes that a communication that does not fall within this safe harbor will not automatically be presumed to satisfy the conduct prong of the coordinated communication test. For a coordinated communication to be established, the use of such non-public information must satisfy the conduct prongs, and the communication must also satisfy the content and payment prongs.

[48] *See, e.g.*, Matter Under Review (''MUR'') 5506 (EMILY's List), First General Counsel's Report at 7 (the Committee ''states that it made its decisions about placing and pulling ads based on information that television stations are required to make public.'')

D. Safe Harbor for Establishment and Use of a Firewall (New 11 CFR 109.21(h))

The *NPRM* sought comment on whether to create a rebuttable presumption that a common vendor or former employee has not engaged in coordinated conduct under 11 CFR 109.21(d)(4) or (5), if the vendor or employee has taken certain specified actions, such as the use of ''firewalls,'' to ensure that no information about the campaign plans, projects, activities, or needs of a candidate or political party committee that is material to the creation, production or distribution of the communication is used or conveyed to a third party. The *NPRM* did not include any proposed regulatory text. The *NPRM* also discussed the Commission's finding in a recent enforcement matter that the facts produced by a respondent indicating that a firewall had been established within a political committee were sufficient to refute allegations of coordination under the first three conduct standards in 11 CFR 109.21(d)(1)–(3). *See* MUR 5506 (EMILY's List), First General Counsel's Report at 5–8.

Many commenters supported the idea of a safe harbor and argued that a candidate, political party committee, or other organization should be able to rely upon assurances from a commercial vendor that it maintains a firewall to prevent any coordination with one of the vendor's other clients. Some commenters urged the Commission to codify its analysis in MUR 5506 and implement a safe harbor with respect to all of the conduct standards. These commenters argued that a safe harbor applicable to all conduct standards would reduce the ''chilling effect'' of the coordination rules with regard to organizations conducting lobbying-related meetings with officeholders who are also candidates and would encourage and enhance compliance with the coordination regulations. Many commenters also supported a firewall safe harbor as a way for organizations to respond to speculative complaints alleging coordination when organizations are faced with trying to ''prove a negative'' by showing that coordination did not occur.

Some commenters described various approaches that political party committees and other committees have used in the past to avoid the possibility of coordination when some employees of a committee work on independent expenditures at the same time that other employees of the committee work with candidates or political party committees on lobbying or other issues. The commenters described how specific employees are placed on separate teams (or ''silos'') within the organization, so that information does not pass between the employees who work on independent expenditures and the employees who work with candidates and their agents.

As these commenters noted, the Supreme Court has recognized that political party committees have the right to make unlimited independent expenditures [49] and that establishing firewalls and similar screening policies is an effective way to simultaneously protect that right and avoid improper coordination. Other commenters opposed the creation of a firewall safe harbor, arguing that such a safe harbor could compromise BCRA.

The Commission has decided to add a safe harbor provision at new 11 CFR 109.21(h) regarding the establishment and use of a firewall. This safe harbor codifies the Commission's conclusions in MUR 5506 (EMILY's List). The Commission concludes that it is possible for a commercial vendor or other employer to create an effective firewall between different employees or between different units within its organization that prevents information obtained from one client from being used on behalf of another, and thereby prevents its staff from conveying information from one client to another. Similarly, a political committee with an effective firewall can prevent involvement by, and discussions between, a candidate or political party committee and the individuals creating the communication. In the context of a political party committee, use of a firewall can ensure that staff responsible for the party's coordinated party expenditures do not share or convey information to staff who are simultaneously exercising the party's constitutional right to make unlimited independent expenditures.[50]

Accordingly, the new regulation provides that the conduct standards in 11 CFR 109.21(d) are not met if a commercial vendor, former employee, or political committee has designed and implemented an effective firewall that meets the requirements of this new provision. In order to be eligible for the safe harbor, the firewall must be designed and implemented to prohibit the flow of information about the candidate's or political party committee's campaign plans, projects, activities, or needs between those employees or consultants providing services for the person paying for the communication and those employees or consultants who currently provide, or previously provided, services for the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee. See new 11 CFR 109.21(h)(1).

The safe harbor provision does not dictate specific procedures required to prevent the flow of information referenced in new 109.21(h) because a firewall is more effective if established and implemented by each organization in light of its specific organization, clients, and personnel. One example of procedures that, if implemented, would satisfy this first requirement is the firewall described by EMILY's List in MUR 5506. That organization's firewall procedures stated that employees, volunteers, and consultants who handle advertising buys were ''barred, as a matter of policy, from interacting with Federal candidates, political party committees, or the agents of the foregoing. These employees, volunteers, and consultants [were] also barred from interacting with others within EMILY's List regarding specified candidates or officeholders.'' *See* MUR 5506 (EMILY's List), First General Counsel's Report at 6–7. The EMILY's List firewall prohibited personnel who worked directly with the candidate committees from discussing and conveying material information to the staff who handled the advertising buys.

Any firewall must also be described in a written policy that is distributed to all relevant employees, consultants and clients affected by the policy. *See* new 11 CFR 109.21(h)(2). ''All relevant employees'' includes all employees or consultants actually providing services to the person paying for the communication or the candidate or political party committee. To ensure that the firewall is in place before any information is shared between the relevant employees, the written firewall policy should be distributed to all relevant employees before those employees begin work on the communication referencing the candidate or political party. In an enforcement context, the Commission will weigh the credibility and specificity of any allegation of coordination against the credibility and

[49] *See Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604, 614, 618 (1996).

[50] In *McConnell* v. *FEC,* 540 U.S. 93, 213–214 (2003), the Supreme Court struck down a provision of BCRA (sec. 213) that required political parties to choose between making coordinated and independent expenditures after nominating a candidate.

specificity of the facts presented in the response showing that the elements of the safe harbor are satisfied. A person paying for a communication seeking to use the firewall safe harbor should be prepared to provide reliable information (*e.g.*, affidavits) about an organization's firewall, and how and when the firewall policy was distributed and implemented.

The Commission notes that common leadership or overlapping administrative personnel does not defeat the use of a firewall. Moreover, mere contact or communications between persons on either side of a firewall does not compromise the firewall, as long as the firewall prevents information about the candidate's or political party committee's campaign plans, projects, activities or needs from passing between persons on either side of the firewall.

Once a firewall has been established, for the firewall to be vitiated and the safe harbor to be inapplicable, material information about the candidate's or political party committee's campaign plans, projects, activities or needs must pass between persons on either side of the firewall. The safe harbor does not apply if there is specific information indicating that, despite the firewall, either (1) information about the candidate's or political party committee's campaign plans, projects, activities or needs that is material to the creation, production, or distribution of the communication was used by the commercial vendor, former employee, or political committee; or (2) the common vendor, former employee, or political committee conveyed this information to the person paying for the communication. *See* new 11 CFR 109.21(h). The Commission emphasizes that the addition of this firewall safe harbor provision to the coordinated communication rules does not *require* commercial vendors, former employees and political committees to use a firewall. The Commission will not draw a negative inference from the lack of such a screening policy.

VII. Amendment to the Payment Prong (11 CFR 109.21(a)(1))

The Commission is amending the payment prong (11 CFR 109.21(a)(1)) of the Commission's coordinated communication test to read, ''Is paid for, *in whole or in part,* by a person other than that candidate, authorized committee, or political party committee.'' The addition of ''in whole or in part'' clarifies that the payment prong is satisfied not only when a person other than the candidate, the candidate's authorized committee, or political party committee, pays for the entire cost of a communication, but also if that person pays for only part of the costs. This clarification is consistent with the approach the Commission has taken in previous advisory opinions. *See* Advisory Opinions 2004–29 (Akin) and 2004–01 (Bush-Cheney/Kerr). The Commission notes that where a candidate or political party committee pays its allocable share of a joint communication, the payment prong has not been triggered and the communication is not a coordinated communication with respect to that candidate or political party.

VIII. Political Party Coordinated Communication Provisions (11 CFR 109.37)

In the NPRM, the Commission noted that the party coordinated communication regulations at 11 CFR 109.37 also contain a three-prong test for determining whether a communication is coordinated between a candidate and a political party committee. This ''party coordinated communication'' test in 11 CFR 109.37, which governs coordinated communications paid for by political party committees, has a content prong that is substantially the same as the one for ''coordinated communications'' in 11 CFR 109.21(c).[51] *See* 11 CFR 109.37(a)(2). Although the party coordinated communication regulations were not addressed in the *Shays* litigation, the Commission sought comment on whether it should make any changes to the 120-day time frame in 11 CFR 109.37 consistent with any changes made to the coordinated communication rules in 11 CFR 109.21. One commenter focused solely on this issue and encouraged the Commission to retain the 120-day time frame while adding a PASO standard. Other commenters noted only that their comments on this issue are the same as their comments on the coordinated communication rules in 11 CFR 109.21 regarding the 120-day time frame.

The Commission is revising its rules regarding party coordinated communications to ensure consistency with the revisions to the fourth content standard at 11 CFR 109.21(c)(4). Thus, revised section 109.37(a)(2)(iii), like revised section 109.21(c)(4), establishes separate time frames for communications referring to Congressional and Presidential candidates. For communications referring to Congressional candidates in primary and general elections, the revised time frame begins 90 days before each election and ends on the date of that election. For communications referring to Presidential candidates, the revised time frame covers, on a State-by-State basis, the entire period of time beginning 120 days before the date of a primary up to and including the date of the general election. Because the content standard in 11 CFR 109.37(a)(2) is not satisfied by a communication that refers only to a political party, revised 11 CFR 109.37, unlike revised 11 CFR 109.21(c)(4), does not contain a separate time frame for communications that refer to political parties.

The justification for the revised time frame in 11 CFR 109.37(a)(2)(iii) is the same as the justification for the revision of 11 CFR 109.21(c)(4). The CMAG data show that in the 2004 election cycle, nearly all television advertisements paid for by House and Senate candidates were aired within 90 days before primary or general elections and that nearly all advertisements paid for by Presidential candidates were aired during the time period that begins 120 days before a State's primary election up to and including the date of the general election. As discussed above, data showing when candidates spend their own campaign funds on advertisements provide an empirical basis for determining when advertising that has the purpose of influencing a Federal election occurs. Moreover, a candidate has an incentive to ask a political party committee to pay for advertisements to be aired precisely during the time period when the candidate believes these advertisements would be effective, which, as shown above, are the time periods when the candidate herself pays for such advertisements to be aired. The CMAG data, therefore, provide empirical support for using the revised time frames as part of a bright-line test for determining whether a communication that is paid for by a political party committee and is coordinated with a candidate is made for the purpose of influencing Federal elections. Finally, the Commission has been presented with no evidence that the revised time frame in 11 CFR 109.37(a)(2)(iii) would permit circumvention of the Act.

For the reasons discussed above, the Commission also incorporates into 11 CFR 109.37 the safe harbor provisions at new 11 CFR 109.21(d)(2)–(5) for use of publicly available information, as well

[51] 11 CFR 109.37(a)(2) differs from 11 CFR 109.21(c) in two ways: first, it does not contain a separate content standard for electioneering communications and, second, the content standard in section 109.37(a)(2)(iii), the equivalent of the fourth content standard in section 109.21(c)(4), can be satisfied only by reference to a clearly identified Federal candidate and not, as in section 109.21(c)(4), also by reference to a political party.

as the safe harbors at new 11 CFR 109.21(g) and (h) for endorsements and solicitations by Federal candidates, and for the establishment and use of a firewall.

IX. Technical Changes Including Amendments to References to ''Agents'' (11 CFR 109.20, 109.21, and 109.23)

The Commission is also making certain technical, non-substantive changes to its coordinated communication rules to simplify them and enhance readability. One technical change of note is that the Commission is adding a sentence to 11 CFR 109.20(a) that explains that any reference in the coordinated communication rules to a candidate, a candidate's authorized committee, or a political party committee, also refers to any agent of the candidate, the candidate's authorized committee, or the political party committee. The Commission is adding this sentence to make explicit that an agent is included whenever a candidate, an authorized committee, or a political party committee is referenced, in order to remove the duplicative references to agents in 11 CFR 109.21 and 109.23.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached rules do not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities that are affected by these rules are not ''small entities'' under 5 U.S.C. 601. The definition of ''small entity'' does not include individuals, but classifies a not-for-profit enterprise as a ''small organization'' if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4).

Moreover, any State, district, and local party committees that are affected by these proposed rules are not-for-profit committees that do not meet the definition of ''small organization.'' State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties or any other political committees might be considered ''small organizations,'' the number that are affected by this proposed rule is not substantial, particularly the number that coordinate communications with candidates or other political committees in connection with a Federal election.

Furthermore, any separate segregated funds that are affected by these proposed rules are not-for-profit political committees that do not meet the definition of ''small organization'' because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated.

Most of the other political committees that are affected by these proposed rules are not-for-profit committees that do not meet the definition of ''small organization.'' Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. In addition, most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities. To the extent that any other entities fall within the definition of ''small entities,'' any economic impact of complying with these rules is not significant.

With respect to commercial vendors whose clients include candidates, political party committees or other political committees, the final rules provide cost-effective methods for complying with the Act that are not required and that will reduce certain regulatory restrictions. Thus, rather than adding an economic burden, the rules potentially have a beneficial economic impact on such commercial vendors.

List of Subjects in 11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) AND (d), AND PUB. L. 107–155 SEC. 214(c))

■ 1. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

■ 2. In § 109.20, paragraph (a) is revised to read as follows:

§ 109.20 What does ''coordinated'' mean?

(a) *Coordinated* means made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee. For purposes of this subpart C, any reference to a candidate, or a candidate's authorized committee, or a political party committee includes an agent thereof.

* * * * *

■ 3. Section 109.21 is revised as follows:
■ a. Revise paragraph (a)(1);
■ b. Revise paragraph (b)(2);
■ c. Revise paragraphs (c)(2), (3), and (4);
■ d. Revise paragraphs (d)(1), (2), (3), (4), and (5);
■ e. Revise paragraph (e);
■ f. Add paragraph (g);
■ g. Add paragraph (h);

The additions and revisions read as follows:

§ 109.21 What is a ''coordinated communication''?

(a) * * *

(1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;

* * * * *

(b) * * *

(2) *In-kind contributions resulting from conduct described in paragraphs (d)(4) or (d)(5) of this section.* Notwithstanding paragraph (b)(1) of this section, the candidate, authorized committee, or political party committee with whom or which a communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure, that results from conduct described in paragraphs (d)(4) or (d)(5) of this section, unless the candidate, authorized committee, or political party committee engages in conduct described in paragraphs (d)(1) through (d)(3) of this section.

* * * * *

(c) * * *

(2) A public communication, as defined in 11 CFR 100.26, that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a

communication that satisfies this content standard, see paragraph (d)(6) of this section.

(3) A public communication, as defined in 11 CFR 100.26, that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(4) A public communication, as defined in 11 CFR 100.26, that satisfies paragraph (c)(4)(i), (ii), (iii), or (iv) of this section:

(i) *References to House and Senate candidates.* The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(ii) *References to Presidential and Vice Presidential candidates.* The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate's primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(iii) *References to political parties.* The public communication refers to a political party, does not refer to a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a candidate and it is publicly distributed or otherwise publicly disseminated in that candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing a reference to that candidate applies;

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a regularly scheduled non-Presidential general election, the time period in paragraph (c)(4)(i) of this section applies;

(C) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated during the two-year election cycle ending on the date of a Presidential general election, the time period in paragraph (c)(4)(ii) of this section applies.

(iv) *References to both political parties and clearly identified Federal candidates.* The public communication refers to a political party and a clearly identified Federal candidate, and is publicly distributed or otherwise publicly disseminated in a jurisdiction in which one or more candidates of that political party will appear on the ballot.

(A) When the public communication is coordinated with a candidate and it is publicly distributed or otherwise publicly disseminated in that candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing a reference to that candidate applies;

(B) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction, the time period in paragraph (c)(4)(i) or (ii) of this section that would apply to a communication containing only a reference to that candidate applies;

(C) When the public communication is coordinated with a political party committee and it is publicly distributed or otherwise publicly disseminated outside the clearly identified candidate's jurisdiction, the time period in paragraph (c)(4)(iii)(B) or (C) of this section that would apply to a communication containing only a reference to a political party applies.

(d) * * *

(1) *Request or suggestion.* (i) The communication is created, produced, or distributed at the request or suggestion of a candidate, authorized committee, or political party committee; or

(ii) The communication is created, produced, or distributed at the suggestion of a person paying for the communication and the candidate, authorized committee, or political party committee assents to the suggestion.

(2) *Material involvement.* This paragraph, (d)(2), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. A candidate, authorized committee, or political party committee is materially involved in decisions regarding:

(i) The content of the communication;

(ii) The intended audience for the communication;

(iii) The means or mode of the communication;

(iv) The specific media outlet used for the communication;

(v) The timing or frequency of the communication; or

(vi) The size or prominence of a printed communication, or duration of a communication by means of broadcast, cable, or satellite.

(3) *Substantial discussion.* This paragraph, (d)(3), is not satisfied if the information material to the creation, production, or distribution of the communication was obtained from a publicly available source. The communication is created, produced, or distributed after one or more substantial discussions about the communication between the person paying for the communication, or the employees or agents of the person paying for the communication, and the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee. A discussion is substantial within the meaning of this paragraph if information about the candidate's or political party committee's campaign plans, projects, activities, or needs is conveyed to a person paying for the communication, and that information is material to the creation, production, or distribution of the communication.

(4) *Common vendor.* All of the following statements in paragraphs (d)(4)(i) through (d)(4)(iii) of this section are true:

(i) The person paying for the communication, or an agent of such person, contracts with or employs a commercial vendor, as defined in 11 CFR 116.1(c), to create, produce, or distribute the communication;

(ii) That commercial vendor, including any owner, officer, or employee of the commercial vendor, has provided any of the following services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days:

(A) Development of media strategy, including the selection or purchasing of advertising slots;

(B) Selection of audiences;

(C) Polling;

(D) Fundraising;

(E) Developing the content of a public communication;

(F) Producing a public communication;

(G) Identifying voters or developing voter lists, mailing lists, or donor lists;

(H) Selecting personnel, contractors, or subcontractors; or

(I) Consulting or otherwise providing political or media advice; and

(iii) This paragraph, (d)(4)(iii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the commercial vendor was obtained from a publicly available source. That commercial vendor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used previously by the commercial vendor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

(5) *Former employee or independent contractor.* Both of the following statements in paragraphs (d)(5)(i) and (d)(5)(ii) of this section are true:

(i) The communication is paid for by a person, or by the employer of a person, who was an employee or independent contractor of the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, during the previous 120 days; and

(ii) This paragraph, (d)(5)(ii), is not satisfied if the information material to the creation, production, or distribution of the communication used or conveyed by the former employee or independent contractor was obtained from a publicly available source. That former employee or independent contractor uses or conveys to the person paying for the communication:

(A) Information about the campaign plans, projects, activities, or needs of the clearly identified candidate, the candidate's opponent, or a political party committee, and that information is material to the creation, production, or distribution of the communication; or

(B) Information used by the former employee or independent contractor in providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, and that information is material to the creation, production, or distribution of the communication.

* * * * *

(e) *Agreement or formal collaboration.* Agreement or formal collaboration between the person paying for the communication and the candidate clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee, is not required for a communication to be a coordinated communication. *Agreement* means a mutual understanding or meeting of the minds on all or any part of the material aspects of the communication or its dissemination. *Formal collaboration* means planned, or systematically organized, work on the communication.

* * * * *

(g) *Safe harbor for endorsements and solicitations by Federal candidates.* (1) A public communication in which a candidate for Federal office endorses another candidate for Federal or non-Federal office is not a coordinated communication with respect to the endorsing Federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate who seeks election to the same office as the endorsing candidate.

(2) A public communication in which a candidate for Federal office solicits funds for another candidate for Federal or non-Federal office, a political committee, or organizations as permitted by 11 CFR 300.65, is not a coordinated communication with respect to the soliciting Federal candidate unless the public communication promotes, supports, attacks, or opposes the soliciting candidate or another candidate who seeks election to the same office as the soliciting candidate.

(h) *Safe harbor for establishment and use of a firewall.* The conduct standards in paragraph (d) of this section are not met if the commercial vendor, former employee, or political committee has established and implemented a firewall that meets the requirements of paragraphs (h)(1) and (h)(2) of this section. This safe harbor provision does not apply if specific information indicates that, despite the firewall, information about the candidate's or political party committee's campaign plans, projects, activities, or needs that is material to the creation, production, or distribution of the communication was used or conveyed to the person paying for the communication.

(1) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to the candidate who is clearly identified in the communication, or the candidate's authorized committee, the candidate's opponent, the opponent's authorized committee, or a political party committee; and

(2) The firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients affected by the policy.

■ 4. In § 109.23, paragraph (b)(1) is revised to read as follows:

§ 109.23 Dissemination, distribution, or republication of candidate campaign materials.

* * * * *

(b) * * *

(1) The campaign material is disseminated, distributed, or republished by the candidate or the candidate's authorized committee who prepared that material;

* * * * *

■ 5. In § 109.37, paragraphs (a)(2) and (3) are revised to read as follows:

§ 109.37 What is a ''party coordinated communication''?

(a) * * *

(2) The communication satisfies at least one of the content standards described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(i) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see 11 CFR 109.21(d)(6).

(ii) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(iii) A public communication, as defined in 11 CFR 100.26, that satisfies paragraphs (a)(2)(iii)(A) or (B) of this section:

(A) *References to House and Senate candidates.* The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's

general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(B) *References to Presidential and Vice Presidential candidates.* The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate's primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e), (g), and (h). A candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

* * * * *

Dated: June 2, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–5195 Filed 6–7–06; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 736 and 744

[Docket No. 060531141–6141–01]

RIN: 0694–AD76

Correction to General Order Concerning Mayrow General Trading and Related Entities

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule; Correction

SUMMARY: The Bureau of Industry and Security is correcting a final rule that appeared in the **Federal Register** on June 5, 2006 (71 FR 32272). This rule corrects an inadvertent error in the telephone number listed in the **FOR FURTHER INFORMATION CONTACT:** section of the preamble.

FOR FURTHER INFORMATION CONTACT: [Corrected] Michael D. Turner, Director, Office of Export Enforcement, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Phone: (202) 482–1208, x3; E-mail: *rpd2@bis.doc.gov;* Fax: (202) 482–0964.

Eileen Albanese,

Director, Office of Export Services.

[FR Doc. E6–8961 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 060314069–6138–002; I.D. 030306B]

RIN 0648–AT25

Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Framework 18

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

ACTION: Final rule.

SUMMARY: This final rule implements Framework Adjustment 18 (Framework 18) to the Atlantic Sea Scallop Fishery Management Plan (FMP), which was developed by the New England Fishery Management Council (Council). The following management measures are implemented by this rule: Scallop fishery specifications for 2006 and 2007 (open area days-at-sea (DAS) and Scallop Access Area trip allocations); scallop Area Rotation Program adjustments; and revisions to management measures that would improve administration of the FMP. In addition, a seasonal closure of the Elephant Trunk Access Area (ETAA) is implemented to reduce potential interactions between the scallop fishery and sea turtles, and to reduce finfish and scallop bycatch mortality.

DATES: Effective June 15, 2006.

ADDRESSES: Copies of Framework 18, the Regulatory Impact Review (RIR), including the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) are available on request from Paul J. Howard, Executive Director, New England Fishery Management Council (Council), 50 Water Street, Newburyport, MA 01950. These documents are also available online at *http://www.nefmc.org.* NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298, and are also available via the internet at *http://www.nero.nmfs.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule should be submitted to the Regional Administrator at One Blackburn Drive, Gloucester, MA, 01930, and by e-mail to *David_Rostker@omb.eop.gov*, or to the Federal e-rulemaking portal *http://www.regulations.gov*, or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Peter W. Christopher, Fishery Policy Analyst, 978–281–9288; fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework 18 to the Atlantic Sea Scallop FMP on November 17, 2005, and submitted it to NMFS on December 16, 2005, for review and approval. Framework 18 was developed and adopted by the Council to meet the FMP's requirement to adjust biennially the management measures for the scallop fishery. The FMP requires the biennial adjustments to ensure that measures meet the target fishing mortality rate (F) and other goals of the FMP and achieve optimum yield (OY) from the scallop resource on a continuing basis. A proposed rule for Framework 18 was published on March 30, 2006 (71 FR 16091). The public comment period for the proposed rule ended on April 14, 2006. This rule implements management measures for the 2006 and 2007 fishing years, which are described in detail below.

Approved Management Measures

In the proposed rule, NMFS requested comments on all proposed management measures, and specifically highlighted a provision relating to the harvest of research set-aside from within an Access Area if the yellowtail flounder

Total Allowable Catch (TAC) allocated for the scallop fishery was attained (*see* Item 5 and Comment 2). The approved management measures are discussed below. No measures in Framework 18 were disapproved. Details concerning the Council's development of these measures were presented in the preamble of the proposed rule and are not repeated here.

1. Revised Open Area DAS Allocations

The FMP requires that the biennial adjustment consider the number of open area DAS allocated to limited access vessels every 2 years, and adjust it if necessary in order to achieve OY at the target F (F=0.2) for the scallop resource. Since the calculation of overall fishing mortality also includes the mortality in controlled Access Areas, the calculation of the open area DAS allocations depends on the Access Area Program measures, including the rotation schedule, and Access Area trip allocations. Based on the Access Area Program measures implemented by Framework 18, the total number of open area DAS is set at 20,000 open area DAS, resulting in the following vessel-specific DAS allocations: Full-time vessels are allocated 52 DAS in 2006 and 51 DAS in 2007; part-time vessels are allocated 21 DAS in 2006 and 20 DAS in 2007; and occasional vessels receive 4 DAS each year.

Framework 18 reduces the 2006 DAS allocations, but because it is being implemented after the start of the 2006 fishing year (March 1), some scallop vessels may use more DAS between March 1, 2006, and the implementation of Framework 18 than they would have if Framework 18 had been implemented prior to March 1. Under current regulations, full-time, part-time, and occasional vessels are allocated 67, 27, and 6 DAS, respectively, for the 2006 fishing year. Framework 18 reduces the DAS allocations in the 2006 fishing year to 52, 21, and 4 DAS, for full-time, part-time, and occasional vessels, respectively. Part-time and occasional vessels are most likely to exceed the Framework 18 DAS allocations for the 2006 fishing year because of their lower allocations implemented by Framework 18. To ensure that the conservation goals of the Scallop FMP are maintained, Framework 18 requires vessels using DAS in excess of their 2006 allocation specified under Framework 18 to deduct the additional DAS from their 2007 fishing year DAS allocations. Although this could potentially allow F to exceed the F target for the 2006 fishing year, the deductions from the 2007 allocations are expected to neutralize the impacts on the resource over the 2-year period.

2. Revised Rotational Management Schedule for the Closed Area I (CAI), Closed Area II (CAII), and Nantucket Lightship Closed Area (NLCA) Scallop Access Areas

Framework 18 establishes a rotational management schedule that opens the CAII and NLCA Access Areas in 2006, and the CAI and NLCA Access Areas in 2007. This schedule is intended to address changes in scallop resource abundance in the CAII and NLCA Access Areas that support trip allocations in those areas in 2006. This schedule is consistent with the rotational area F target (F=0.2 to 0.3), which is specified in the FMP to achieve OY from the Scallop Access Areas.

3. Trip Allocations, Catch Limits and Seasons for Scallop Access Areas

The Access Area program regulations authorize limited access vessels to take a specified number of trips in each controlled Access Area, with a scallop possession limit for each trip. The number of trips and the possession limit are designed to maintain F at 0.2 to 0.3 within the Access Areas. Vessels are allocated a maximum number of trips into each Access Area, though this allocation can be increased through an exchange of a trip(s) with another vessel.

In the 2006 fishing year, the maximum number of trips a vessel may take in the CAII and NLCA Access Areas is three and two trips, respectively. A full-time scallop vessel is allocated three trips in the CAII Access Area, and two trips in the NLCA Access Area. A part-time scallop vessel is allocated two trips, which could be distributed into the Access Areas as follows: One trip in CAII Access Area and one trip in the NLCA Access Area; two trips in the CAII Access Area; or two trips in the NLCA Access Area. An occasional vessel is allocated one trip, which could be taken in either the CAII or NLCA Access Area. The scallop possession limit for Access Area trips is 18,000 lb (8,165 kg) for full-time and part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

In the 2007 fishing year, the maximum number of trips a vessel may take in the CAI, NLCA, and ETAA is one, one, and five, respectively (unless the ETAA allocation is adjusted as described in management measure number four below). A full-time scallop vessel is allocated one trip in the CAI Access Area, one trip in the NLCA Access Area, and five trips in the ETAA. A part-time scallop vessel is allocated three trips, which could be distributed as follows: One trip in the CAI Access Area, one trip in the NLCA Access Area, and one trip in the ETAA; one trip in the CAI Access Area and two trips in the ETAA; or one trip in the NLCA Access Area and two trips in the ETAA; or three trips in the ETAA. An occasional vessel is allocated one trip, which could be taken in either the CAI or NLCA Access Areas, or ETAA. The scallop possession limit for Access Area trips is 18,000 lb (8,165 kg) for full-time vessels, 16,800 lb (7,620 kg) for part-time vessels, and 7,500 lb (3,402 kg) for occasional vessels.

The ETAA will open for scallop fishing on January 1, 2007, rather than at the start of the fishing year on March 1, 2007. This early opening is intended to spread out the fishing effort in the ETAA to avoid potential negative effects of high levels of fishing effort concentrated in a shorter period of time.

4. Regulatory Procedure To Reduce the Number of Scallop Access Area Trips Into the ETAA if Updated Biomass Estimates Are Available From 2006 Resource Survey(s) That Identify Lower Exploitable Scallop Biomass Within the ETAA

The ETAA will open as an Access Area on January 1, 2007. The Framework 18 ETAA trip allocations are based on 2004 scallop survey information, which was the best scientific information available when the Council established the ETAA trip allocations for Framework 18. Because the ETAA will open nearly 3 years after the resource in that area was last surveyed, the biomass estimates used in Framework 18 may not reflect the biomass at the time the ETAA opens. If, as of January 1, 2007, there is less biomass in the ETAA than the 2004 estimate, the number of allocated trips would be too high. This could result in overharvest of the ETAA unless there is a provision for adjusting the number of allocated trips. Framework 18 establishes a rulemaking process that allows the Administrator, Northeast Region, NMFS (Regional Administrator) to adjust allocations in the ETAA based on updated biomass projections from the 2006 resource surveys. To provide sufficient time to adjust allocations, if necessary, the survey data and analyses of updated exploitable biomass estimates for the area must be available prior to December 1, 2006, because Framework 18 requires NMFS to publish revised trip allocations on or about December 1, 2006. This final rule implementing Framework 18 includes reduced total allowable catch (TAC)

specifications and trip allocations based on a range of estimated exploitable biomass levels in the ETAA to ensure that the ETAA allocations do not cause overharvest of the scallop biomass in the area. If biomass estimates are lower than projected, the number of access trips can be reduced through a regulatory action consistent with the Administrative Procedure Act using the predetermined values in the table in § 648.60(a)(3)(i)(F) of the regulatory text.

5. Open Area DAS Adjustments When Yellowtail Flounder Catches Reach the TAC Limit Allocated to Scallop Vessels Fishing in Georges Bank Access Areas

Under current groundfish regulations, 10 percent of the yellowtail flounder TAC specified for harvest for each yellowtail flounder stock is allocated to vessels fishing for scallops under the Area Access Program in the CAI, CAII, or NLCA Access Areas (9.8 percent for the scallop Access Area fishery and 0.2 percent for vessels participating in approved scallop research). If the yellowtail flounder TAC is attained in any Access Area, that area is closed to further scallop fishing. Vessels that have unutilized trips in the affected Access Area are authorized to take their unutilized trips in the open fishing areas. Framework 18 allocates the open area DAS for these unutilized trips in a manner that maintains the fishing mortality objectives for scallops. To do this, Framework 18 establishes a ratio for each Access Area that reflects differential catch rates between Access Areas and open areas. If an Access Area is closed, each vessel with unutilized trips shall be allocated a specific amount of additional open area DAS based on the following ratios: 5.5 DAS per unutilized trip in the CAI Access Area; 5.4 DAS per unutilized trip in the CAII Access Area; and 4.9 DAS per unused trip in the NLCA Access Area. For broken trips for which a vessel has not completed a compensation trip, the unutilized compensation days remaining in the applicable Access Area shall be determined by dividing the pounds of scallops authorized for harvest on the compensation trip(s) by 1,500 lb (680 kg) (the catch per day used to calculate the possession limit in the Access Areas). For each unutilized compensation trip day in the CAI, CAII, or NLCA Access Areas, a vessel shall receive 0.458, 0.450, and 0.408 DAS, respectively, in open areas. These ratios shall also apply to vessels participating in approved research under the scallop research set-aside program. Such vessels shall be allowed to conduct compensation fishing in open areas subject to the same ratio if the yellowtail research set-aside TAC (equal to 2 percent of the scallop fishery's overall yellowtail TAC set-aside) is harvested. This ratio is intended to equate Access Area catch that is limited by possession limit with open area trips that would be limited by DAS.

The yellowtail flounder bycatch TAC allocation for the Area Access Program is specified in the Northeast (NE) multispecies regulations in § 648.85(c). Although Framework 18 is not proposing substantive modifications of the NE multispecies regulations, § 648.85(c) is revised to remove references to the 2004 and 2005 fishing years. In addition, since Framework 16 to the Scallop FMP and Framework 39 to the NE Multispecies FMP (69 FR 63460, November 2, 2004) implemented a permanent allowance for the yellowtail flounder bycatch TAC under the Area Access Program, specific dates in § 648.85(c) would be removed to eliminate the need to modify the paragraph each time a new framework is completed.

6. Extension of the Current Scallop Access Area Program in the Hudson Canyon Access Area (HCAA) Through February 2008 for Vessels That Have Unutilized HCAA Trips From 2005

The 2005 scallop resource surveys indicated that scallop biomass in the Hudson Canyon area during 2005 was much lower than had been predicted in Amendment 10 to the FMP. The biomass estimates in Amendment 10 were based on 2003 NMFS scallop survey results. Catch rates dropped more quickly than had been anticipated, and many vessel owners hesitated to take their 2005 HCAA trips. In response to concerns about low catch rates, Framework 18 extends the HCAA until February 29, 2008, so that vessel owners with unutilized or incomplete trips during the 2005 fishing year may wait to complete their trips. This extension of the HCAA will allow short-term growth of scallops in the HCAA that is projected to improve catch rates. Additionally, this extension will apply to unutilized 2005 research set-aside that was allocated for harvest in the HCAA.

7. Seasonal Closure of the ETAA (September–October) To Reduce Sea Turtle Interactions in the ETAA and Reduce Scallop and Finfish Discard Mortality

The ETAA will be closed to scallop fishing from September 1–October 31. This 2-month closure is intended to reduce potential interactions between threatened and endangered sea turtles and the scallop fishery in the Mid-Atlantic. Data through 2004 indicate a relatively high number of sea turtle and scallop fishery interactions during September and October in the ETAA. Closing the ETAA during September and October is predicted to provide the most protection for sea turtles from the effects of the scallop fishery while minimizing the potential economic impacts of a longer closure. Additionally, the high water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, this 2-month closure is predicted to also reduce scallop and finfish discard mortality.

8. Closure of an Area Off of Delaware/Maryland/Virginia on January 1, 2007

Framework 18 closes an area to the south of the ETAA, known as the Delmarva area. High numbers of small scallops from the 2003 year class were observed in the 2005 NMFS scallop survey in the Delmarva Rotational Closed Area. The Delmarva area will close on January 1, 2007; this closure coincides with the opening of the ETAA. The Delmarva area will remain closed for 3 years, until February 28, 2010, by which time the small scallops are expected to have grown to an optimal size for harvest. This new Rotational Scallop Closed Area is consistent with the FMP's requirement to adjust the Area Rotation Program by establishing Rotational Closed Areas to protect large concentrations of small scallops.

9. Elimination of the Scallop Access Area Trip Exchange Program Deadline in Order To Allow Trip Exchanges Throughout the Year

This action allows vessels to exchange controlled Access Area trips at any time during the fishing year with proper notification and approval by NMFS. The current regulations require that transactions be submitted by June 1 of each year, but this time restriction was found to be unnecessary for adequate monitoring and compliance. Therefore, Framework 18 eliminates the June 1 deadline.

10. Allowance of Trip Exchanges of 2006 CAII and/or NLCA Access Area Trips for 2007 ETAA Trips

In addition to allowing one-for-one exchanges of Access Area trips in areas open during the same fishing year (including any unutilized HCAA trips under the HCAA extension described above), this action allows one-to-one trip exchanges of 2006 CAII or NLCA Access Area trips and 2007 ETAA trips.

Without this additional measure, the owners of Mid-Atlantic vessels who prefer not to fish on Georges Bank would not be able to gain a Mid-Atlantic controlled Access Area trip in exchange for a Georges Bank controlled Access Area trip in 2006. This action provides an important fishing opportunity because, with the exception of vessels that have unutilized HCAA trips from 2005, there will be no Mid-Atlantic Access Areas open to fishing in 2006.

11. Modification of the Scallop Access Area Broken Trip Program To Allow Unused Makeup Trips To Be Carried Over to the Next Fishing Year

The broken trip program allows vessels that terminate an Access Area trip prior to catching the full possession limit to return to the Access Area to catch the remaining portion of the possession limit on a compensation trip. This action authorizes vessels that break a trip within the last 60 days of an open period for an Access Area to take their compensation trip in the same Access Area up to 60 days after the start of the subsequent fishing year or season for the Access Area. Vessels are only allowed to take compensation trips in the subsequent fishing year in the same Access Area where the original trip was broken and only if the Access Area is open in the subsequent fishing year. For example, a vessel will not be allowed to carry a compensation trip forward from the 2006 CAII Access Area into the 2007 fishing year because CAII will be closed in 2007. This provision is intended to reduce safety risks associated with vessel owners attempting to complete a broken trip with limited time left in the fishing year or Access Area season. It also allows vessel owners and operators additional flexibility in planning end-of-year Access Area trips. Additionally, this rule requires vessel operators to enter a trip identification number in the vessel's VMS prior to the start of a compensation trip so that NMFS can more accurately monitor Access Area activity in the scallop fleet. Under current regulations, which do not require such trip identification, accounting of vessel trip allocations in the Access Areas has been difficult and burdensome, especially if compensation trips are terminated before catching the possession limit allowed on that compensation trip.

12. Elimination of the Scallop Vessel Crew Size Limit for Scallop Access Area Trips Only

This rule eliminates the seven-person crew limit (five-person limit for small dredge category vessels) for Access Area trips. Limited access vessels on an Access Area trip would have no limit on the number of crew onboard. This action is intended to eliminate inefficiencies caused by the crew limit for fishing activity that is limited by a possession limit. The crew limit was established to control vessels' shucking capacity when fishing under DAS.

Comments and Responses

NMFS received nine comment letters on Framework 18; two letters were from individuals, five were from industry representatives, one was from the Council, and one was from an environmental advocacy group. Comments on the Scallop FMP that were not specific to Framework 18 or the management measures described in the proposed rule are not responded to in this final rule. This includes comments that suggested that NMFS should implement measures other than those described in the proposed action. Under the regulatory process established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), NMFS can only approve or disapprove measures proposed by the Council and cannot implement other measures.

Comment 1: One commenter indicated general support for a reduction of commercial quotas, the use of accurate harvest information to develop quotas, and the need for protection of the public fishery resource.

Response: NMFS acknowledges the importance of the issues raised by the commenter, which relate generally to Framework 18. As specified in the FMP, the Council developed Framework 18 using the best available data regarding the resource and the fishery. Framework 18 establishes scallop fishery specifications for 2006 and 2007 consistent with the control rules specified in the FMP to achieve OY.

Comment 2: The Council commented that the proposed regulations comport with the intent of the Council, with the following exception. When a scallop Access Area is closed because the scallop fishery has harvested its yellowtail flounder TAC for the area, the proposed rule would have allocated additional open area DAS and re-direct research compensation trips to open areas with the same prorated adjustment that applies to commercial fishing trips. The Council commented that this would be inconsistent and incompatible with the intent of research set-aside, and noted the provision that reserves 2 percent of the yellowtail flounder TAC for research-related trips so that they can occur in an area even if that area is closed to commercial scallop fishing. Therefore, the Council requests that additional open area DAS adjustments do not apply to research compensations trips because the Council believes it may constrain research in the Access Areas. The Council suggests that these trips should occur using the 2 percent of the yellowtail flounder TAC allocated for this purpose.

Response: NMFS reviewed Framework 18 and agrees with the Council that the proposed regulations, including provisions to allow for additional research compensation trips by way of prorated open area DAS if the yellowtail flounder TACs are attained, extend beyond the intent of Framework 18. Therefore, NMFS removed the provisions allowing research trips to be transferred to open areas in this final rule.

Because 2006 yellowtail flounder TACs are low, the portion of those TACs allocated for research activities are low. For example, the yellowtail flounder catch available to research is estimated to be approximately 644 lb (292 kg) in the NLCA Access Area and 9,127 lb (4,140 kg) in CAII Access Area. Once these yellowtail flounder research allocations are attained, all compensation for research approved under the TAC set-aside program will be prohibited. As a result, NMFS remains concerned that incomplete research and/or the inability to fully compensate research trips may result, should these yellowtail flounder allocations be attained before research is complete.

Comment 3: Two commenters supported seasonal closures in the Mid-Atlantic Region to reduce the potential for interactions between scallop dredges and threatened and endangered sea turtles. One commenter supported a closure of the ETAA during June 15–November 15 because it closed the area during summer months when sea turtles are in the area foraging, and because it would have minimal economic effects on the scallop fishery because vessels would be able to harvest in this area during the remainder of the year. The other commenter also supported seasonal closures but was not specific about the timing or duration of such closures. This commenter recognized that closing the ETAA during September and October would be beneficial, but was concerned that it provided only limited protection for sea turtles.

Response: The Council recommended, and NMFS is implementing, a September 1–October 31 closure of the ETAA. Data through 2004 indicate a relatively high number of sea turtle and scallop fishery interactions during September and October in the ETAA. Because of the potential for interaction

during September and October, Framework 18 concludes that a closure to scallop fishing may have positive benefits to turtles in the ETAA if fishing effort is not displaced to areas with higher densities of turtles than inside the ETAA. Additionally, the elevated water and air temperatures that occur during September and October in the ETAA may result in higher than average small scallop and finfish discard mortality. Therefore, this 2-month closure is intended to also reduce scallop and finfish discard mortality.

Comment 4: Several industry representatives expressed concern regarding the timing of the January 1, 2007, opening of the ETAA. They stated that opening the ETAA 2-months before the start of the scallop fishing year on March 1 may introduce uncertainty into the scallop market by making high volumes of scallops available during non-peak harvesting times. This could create the need to freeze scallops for future sales because of the lower prices associated with high supplies of scallops. In general, commenters proposed that NMFS either align the opening of the ETAA with the beginning of the scallop fishing year on March 1 or limit effort in the ETAA to one or two trips per vessel during January and February.

Response: Framework 18 concluded that opening the ETAA on January 1, 2007, thereby providing 2 additional months of fishing opportunity in 2007, may help to disperse fishing effort within the area over the longer period. Dispersing fishing effort over time should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (e.g., rapid depletion and high levels of effort and scallop shucking in a confined area). A January 1 opening also has the potential of further reducing fishery interactions with sea turtles by allowing more fishing to occur prior to summer months when threatened and endangered sea turtles are most likely to be present within the ETAA. In the initial year of the ETAA opening, the 2 additional months of fishing opportunity also help offset the September 1–October 31 closure of the ETAA that is intended to reduce fishery interactions with sea turtles. Moreover, this action was not designed to control market fluctuations.

Comment 5: Several industry representatives speculated that fishing effort in the ETAA will likely be high in response to the high scallop biomass and raised concerns that the scallop biomass in this relatively small Access Area may become depleted. To prevent a resource collapse due to high fishing effort and subsequent failure of area rotation management, the commenters proposed reducing the number of ETAA trips from five to three or four, monitoring the ETAA biomass and the landings throughout the year, and only allowing additional ETAA trips if data indicate that the biomass can support additional fishing effort.

Response: NMFS agrees with the commenters on the importance of a healthy resource to ensure the success of area rotation management. Provisions in Framework 18, specifically the ETAA trip adjustment procedure, allow for the status of the ETAA resource to determine the number of access trips prior to the initial opening of the ETAA. A survey of the ETAA is incorporated into the NMFS scallop survey conducted in the summer of each year. Data from that survey, and any additional surveys, will be used to determine the appropriate number of trips for the ETAA in 2007, thereby ensuring the F objectives are met. This assessment and trip setting procedure should be sufficient to ensure that the scallop resource in the ETAA is not depleted.

Comment 6: One industry representative believes that the seasonal September–October closure of the ETAA, intended to reduce fishery interactions with sea turtles, is unnecessary because the estimate of sea turtles takes in the scallop fishery has dramatically declined from 2003 to 2004 and that a gear-based solution to fishery/turtle interactions is a more consistent and constructive approach than a seasonal closure.

Response: Framework 18 concludes that the proposed closure period would provide additional benefits to sea turtles compared to allowing access to the ETAA throughout the fishing year. Although Framework 18 recognizes the potential benefits of gear-based solutions, the Council determined that it would be more precautionary to implement the closure irrespective of the final decision regarding the chain mat requirement.

Comment 7: An industry representative commented that Framework 18's economic analyses may be masking important long-term issues in the fishery. Specifically, the comment noted that economic analyses contrasting the area access options may not adequately take into account scallop resource conditions and long-term OY. The commenter provided the example that, in the short-term, transferring an Access Area trip from CA I to CA II would not have significant economic effects because the trip TAC is limited, but harvesting smaller scallops while larger scallops remain unharvested in habitat closed areas would have an adverse effect on the fishery's ability to sustain yields in a rotational area management program over time.

Response: Amendment 10 to the Scallop FMP implemented a comprehensive management program for the scallop fishery that incorporates an adaptive area rotation program designed to focusing fishing effort in areas where there is a high catch of scallops. Amendment 10 also established closed areas to protect essential fish habitat (EFH) from the effects of scallop fishing, as well as a suite of other measures to meet the goals and objectives of the Scallop FMP and Magnuson-Stevens Act requirements. The EFH closed areas will remain in place unless modified by the Council. The analyses in Framework 18 are based on the current and foreseeable management program for the scallop fishery, which includes the current EFH closed areas. The fact that scallops are not available within EFH closed areas to the fishery is true for all of the alternatives in Framework 18. Therefore, the presence of EFH closed areas does not result in differential economic impacts between alternatives in either the short or long-term. Furthermore, the economic analyses are derived from results of a sophisticated biological projection model (see Appendix II of Framework 18), which incorporates several facets of the scallop resource and fishery to determine short and long-term scallop yield in an area-based management program. This projection model served as the basis for biological and economic projections in Amendment 10, Joint Frameworks 16/39, and Framework 18.

Comment 8: One industry representative supported Framework 18's access program for Georges Bank, with the exception of the measure that established CA II as an Access Area in 2006 rather than CA I. The commenter argued that CA I has a higher scallop catch rate and a lower incidence of yellowtail flounder bycatch than CA II, and that the CA I Access Area should open in 2006 in addition to CA II and the NLCA.

Response: The Georges Bank Access Area management measures in Framework 18 did not include Access Area trips for Closed Area I in 2006 due to concerns that the adjustment of the boundaries of the area in *Oceana* v. *Evans, et. al.*, (Civil Action No. 04–810, D.D.C., August 2, 2005, and October 6, 2005), which made the access area smaller, and reduced the biomass of scallops available to the fishery in the Access Area. Because NMFS can only

approve or disapprove substantive measures in this Framework, NMFS cannot modify Framework 18 measures in this rulemaking. If NMFS were to disapprove this portion of Framework 18, it would leave the existing regulations in effect, which allow one trip to the CAI Access Area and one trip to the NLCA Access Area. This would result in Access Area allocations and fishery-wide measures that would fall short of OY.

Comment 9: One industry representative was concerned that the conversion factor for Georges Bank Access Area trips to open area DAS is too low. The commenter noted that the conversion factors are based on a comparison of the estimated average meat counts within the access areas to the average meat count in the open area. The commenter found the figures used in Framework 18 inconsistent with their members' experience in the open areas, and recommended using an alternate calculation that was presented to the Council at the final Council meeting when Framework 18 was adopted.

Response: The intent of the conversion factor is to allow the industry to be allocated DAS for unused access area trips in a way that achieves an equivalent amount of scallop mortality even though the scallop meat count and, therefore, the catch per fishing day, differs inside and outside of the access areas. The meat weight, including open area meat weight, is a product of the biological simulation model and is based on the area rotation selected by the Council. The commenter noted that, at the meeting where the Council took final action, the Council reviewed several examples of such calculations. The commenter would have preferred that the Council select the lower average meat counts in the open areas of 16.8 or 17.2 scallop meats/lb, thus resulting in a greater number of DAS for use in the open areas. While the commenter may find those alternatives preferable, NMFS must approve or disapprove the measure in Framework 18, and finds this is sufficient justification for the selected alternative.

Comment 10: One industry representative remarked that Framework 18 provides for limited open area fishing opportunity in the Mid-Atlantic in 2007 and that NMFS needs to recognize the implications of closing the Delmarva area.

Response: NMFS is uncertain whether the commenter is advocating that the Delmarva Area remain open to provide open access scalloping in the Mid-Atlantic. Regardless, closing the Delmarva area is intended to protect a strong year class of scallops in that area. Such closures are central to the rotational area management strategy adopted by the Council. The closure of the Delmarva Area will take effect when the ETAA reopens, in order to mitigate the socioeconomic effects of the closure on vessels that fish in the Mid-Atlantic.

Comment 11: One industry representative expressed concern that Framework 18 would eliminate the limit on the number of crew on board a scallop vessel for trips into the Access Areas. The commenter is concerned that this could exacerbate the possibility that a derby fishery will occur in the Access Areas. The commenter believes a derby could be motivated in part by the industry concerns that catches will be reduced if the Access Area yellowtail TACs are attained and trips are shifted to the open areas on a pro-rated basis.

Response: The crew limits were established in the FMP to limit the amount of scallops that could be shucked on a DAS, which limited fishing capacity in the DAS management program. Because the Access Areas limit harvest by poundage (18,000 lb (8,165 kg) per authorized trip), removing crew limits will not affect the total weight of scallops that may be landed. The Council considered the fact that additional crew could enable vessels to harvest smaller scallops because additional crew could be carried to maintain shucking efficiency, but concluded that the resource would be sufficiently protected by the poundage limits.

The yellowtail flounder TAC is a restrictive management measure necessary for the conservation and rebuilding of the yellowtail flounder stock, and cannot be undermined. Derby fishing behavior is a risk often associated with implementing restrictive management measures. The Council weighed the advantages associated with eliminating crew limits, such as lowered fishing costs and increased efficiency, against the possibility of a derby fishery and determined that the advantages outweighed the risks. Therefore, NMFS is eliminating crew limits for vessels fishing in access areas. If derby fishing behavior in response to yellowtail flounder TACs becomes a problem, the Council may consider that issue at a future time.

Comment 12: An industry representative commented that the requirement to stow gear when transiting CA II needs to be reconsidered because of the additional safety risk associated with stowing gear and because other Access Areas can be transited without gear being stowed.

Response: The gear stowage requirements were not considered during the development of Framework 18. The current gear stowage requirements are established in regulations for conserving multispecies groundfish and can not be modified through a scallop framework. NMFS advises the commenter to raise this concern to the Council for possible consideration in a future management action.

Comment 13: An industry representative made several editorial suggestions to regulatory text in the proposed rule for Framework 18.

Response: Several of these editorial changes, which NMFS found to be helpful, are included below in ''Changes from the Proposed Rule.'' NMFS did not accept editorial suggestions that were not considered to be an improvement.

Comment 14: One commenter expressed concern that Framework 18 does not incorporate any information from the Biological Opinion (BO) being developed as part of the section 7 consultation under the ESA that is evaluating the effects of the scallop fishery on sea turtles. The commented advises that this BO is overdue and it should be completed and incorporated into Framework 18 prior to implementation of the proposed action.

Response: NMFS reinitiated formal consultation on the Scallop FMP in November 2005, based on new information regarding the effects of the continued operation of the scallop fishery on threatened and endangered sea turtles. As allowed by the regulations (50 CFR 402.14), this consultation period was extended.

The effects of the management measures associated with Framework 18 on ESA-listed species were considered during review as part of an informal section 7 consultation under the ESA. The consultation, which concluded on January 26, 2006, determined that implementation of Framework 18 would not result in adverse affects to any ESA-listed species under NMFS jurisdiction and would result in no additional adverse effects on sea turtles because Framework 18 reduces fishing effort from levels allowed under current regulations. Waiting until the new BO has been completed to implement Framework 18 does not enable additional mitigation measures that may be identified in the BO to be implemented as part of Framework 18, given that NMFS can only approve or disapprove measures, and cannot adopt new or modified alternatives to the proposed action. The likelihood of sea turtle interactions with the scallop fishery increase during summer months.

NMFS anticipates having a completed BO by summer of this year. If necessary, the process to implement additional management measures to protect sea turtles will begin at that time, and NMFS will take appropriate action to implement any measures that may result from the new BO, once completed, that are necessary to reduce ESA-listed species interactions with the scallop fishery. Nothing in Framework 18 prevents NMFS's consideration and implementation of additional measures that may result from the new BO.

Comment 15: One commenter raised the issue that the analysis for Framework 18 does not adequately assess the effects on sea turtles. Specifically, the commenter stated that the analysis does not contain recent turtle stock assessment information, that it does not address cumulative effects, that it improperly combines turtle sub-populations, and that it attempts to diminish the effects of the scallop fishery by discussing the number of sea turtle takes in other fisheries. Additionally, the commenter expressed concern that Framework 18 contains no measures specifically designed to avoid, reduce, or mitigate sea turtle takes in the 2006 fishery.

Response: Framework 18 contains a complete evaluation of the effects of the scallop fishery on sea turtles, based on the best available scientific information. The analysis is based on the December 2004 BO evaluating the effect of the scallop fishery on sea turtles and Amendment 10 to the Scallop FMP. Ongoing nest counts for loggerhead sea turtles have suggested a decline in nesting in recent years at some U.S. beaches. However, the currently available nesting data are still too limited to indicate statistically reliable trends for these loggerhead sub-populations. The analysis for Framework 18 combines loggerhead turtle sub-populations because there are not yet adequate data to identify trends in loggerhead sub-populations. As more data on loggerhead sub-populations become available, NMFS will incorporate these data into its analyses. In discussing sea turtle takes in other fisheries, NMFS is in no way diminishing the effects of the scallop fishery on sea turtles, but rather is presenting the information to describe cumulative effects of all ongoing activities on sea turtles. The updated BO section 7 consultation on the continued operation of the scallop fishery was reinitiated in November 2005 in response to new information on takes of sea turtles in the scallop fishery. NMFS will re-evaluate the impacts of the scallop fishery on ESA-listed sea turtles during consultation and describe the anticipated effects of the fishery on sea turtles in a new BO, along with any non-discretionary measures deemed necessary that NMFS must implement to reduce adverse effects to ESA-listed species such as sea turtles.

Comment 16: One commenter believes that the EA for Framework 18 does not include the fundamental analyses necessary to determine whether this action significantly affects the environment and recommends that an environmental impact statement (EIS) should be developed to fully assess the environmental effects of this action.

Response: NOAA Administrative Order 216–6 (NAO 216–6) (May 20, 1999) contains criteria for determining the significance of the impacts of a proposed action. On July 22, 2005, NOAA published a Policy Directive with guidelines for the preparation of a Finding of No Significant Impacts. In addition, the Council on Environmental Quality (CEQ) regulations at 40 CFR 1508.27 state that the significance of an action should be analyzed both in terms of ''context'' and ''intensity.'' The significance of this action was analyzed based on the NAO 216–6 criteria, the recent Policy Directive from NOAA, and CEQ's context and intensity criteria. Based on the analysis contained in the supporting EA prepared for Framework 18, and in the supplemental EIS for Amendment 10 to the Sea Scallop Fishery Management Plan, NMFS determined that Framework 18 will not significantly impact the quality of the human environment and all beneficial and adverse impacts of the proposed action have been addressed to reach the conclusion of no significant impacts. Therefore, preparation of an EIS for this action is unnecessary.

Comment 17: One commenter cautioned NMFS that a framework adjustment cannot be used to significantly alter provisions in an FMP. Amendment 10 established the requirement that DAS allocated for controlled access trips cannot be used for open access trips, and therefore, Framework 18 cannot allow limited access vessels to use their closed area trips in the open areas if the scallop fishery's yellowtail flounder TAC has been reached.

Response: While Amendment 10 did establish the requirement that DAS allocated for controlled access trips cannot be used for open assess trips, Joint Frameworks 16/39 revised Amendment 10 to allow DAS allocated for Access Area trips to be used in the open areas if an Access Area is closed (69 FR 63460, November 2, 2004). Under the existing regulations, if the yellowtail flounder TAC is reached and an Access Area is closed, vessels that have not taken their allocated Access Area trips are authorized to take those trips in open fishing areas. Framework 18 only slightly modifies the current provision by reducing the amount of time a vessel can fish in the open areas compared to Access Areas when the yellowtail TAC for the scallop fishery is harvested but does not create a new provision in the FMP.

Comment 18: One commenter stated that Framework 18 will significantly increase the bycatch of overfished groundfish species in 2006, due to high bycatch rates of groundfish in controlled Access Areas, high levels of allocated open area DAS, and the measure that allocates Access Area trips into the open areas if the yellowtail flounder TAC is reached.

Response: The Scallop FMP established a management program that adapts to changing resource conditions. In some years, to achieve OY, higher DAS and Access Area trip allocations may be specified, while in other years the allocations may be lower. Therefore, overall bycatch levels would fluctuate as well, possibly increasing in one year compared to other years when allocations were lower. Nevertheless, NMFS disagrees that Framework 18 will significantly increase the bycatch of overfished species in 2006. Amendment 10 and Joint Frameworks 16/39 implemented measures that minimized bycatch to the extent practicable. Framework 18 adjusts these management measures. To minimize bycatch to the extent practicable, the Scallop FMP relies on gear restrictions and, more generally, reductions in area swept (i.e., overall bottom contact time) by focusing effort in areas where scallop catch rates are highest (and therefore trip times the shortest). The restrictions in the Access Areas within the groundfish closed areas are specified to minimize groundfish bycatch to the extent practicable. Currently, Access Areas have the highest bycatch rates of groundfish species. The Area Access program in the groundfish closed areas incorporates a closed season of February 1 through June 14 each fishing year to prevent fishing effort in the Access Areas when spawning of yellowtail flounder and other groundfish species is at its peak. In addition, the scallop fleet is constrained by a hard TAC on yellowtail flounder in each Access Area when bycatch is a concern. When the TAC is caught, scallop vessels may no longer fish within the Access Area. Not only does this limit bycatch of yellowtail flounder in Access Areas, it

also limits bycatch of other regulated flounder species, skates, and monkfish. The Scallop FMP allows scallop vessels to fish additional open area DAS when the Access Areas close, if they have unutilized trips in the closed Access Area. Although these transferred trips may continue to result in bycatch of regulated species, the provision under Framework 18 reduces the amount of time that a scallop vessel can fish in open areas by equating the mortality of scallops in open areas with that of scallops in Access Areas. Therefore, the provision under Framework 18 would decrease bycatch compared to allowing the trips to be transferred to open areas on a one-for-one basis, as authorized under existing regulations. In addition, the retention of regulated groundfish is strictly managed under the NE Multispecies FMP; limited access scallop vessels may retain only 300 lb (136 kg) of regulated multispecies on each trip. Although discards may occur, the NE Multispecies FMP accounts for the bycatch associated with the scallop fishery in its mortality estimates and necessary management measures. The same is true for the Monkfish FMP with respect to monkfish bycatch. The analysis in Framework 18 supports these conclusions.

Comment 19: One industry representative supported the observer set-aside provisions in the Scallop FMP and suggested that these provisions should be implemented.

Response: NMFS is continuing to explore ways to facilitate an industry-funded observer program implementing the observer set-aside provisions in the Scallop FMP.

Comment 20: One commenter was concerned that Framework 18 does not ensure that adequate observer coverage will be in place during the 2006 fishery to allow for accurate and precise reporting of the significant bycatch that occurs in this fishery. The commenter also remarked that most limited access scallop vessels do not report discards on their Vessel Trip Reports (VTRs). Because of the under-reporting of discard and inadequate observer coverage, the commenter believes that it will be impossible to monitor the yellowtail flounder TACs or scallop catch, assess the bycatch of other groundfish species, or assess the incidental take of sea turtles.

Response: Recent discussions of the Fiscal Year 2006 funding for observer coverage indicated that funding limitations could result in lower coverage than previous years. The funding of observer coverage is not within the scope of this framework and, therefore, this rulemaking can do nothing to address this issue. Collecting accurate data on the bycatch of groundfish species and the incidental take of sea turtles in the scallop fishery, as well as accurately tracking the harvest of scallops, is clearly critical to the management program. NMFS will continue to work on resolving issues affecting 2006 observer coverage in the scallop fishery and, as noted above, is working on ways to facilitate an industry-funded observer provision. NMFS agrees that one reason that observer coverage is important is that discards reported in VTRs are generally lower, often much lower, than those reported by at-sea observers.

Comment 21: One commenter urged NMFS to take action in Framework 18 to protect Georges Bank cod EFH from dredging that the commenter believes would impede the recovery of the cod stock due to impacts on juvenile cod EFH.

Response: Amendment 10 to the Scallop FMP implemented EFH closed areas to minimize the adverse affects of scallop fishing, to the extent practicable, on EFH that was designated for several species, including cod. Framework 18 is the biennial adjustment of the specifications required by the management program established by Amendment 10. NMFS has determined that there is no need in Framework 18 to modify any of the current EFH provisions in the FMP. The measures in Framework 18 continue to minimize the adverse effects of scallop fishing on EFH to the extent practicable. The Council is currently preparing an omnibus EFH amendment and the commenter can more appropriately raise this issue during that process.

Changes From the Proposed Rule

In § 648.11, paragraph (a)(1) is corrected to remove duplicate text and to make it consistent with other observer provision regulations.

In § 648.51, paragraph (f) is revised to clarify that limited access scallop vessels may not have even one trawl net on board except under the specific conditions outlined in the paragraph.

In § 648.59, the coordinates in paragraph (c)(3) are corrected.

In § 648.60, paragraph (5)(ii) is corrected to remove duplicate text and paragraph (e)(3) is revised to remove provisions allowing research compensation trips to be transferred to open areas after the yellowtail flounder research allocation is attained.

In § 648.60, paragraphs (a)(9)(i) and (ii) are revised to specify that total catch and/or discard must be reported in pounds rather than kilograms.

In § 648.85, paragraph (c)(3)(ii) is revised to more accurately reflect that the Regional Administrator will publish a notice when the scallop fishery's yellowtail flounder TAC for each yellowtail flounder stock has been attained.

Classification

The Regional Administrator determined that the framework adjustments implemented by this rule are necessary for the conservation and management of the Atlantic sea scallop fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

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

Because Section 648.51 of this rule eliminates restrictions on crew size during Access Area trips and for small dredge vessels, thereby relieving a restriction, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). Under current regulations, the number of people on board vessels participating in the Access Area program could not exceed seven individuals and the number of people aboard vessels participating in the small dredge program could not exceed five individuals. Section 648.51 eliminates restrictions on the number of people aboard vessels participating in the Assess Area program and vessels participating in the small dredge program, thereby, providing vessels the flexibility to maximize their economic gain by fishing with the crew size of their choice. This restriction should be relieved prior to the opening of the Access Areas on June 15, 2006, so that fishers can arrange for their crew prior to the beginning of the season.

The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the 30-day delay in effective date for this rule under authority contained in 5 U.S.C. 553(d)(3) because a delay would be impracticable and contrary to public interest from the perspective of resource conservation needs and economic impact on the public. Framework 18 implements biennial adjustments to ensure that measures meet the target fishing mortality rate and achieve OY from the scallop resource. Access Area and DAS allocations are set for each fishing year to achieve, but not exceed, annual fishing mortality objectives and OY. Under current regulations, the CAI Access Area will open on June 15, 2006. When Framework 18 was being finalized, an EFH court decision reduced the size of CAI. Because fishing

effort in CAI will now be concentrated in a smaller area, if fished, localized depletion of the scallop resource in CAI is possible. CAI is an important Access Area for the scallop fishery because its close proximity to shore makes to easy to access and because of its abundant scallop resource. Therefore, if this area opens on June 15, 2006, fishers will likely immediately take their CAI trip allowed under current regulation. This rule closes CAI for 2006 to prevent localized depletion of the scallop resource within the Access Area. Allowing fishing in the CAI will increase the potential for exceeding 2006 fishing mortality targets and may result in long-term harm to the health of the scallop resource within this important Access Area.

Delaying implementation of this rule would be impracticable and contrary to public interest because it may prevent scallop fishers from optimizing their limited fishing opportunities in 2006, and possibly in 2007. Because this rule modifies options for fishing in open areas and in Access Areas, it should be implemented as soon as possible to ensure that fishers are able to optimize their decisions on when and where to fish, given a limited number of fishing opportunities. To delay the effectiveness of this rule may result in fishers making less than optimal decisions, especially concerning Access Area trips, because they will be basing their fishing decisions for 2006 on current regulations and not on the specifications for 2006 and 2007. This rule also modifies HCAA requirements by allowing vessels to utilize unused 2005 HCAA trips. Under current regulations, unused 2005 HCAA trips are lost fishing opportunities. Additionally, this rule implements more restrictive open area DAS provisions for 2006 than open area DAS provisions under current regulations. The scallop open area fishing year started on March 1, 2006, and fishers have been basing their fishing decisions on the more liberal DAS provisions under current regulations and not the more restrictive open area DAS provisions for 2006. Because open area DAS are limited, this rule should be implemented as soon as possible to prevent fishers from exceeding the more restrictive 2006 open area DAS provisions. If fishers do exceed 2006 open area DAS during 2006, their excess open area DAS will be subtracted from their 2007 open area DAS opportunities. For these reasons, this rule should be implemented as soon as possible to allow fishers to optimize limited fishing opportunities to maximize economic gain in both 2006 and 2007 and to avoid more restrictive measures, and possible economic penalties, in 2007.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA in support of Framework 18. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement Framework 18 (71 FR 16091, March 30, 2006), the comments and responses in this final rule, and the corresponding economic analyses prepared for Framework 18 (e.g., the EA and the RIR). The contents of these incorporated documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in Framework 18 and the preamble to the proposed and final rules.

Statement of Need for This Action

The purpose of this action is to improve the management of the scallop fishery and to make necessary adjustments to the existing management measures, including the Scallop FMP's Area Rotation Program.

A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

Several industry representatives expressed concern regarding the timing of the January 1, 2007, opening of the ETAA. They stated that opening the ETAA 2-months before the start of the scallop fishing year on March 1 may introduce uncertainty into the scallop market by making high volumes of scallops available during non-peak harvesting times. This could create the need to freeze scallops for future sales because of the lower prices associated with high supplies of scallops. The analysis for Framework 18 concluded that opening the ETAA on January 1, 2007, thereby providing 2 additional months of fishing opportunity in 2007, may help to disperse fishing effort within the area over the longer period. Dispersing fishing effort over time should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (*e.g.*, rapid depletion and high levels of effort and scallop shucking in a confined area). A January 1 opening also has the potential of further reducing fishery interactions with sea turtles by allowing more fishing to occur prior to summer months when threatened and endangered sea turtles are most likely to be present within the ETAA. In the initial year of the ETAA opening, the 2 additional months of fishing opportunity also help offset the September 1–October 31 closure of the ETAA that is intended to reduce fishery interactions with sea turtles. No changes to the proposed rule were made as a result of this comment.

Description of Small Entities to Which This Action Will Apply

The regulations associated with Framework 18 will affect vessels with limited access scallop and general category permits. According to NMFS Northeast Region permit data, 337 vessels were issued limited access scallop permits, with 300 full-time, 30 part-time, and 7 occasional limited access permits in the 2004 fishing year. In addition, 2,801 open access general category permits were issued to vessels in the 2004 fishing year. All of the vessels in the Atlantic sea scallop fishery are considered small business entities because all of them grossed less than $4 million according to landings data for the 2004 fishing year. Complete landings and value information from the 2005 fishing year is not available, since the fishing year ended on February 28, 2006. According to the information in Framework 18, annual revenue from scallop landings averaged about $759,816 per full-time vessel, $208,002 per part-time vessel, and $7,193 per occasional vessel during the 1999–2004 fishing years. Total revenues per vessel for all species landed were less than $3 million per vessel. Since December 1, 2005, the general category fleet has been separated into two permit categories under Framework Adjustment 17 to the FMP (70 FR 61233, October 21, 2005). Vessels that possess up to 400 lb (181.4 kg) per trip are required to operate VMS and are issued a VMS general scallop permit. Vessels that do not possess more than 40 lb (18.1 kg) are not required to operate VMS and are issued Non-VMS general scallop permits. There are currently 831 VMS general scallop vessels and 1,949 Non-VMS general scallop vessels. Revenues for these vessels are not available at this time.

Two criteria, disproportionality and profitability, are considered to determine the significance of regulatory impacts on small entities. The disproportionality criterion compares the effects of the regulatory action on

small versus large entities. All of the vessels permitted to harvest sea scallops are considered to be small entities, and therefore, there are no disproportionate effects between large and small entities. The profitability criterion applies if the regulation significantly reduces profit for a substantial number of small entities, and is discussed in the Economic Impacts section of the FRFA summary in this final rule.

Description of Reporting, Recordkeeping, and Other Compliance Requirements

Framework 18 implements one new reporting, recordkeeping, and compliance requirement for limited access scallop vessels. The broken trip program allows vessels to resume an Access Area trip that was terminated before the vessel was able to catch the full possession limit, provided the vessel operator complies with the notification requirements, submits a request for a compensation trip, and receives written verification of the compensation trip from the Regional Administrator. Currently, it is difficult for the NMFS to account for vessel trip allocations when a vessel has multiple broken trips and has taken several compensation trips. To address this administrative problem, Framework 18 requires vessels resuming an Access Area trip that was previously terminated early (a so-called compensation trip) to enter a trip identification number through their VMS prior to sailing on the compensation trip. The trip identification number will be provided on the letter(s) authorizing compensation trip(s). This requirement applies only to limited access scallop vessels and will be a minor addition to current reporting requirements that are done through the vessel's VMS. The cost of such a requirement is approximately $395 based on an estimated 500 compensation trips, fleet-wide.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

Because total economic impacts of the management measures depend on the overall management program implemented in Framework 18, the economic impacts of Framework 18 are most relevant in aggregate. Therefore, aggregate impacts are discussed below, followed by qualitative discussion of the impacts of the individual measures.

The aggregate economic impacts of the proposed measures and other alternatives considered by the Council are analyzed relative to the no action alternative. Management measures considered in aggregate include Access Area allocations, modified ETAA opening and groundfish closed area access, extended HCAA, area closures (Delmarva), and open area DAS allocations. ''No action'' refers to open area DAS (24,700 for the fleet), CAI, CAII, and NLCA rotation order, as specified in current regulations, HCAA and ETA reverting to open areas subject to open area DAS, and no additional closures. Total open area DAS under the proposed alternative would be 20,000. The impacts on vessel revenues and profits are expected to be similar to the impacts of the proposed measures on total fleet revenue and producer surplus. Overall fleet revenue, and therefore annual scallop revenue, is estimated to be $545 million under the no action, compared to $551 million under the proposed alternative, during 2006–2007 (an increase of 1.06 percent). Revenues for each vessel issued a limited access permit would increase by approximately 1.06 percent under the proposed action, compared to the no action alternative. Because fishing costs are estimated to increase due to the allocation of more Access Area trips with the proposed measures, the changes in net revenue (revenue minus variable costs) and vessel profits compared to no action will be negligible (0.1-percent increase per year) over the 2-year period from 2006 through 2007.

The long-term (2008–2019) economic effects of the measures comprising this action are estimated to be slightly negative on revenues ($901.6 million, compared to $913.2 million under no action, an average 1.27-percent decline per year) and negligible on producer surplus (0.1-percent decline per year) compared to no action. Since the no action scenario would result in higher price due to lower landings, revenues under this scenario would exceed the revenues for the proposed measures, depending on the assumptions regarding changes in export, imports, disposable income, consumer preferences, and composition of landings by market size category in the future years. Expansion of the export markets for the U.S. sea scallops, for example, has helped to prevent price declines in the recent years, despite the record increase in scallop landings, and could keep prices and scallop revenues higher than historical averages over the long-term as well, benefitting the small business entities in the scallop fishery. However, as noted below for individual measures, the measures in this rule are legally required to meet conservation objectives for scallops and species caught as bycatch. These measures have long-term economic benefits that should out-weigh the short-term negative impacts on the scallop industry.

Other measures in this rule are expected to provide additional positive impacts, although not quantified, by providing vessels more flexibility in choosing the areas and time of fishing that will maximize their profits. These measures include one-for-one exchanges of 2006 CAII and NLCA Access Area trips for 2007 ETAA trips, other one-for-one exchanges of Access Area trips, the 60-day carryover of compensation trips, the January 1, 2007, opening of ETAA (rather than March 1, 2007), the September through October closed season for the ETAA, and the elimination of the trip exchange deadline.

1. Revised Open Area DAS Allocations

Open area DAS under this action would be lower than under the no action alternative, reducing potential economic benefits. In addition, 2007 DAS for some vessels may be reduced if such vessels use more DAS initially in 2006 than are ultimately allocated under Framework 18, because such DAS would be deducted from 2007 DAS allocations. However, consistent with the Area Rotation Program and the overall FMP management program, proposed open area DAS allocations would prevent overfishing in open areas and a decline in future yield. It would therefore have long-term positive impacts on revenue and profits of small business entities.

Alternatives to these measures would have allocated 15,000 DAS to 30,000 DAS for open areas instead of 20,000 open area DAS under this action. In aggregate, none of the other alternatives would have significantly different impacts than this action in the short- or the long-term, as indicated by changes in revenues near 1 percent for all alternatives (compared to the no action alternative).

2. Revised Rotational Management Schedule for the CAI, CAII, and NLCA Access Areas

Because the Area Access schedule in this action allocates five trips in 2006 to CAII and NLCA combined, compared to the no action schedule of a total of two trips in 2006, it would have positive impacts on landings, revenues, and

gross profits of small businesses in general. This rotation schedule could have some negative impacts in 2006 compared to no action, and other alternatives allowing access to CAI in 2006. It may not be possible for smaller boats, such as general category scallop vessels, to access CAII to substitute for the CAI trips. The short-term negative impacts could be offset if enough trips can be taken in open areas of Georges Bank and/or the Mid-Atlantic to compensate for the trips that could not be taken in CAI. The closure of the CAI Access Area in 2006 would protect the smaller biomass of scallops in the modified Access Area from overfishing, and, therefore, would result in higher future benefits for both the limited access and general category vessels when it is reopened to fishing in 2007. These long-term benefits are expected to outweigh short-term losses from the closure of CAI.

The no action and status quo alternatives would allocate fewer trips to the Georges Bank Access Areas than this action, and therefore, would have lower economic benefits. The economic impacts on small business entities of the alternative that would have allowed the limited access and general category vessels to fish in all three Access Areas in 2006 would be similar to the schedule in this rule because the total number of controlled access trips are the same. Although this non-preferred alternative would have provided general category and limited access vessels the opportunity to fish in CAI in 2006, it could also increase the risk of localized overfishing, as many vessels could fish within the small area. As a result, this alternative could lower revenues and profits for both limited access and general category vessels over the long-term and when this area is reopened in 2007.

3. Area-Specific Limits on Vessels Fishing in Access Areas

The economic impacts of area specific trip allocations and possession limits are unchanged from the no action alternative. Area specific trip allocations and possession limits help prevent overfishing in Access Areas, preventing reduction in future yield, and in social and economic benefits from the scallop fishery. Although trip allocations and possession limits increase fishing costs by lowering flexibility for vessel owners to determine how many trips to take to land the allocated amounts, they also prevent large landings, resulting in more stable landings and less fluctuation in prices over time. Overall, these positive economic impacts are expected to outweigh the negative impacts associated with the reduced flexibility.

The alternative to trip allocations and possession limits would have introduced an overall catch limit for vessels fishing in Access Areas, but would have allowed vessels to harvest the overall catch limit in as many trips as necessary for each vessel. Therefore, the alternative would have eliminated the trip allocations with trip-by-trip possession limits. This non-preferred alternative could have lowered the fishing costs for some vessels if fewer trips were necessary to land the overall limit for an area. Therefore, this measure could have increased profits and other benefits for those vessels. However, this alternative may also have resulted in large landings, lowering prices and reducing economic gains. Combined with the elimination of crew limits in controlled Access Areas, this measure could reduce the long-term revenues, profits and total economic benefits if vessels with large crews start targeting smaller scallops with lower prices.

4. Open Area DAS Adjustments When Yellowtail Flounder Catches Reach the 10-Percent TAC Limit Allocated to Scallop Vessels Fishing in Georges Bank Access Areas

Allowing unutilized Access Area trips to be used as open area DAS will help to minimize the loss in landings and revenue due to the closure of Access Areas before a vessel takes its trip, although impacts will likely be negative compared to no action. Scallop catch in open areas under this action is expected to be similar to the overall catch on Access Area trips in terms of numbers of scallops. However, if meat counts (i.e., the number of scallop meats that it takes to weigh 1 lb (0.45 kg)) are lower in open areas, the landed weight of scallops would be lower than 18,000 lb (8,165 kg) for a full Access Area trip. For example, if the meat count averages 17.2 meats per pound in open areas, compared to 12.0 meats per pound in Closed Area II Access Area, catches from the additional open area trips could range from about 11,000 lb (4,990 kg) to close to 13,000 lb (5,897 kg), compared to the 18,000 lb (8,165 kg) from the trip that would have been taken in the Access Area. Compared to the no action alternative, which would have allowed the trips to be reallocated on a one-to-one DAS ratio, this example could result in revenues of $60,000 if 11,000 lb (4,990 kg) of scallops are landed, or $47,000 if 13,000 lb (5,897 kg) of scallops are landed. However, the higher the meat count, the less the economic loss in comparison to the no action alternative. Vessels with more than 24 DAS reallocated in open areas under this action would have positive economic impacts compared to the no action. This action will allow all unused trips to be reallocated to open areas, as opposed to the no action alternative which caps the reallocation at 24 DAS for full-time vessels. The amount of additional revenue compared to the no action would depend on the amount and size of scallops landed.

One alternative considered for this measure would allocate an equal number of open area trips with an 18,000-lb (8,165-kg) possession limit for each trip not taken before areas close from yellowtail flounder catches. Such trips would not count against the vessel's open area DAS allocation. Although this alternative would minimize the loss in revenue compared to the preferred alternative, it could result in negative long-term impacts on the scallop resource and negative economic benefits for the small business entities, since the transferred trips in the open areas could increase fishing mortality and take longer than in the Access Areas. Another alternative, to allocate half the access trips, would prevent any shift of effort into open areas, but each vessel would be allocated fewer trips if the TAC is reached, thus it would lower revenues as compared to the preferred alternative. The status quo alternative would allow vessels to fish 12 DAS in open areas for up to 2 trips not taken before areas close due to yellowtail flounder catches. This alternative would have a negative economic impact on vessels that could not take three or more of their trips in the controlled Access Areas.

5. Extension of the Current Access Area Program in the HCAA Through February 2008 for Vessels That Have Unutilized HCAA Trips From 2005

Extension of the HCAA program, by itself, is expected to have positive economic impacts in 2006 and/or 2007 because the vessels could lower their costs and increase their profits by taking trips when catch rates increase relative to the 2005 levels. However, if prices decline, revenue relative to foregone revenue in 2005 would be negative. Nevertheless, the opportunity to complete the trips in the HCAA would provide for additional benefits in 2006 and 2007.

The only significant alternative to the action in this rule is the no action alternative of converting HCAA to a fully open area without allowing vessels to take any 2005 access trips in the future. This would result in slightly lower revenues and profits for small

business entities in the short term, and negligible impacts over the long term, compared to the proposed action. Given that catch rates of scallops in areas outside of the boundaries of the HCAA are currently higher than catch rates within the HCAA, it is unlikely that vessels would utilize open area DAS to fish in the HCAA under the no action alternative.

6. Opening of the ETAA on January 1, 2007

Opening the ETAA on January 1, 2007, would have positive economic impacts on small entities by dispersing fishing effort over time, which should reduce the likelihood that the scallop resource in the ETAA will be adversely impacted by intense fishing effort (*e.g.*, rapid depletion and high levels of effort and scallop shucking in a confined area). It would also provide vessel owners more flexibility to determine when to fish during the initial year of the ETAA. Therefore, fishing revenues would be more stable compared to an opening on March 1, 2007, the beginning of the fishing year.

The alternative to this action is the status quo opening in March 1, 2007, which has lower benefits for the reasons noted above.

7. ETAA Trip Allocations

The combined impacts of the proposed ETAA trip allocations are expected to be positive. Allocating five trips initially compared to nine trips under the status quo (there is not a no action alternative in this case), would result in slightly higher revenues and profits for small business entities in the short term and negligible impacts over the long term, as summarized above in the discussion of aggregate impacts. This action, by itself, therefore, is expected to increase yield from the scallop fishery over the long term, and thus, would have positive economic impacts on small entities. These allocations could have negative economic impacts on the general category scallop vessels because they limit the maximum catch from this vessel category whereas under the status quo alternative, general category vessels would not be constrained by a limit on trips or by the TAC. However, if such controls are not implemented for the general category fleet, the landings from this area could exceed the fishing mortality targets, and reduce the scallop biomass and yield in the future. This could result in lower allocations in the future for both the limited access and general category vessels and reduce the net economic benefits form the scallop resource.

8. Seasonal Closure of the ETAA (September–October) To Reduce Sea Turtle Interactions in the ETAA and Reduce Scallop and Finfish Discard Mortality

The September through October closed season for the ETAA would likely have negative economic effects on scallop fishermen by reducing their flexibility in choosing when to fish. Under no action, vessels could fish in the area year-round, with maximum flexibility. Furthermore, seasonal closures can cause spikes in landings before and after the closure, which can have negative effects on price and revenues. The negative economic impacts of this closure are expected to be minimal because the area will be closed for only 2 months, during which time vessels could fish in other areas. Additionally, this closure will not affect the total number of fishing trips that a vessel could make during the fishing year.

This action will minimize these negative impacts on fishing costs relative to other closure alternatives. The alternative options would close the ETAA for a longer period, one alternative from July 15 to October 31, and another alternative from June 15 to November 14, and thus could have larger negative impacts on vessels due to the length of the closure.

9. Regulatory Procedure to Reduce the Number of Scallop Access Area Trips Into the ETAA If Updated Biomass Estimates Are Available from 2006 Resource Survey(s) That Identify Lower Exploitable Scallop Biomass Within the ETAA

The adjustment procedure is expected to have positive economic impacts by ensuring that landings and economic benefits are kept to sustainable levels by making timely adjustments to management measures when new ETAA biomass data become available. The no action alternative would reduce economic benefits if the exploitable scallop biomass in the ETAA is determined to be too low to support the allocated number of trips, reducing biomass too rapidly, compromising years 2 and 3 of the ETAA. The economic impacts of the higher versus lower trip allocations are discussed above (#7. ETAA Trip Allocations).

10. Closure of an Area Off of Delaware/Maryland/Virginia on January 1, 2007

The impacts of closing the Delmarva area, by itself, could have negative impacts in the short-term compared to the no action alternative, which would not close the area. It may also have negative economic impacts on some vessels that mainly fish in Mid-Atlantic areas, by narrowing the fishing grounds they could use for their open-area DAS. Some of these negative economic impacts may be mitigated by the re-opening of the ETAA in 2007. However, the Delmarva area was identified during development of Framework 18 as an area where a concentration of small scallops warranted the establishment of a Rotational Closed Area under the FMP's Area Rotation Program. The Area Rotation Program represents the FMP's management strategy to improve yield over the long-term and, consistent with that strategy, positive impacts over the long-term are anticipated from the closure. When the area re-opens in 2010, increased revenues should be realized because the scallops in the area will be the optimal size for harvesting. When considered in aggregate as discussed above, the impacts will be positive on revenues and profits of small entities in the short-term, and negligible over the long term (as summarized above in aggregate impacts).

11. Elimination of the Scallop Access Area Trip Exchange Program Deadline in Order To Allow Trip Exchanges Throughout the Year

The elimination of the trip exchange deadline is expected to have positive economic impacts by providing greater flexibility for vessel owners to respond to circumstances, and it is expected to lower fishing costs as well as reducing business and safety risks. Vessel owners may find it necessary or advantageous to be able to exchange trips throughout the fishing year as fishery and resource conditions change. The no action alternative of keeping the June 1 deadline would constrain trip exchange activity when no such constraint is necessary.

12. Allowance of Trip Exchanges of 2006 CAII and/or NLCA Access Area Trips for 2007 ETAA trips

Allowing vessel owners to exchange 2007 ETAA trips for 2006 CAII or NLCA Access Area trips will have positive economic impacts on small entities. In particular, vessels in the Mid-Atlantic that would typically not fish in the CAII or NLCA Access Areas would otherwise be forced to take trips on Georges Bank or forego a large number of trips in the 2006 fishing year. The cross-year trip exchange will allow such vessels to forego such trips to Georges Bank in 2006, but make up for them with additional trips in the ETAA in 2007. Exchanging vessel owners could also negotiate compensation for the

postponed landings, thus mitigating the short-term costs for one of the exchanging vessels. The revised exchange program is expected to provide flexibility to vessel owners regarding which areas to fish, thereby reducing fishing costs without changing the total number of trips allocated to the fleet in the Access Areas during a fishing year.

There were no significant alternatives other than the no action alternative, which would not have allowed cross-year trip exchanges between CAII, NLCA, and ETAA.

13. Modification of the Scallop Access Area Broken Trip Program To Allow Unused Makeup Trips to Be Carried Over to the Next Fishing Year

The broken trip carryover provision would have positive impacts by reducing the risk associated with trips taken at the end of a fishing year, or at the end of a seasonal access program, and preventing any revenue loss that would result if the compensation trips could not be taken by the end of the same fishing year due to weather or other factors. Under the no action alternative, vessels breaking trips near the end of the fishing year or Access Area season would be required to complete the trip before the end of the fishing year or Access Area season. In prior years, such a restriction has resulted in vessels opting to not break a trip, foregoing the trip and resulting revenues, or forcing compensation trips in poor weather, potentially compromising safety.

14. Elimination of the Scallop Vessel Crew Size Limit for Scallop Access Area Trips Only

Eliminating the crew limit for limited access vessels conducting an Access Area trip is expected to lower total fishing costs, increase total benefits for crew and the vessel-owners, but reduce income per crew member. This measure could have negative economic impacts, however, if there is a race to fish by many vessels employing large crews in order to fish before catch rates decline or before the area is closed due to bycatch. Furthermore, if unlimited crew size leads to smaller scallops being landed, then both the immediate impacts (if price falls) and long-term impacts (when harvesting smaller scallops affects future landings) would be negative. On the other hand, the existing possession limits for Access Areas could mitigate some of these negative impacts by limiting the trip duration.

Economic Impacts of Significant and Other Non-Selected Alternatives

As noted above, the economic impacts of this action are most relevant in aggregate. Therefore, the impacts of the significant alternatives to this action are also most relevant when considered in aggregate. Framework 18 considered 10 alternative scenarios, including this action and the no action alternative. Status quo differs from the no action in that it specified open area DAS and Access Area allocations to meet the F=0.2 fishing mortality target for the scallop resource overall, and fishing mortality targets consistent with the area rotation program. Both the status quo and no action alternatives would allocate 24,700 open area DAS. The main difference between status quo and no action would be that, under status quo, the ETAA would become an Access Area with nine trips allocated, whereas under no action, the ETAA would become part of the open area under DAS. Framework 18 considered open area DAS allocations of 30,000; 24,700; 20,000; 18,000; and 15,000, combined with CAI, CAII, and NLCA Access Area Schedule, ETA Access Area trip allocations, HCAA opening to open area DAS, HCAA extension through the 2007 fishing year, and the Delmarva closed area. The difference in overall economic impacts between alternatives compared to the no action alternative are relatively small, with all of the alternative scenarios resulting in total revenues between $540 million to $552 million, compared to $527 million for the no action alternative for 2006 and 2007 combined. The action in this rule are expected to result in the second-highest revenues in the short-term, with $551 million in revenues, as noted above. The action in this rule would result in the second to lowest long-term revenues. The alternative with the highest short-term revenues, at $552 million, would allocate 18,000 DAS, allow access to the CAI, CAII, and NLCA Access Areas in 2006 and the CAI and NLCA Access Areas in 2007, allow five trips in the ETAA in 2007, extend the HCAA, and close the Delmarva area. This alternative also would have the lowest long-term revenues. Long-term impacts would likely be mitigated by required adjustments that will be completed by the Council for the 2008 and 2009 fishing years. The status quo alternative would result in the lowest short-term revenues, at $539 million, and middle-of-the-range long-term revenues. The difference in revenues depended on the total open area DAS allocations (15,000; 18,000; 20,000; 24,700; and 30,000 were considered), the schedule for the CAI, CAII, and NLCA Access Areas, whether the ETAA would be an Access Area or open to fishing under open area DAS in 2006, whether the HCAA would be extended or not, and whether the Delmarva area would be closed or not in 2007.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator and are also available from NMFS, Northeast Region (see **ADDRESSES**).

This final rule contains a new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) which were approved by the Office of Management and Budget (OMB) under control number 0648–0541. Vessels that are resuming an Access Area trip that was previously terminated early (a so-called compensation trip) would be required to enter a trip identification number through their VMS units prior to sailing on the compensation trip. This requirement would apply to limited access scallop vessels. Public reporting burden for this collection-of-information is estimated to be 2 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Send comments on these or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: June 1, 2006.

James W. Balsiger,

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

■ For the reasons stated in the preamble, 15 CFR chapter IX and 50 CFR chapter VI are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under the CFR part ''50 CFR'' is amended by adding a new entry to read as follows.

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR	
* * * * *	
648.60	–0541
* * * * *	

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for part 648 continues to read as follows:

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

■ 4. In § 648.4, paragraph (a)(2)(ii)(D) is removed and reserved, and paragraphs (c)(2)(iv) introductory text and (c)(2)(iv)(B) are revised to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(2) * * *

(ii) * * *

(D) [Reserved]

* * * * *

(c) * * *

(2) * * *

(iv) An application for a scallop permit must also contain the following information:

* * * * *

(B) If applying for a VMS general scallop permit, or full-time or part-time limited access scallop permit, or if opting to use a VMS unit, a copy of the vendor installation receipt or proof of vendor activation of the VMS from a NMFS-approved VMS vendor. NMFS-approved vendors are described in § 648.9.

* * * * *

■ 5. In § 648.9, paragraphs (c)(1)(iii) and (c)(2)(i)(D) are revised to read as follows:

§ 648.9 VMS requirements.

* * * * *

(c) * * *

(1) * * *

(iii) At least twice per hour, 24 hours a day, throughout the year, for vessels issued a general scallop permit and subject to the requirements of § 648.4(a)(2)(ii)(B).

(2) * * *

(i) * * *

(D) The vessel has been issued a general scallop permit and is required to operate VMS as specified in § 648.10(b)(1)(iv), is not in possession of any scallops onboard the vessel, is tied to a permanent dock or mooring, and the vessel operator has notified NMFS through VMS by transmitting the appropriate VMS power down code, that the VMS will be powered down, unless required by other permit requirements for other fisheries to transmit the vessel's location at all times. Such a vessel must repower the VMS prior to moving from the fixed dock or mooring. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

■ 6. In § 648.10, paragraphs (b)(1)(i), (b)(1)(iv), (b)(2) introductory text, (b)(2)(i), (b)(2)(ii), and (b)(4) are revised and paragraph (e)(2)(v) is added to read as follows:

§ 648.10 DAS and VMS notification requirements.

* * * * *

(b) * * *

(1) * * *

(i) A scallop vessel issued a Full-time or Part-time limited access scallop permit or a VMS general scallop permit;

* * * * *

(iv) A scallop vessel issued a VMS or a Non-VMS general scallop permit when fishing under the Sea Scallop Area Access Program specified under § 648.60;

* * * * *

(2) The owner of such a vessel specified in paragraph (b)(1) of this section must provide documentation to the Regional Administrator at the time of application for a limited access permit or general scallop permit that the vessel has an operational VMS unit installed on board that meets those criteria, unless otherwise allowed under this paragraph (b). If a vessel has already been issued a limited access permit without the owner providing such documentation, the Regional Administrator shall allow at least 30 days for the vessel to install an operational VMS unit that meets the criteria and for the owner to provide documentation of such installation to the Regional Administrator. A vessel that is required to, or whose owner has elected to, use a VMS unit is subject to the following requirements and presumptions:

(i) A vessel subject to the VMS requirements of § 648.9 and this paragraph (b) that has crossed the VMS Demarcation Line specified under paragraph (a) of this section is deemed to be fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS as applicable, unless the vessel's owner or authorized representative declares the vessel out of the scallop, NE multispecies, or monkfish fishery, as applicable, for a specific time period by notifying NMFS by transmitting the appropriate VMS code through the VMS prior to the vessel leaving port, or unless the vessel's owner or authorized representative declares the vessel will be fishing in the Eastern U.S./Canada Area as described in § 648.85(a)(3)(ii) under the provisions of that program.

(ii) Notification that the vessel is not fishing under the DAS program, the general category scallop fishery, or other fishery requiring the operation of VMS, must be received prior to the vessel leaving port. A vessel may not change its status after the vessel leaves port or before it returns to port on any fishing trip.

* * * * *

(4) *Atlantic sea scallop vessel VMS notification requirements.* (i) Less than 1 hour prior to leaving port, the owner or authorized representative of a scallop vessel that is required to use VMS as specified in paragraph (b)(1) of this section must notify the Regional Administrator by entering the appropriate VMS code that the vessel will be participating in the scallop DAS

program, Area Access Program, or general category scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

(ii) To facilitate the deployment of at-sea observers, all sea scallop vessels issued limited access permits fishing in open areas or Sea Scallop Access Areas, and general category vessels fishing under the Sea Scallop Access Area program specified in § 648.60, are required to comply with the additional VMS notification requirements specified in paragraphs (b)(4)(iii) and (iv) of this section, except that scallop vessels issued Occasional scallop permits not participating in the Area Access Program specified in § 648.60 may provide the specified information to NMFS by calling NMFS. All sea scallop vessels issued a VMS general category or Non-VMS general scallop permit that are participating in the Area Access Program specified in § 648.60 are required to comply with the additional VMS notification requirements specified in paragraphs (b)(4)(iii) and (iv) of this section.

(iii) Prior to the 25th day of the month preceding the month in which fishing is to take place, the vessel must submit a monthly report, through the VMS e-mail messaging system, of its intention to fish for scallops, along with the following information: Vessel name and permit number, owner and operator's name, owner and operator's phone numbers, and number of trips anticipated for open areas and each Sea Scallop Access Area in which it intends to fish. The Regional Administrator may waive this notification period if it is determined that there is insufficient time to provide such notification prior to a Sea Scallop Access Area opening or beginning of the fishing year. Notification of this waiver of a portion of the notification period shall be provided to the vessel through a permit holder letter issued by the Regional Administrator.

(iv) In addition to the information required under paragraph (b)(4)(iii) of this section, and for the purpose of selecting vessels for observer deployment, each participating vessel owner or operator shall provide notice to NMFS of the time, port of departure, and open area or specific Sea Scallop Access Area to be fished, at least 72 hr, unless otherwise notified by the Regional Administrator, prior to the beginning of any scallop trip.

* * * * *

(e) * * *

(2) * * *

(v) Such vessels must comply with the VMS notification requirements specified in paragraph (b) of this section by notifying the Regional Administrator by entering the appropriate VMS code that the vessel is fishing outside of the scallop fishery. VMS codes and instructions are available from the Regional Administrator upon request.

* * * * *

■ 7. In § 648.11, paragraph (a)(1) is added, and paragraph (a)(2) is added and reserved to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) * * *

(1) For the purpose of deploying at-sea observers, sea scallop vessels are required to notify NMFS of scallop trips as specified in § 648.10(b)(4). Unless otherwise notified by the Regional Administrator, owners of scallop vessels shall be responsible for paying the cost of the observer for all scallop fishing trips on which an observer is carried onboard the vessel, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit, or reduced accrual rate of DAS.

(2) [Reserved]

* * * * *

■ 8. In § 648.14:

■ a. Paragraph (a)(56)(iii) is added.

■ b. Paragraph (a)(58) is removed and reserved.

■ c. Paragraphs (a)(56) introductory text, (a)(56)(i), (h)(2), (h)(4), (h)(5), (h)(6), (h)(12), (h)(13), (h)(15), (h)(17), (h)(19), (h)(24), (h)(25), (h)(26), (i)(3), (i)(11) and (i)(12) are revised.

■ d. Paragraphs (h)(27) through (h)(35) are removed.

The additions and revisions read as follows:

§ 648.14 Prohibitions.

(a) * * *

(56) Fish for, possess, or land per trip, scallops in excess of 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops unless:

(i) The scallops were fished for and harvested by a vessel that has been issued and carries on board a VMS general scallop or limited access scallop permit;

* * * * *

(iii) The scallops were fished for and harvested by a vessel issued a VMS general scallop permit with an operator on board who has been issued an operator's permit and the permit is on board the vessel and is valid.

* * * * *

(58) [Reserved]

* * * * *

(h) * * *

* * * * *

(2) Land scallops on more than one trip per calendar day after using up the vessel's annual DAS allocation or when not participating under the DAS program pursuant to § 648.10, unless exempted from DAS allocations as provided in § 648.54.

* * * * *

(4) If the vessel is not subject to VMS requirements specified in § 648.10(b), fail to comply with the requirements of the call-in system specified in § 648.10(c).

(5) Combine, transfer, or consolidate DAS allocations, except as allowed for one-for-one Access Area trip exchanges as specified in § 648.60(a)(3)(ii).

(6) Have an ownership interest in more than 5 percent of the total number of vessels issued limited access scallop permits, except as provided in § 648.4(a)(2)(i)(M).

* * * * *

(12) Possess or use dredge gear that does not comply with the provisions and specifications in § 648.51(b).

(13) Participate in the DAS allocation program with more persons on board the vessel than the number specified in § 648.51(c), including the operator, when the vessel is not docked or moored in port, unless otherwise authorized by the Regional Administrator, or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

* * * * *

(15) Fish under the small dredge program specified in § 648.51(e) with more than five persons on board the vessel, including the operator, unless otherwise authorized by the Regional Administrator or unless participating in the Area Access Program pursuant to the requirements specified in § 648.60.

* * * * *

(17) Fail to comply with the notification requirements specified in § 648.10(b)(4) or refuse or fail to carry an observer after being requested to carry an observer by the Regional Administrator or Regional Administrator's designee.

* * * * *

(19) Fail to comply with any requirement for declaring in and out of the DAS allocation program or other notification requirements specified in § 648.10.

* * * * *

(24) Possess or land more than 50 bu (17.62 hL) of in-shell scallops, as specified in § 648.52(d), once inside the VMS Demarcation Line by a vessel that, at any time during the trip, fished in or

transited any area south of 42°20′ N. Lat; or fished in any Sea Scallop Area Access Program specified in § 648.60, except as provided in § 648.54.

(25) Declare and initiate a trip into or fish in the areas specified in § 648.59(b) through (d) after the effective date of the notice in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(26) Retain yellowtail flounder in the areas specified in § 648.59(b) through (d) after the effective date of the notice in the **Federal Register** stating that the yellowtail flounder TAC has been harvested as specified in § 648.85(c).

(i) * * *

(3) Possess or use dredge gear that does not comply with any of the provisions or specifications in § 648.51(b).

* * * * *

(11) Fail to comply with any requirement for declaring in and out of the general category scallop fishery or other notification requirements specified in § 648.10(b).

(12) Fish for or land per trip, or possess at any time, in excess of 40 lb (18.14 kg) of shucked or 5 bu (176.2 L) of in-shell scallops unless the vessel has been issued a VMS general scallop permit and has declared into the general category scallop fishery as specified in § 648.10(b)(4).

* * * * *

■ 9. In § 648.51, paragraphs (b)(3)(i), (b)(3)(ii), (c), (e)(3), and (f)(1) are revised to read as follows:

§ 648.51 Gear and crew restrictions.

* * * * *

(b) * * *

(3) *Minimum ring size.* (i) Unless otherwise required under the Sea Scallop Area Access program specified in § 648.60(a)(6), the ring size used in a scallop dredge possessed or used by scallop vessels shall not be smaller than 4 inches (10.2 cm).

(ii) Ring size is determined by measuring the shortest straight line passing through the center of the ring from one inside edge to the opposite inside edge of the ring. The measurement shall not include normal welds from ring manufacturing or links. The rings to be measured will be at least five rings away from the mouth, and at least two rings away from other rigid portions of the dredge.

* * * * *

(c) *Crew restrictions.* Limited access vessels participating in or subject to the scallop DAS allocation program may have no more than seven people aboard, including the operator, when not docked or moored in port, except as follows:

(1) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(2) Vessels participating in the small dredge program are restricted as specified in paragraph (e) of this section;

(3) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

* * * * *

(e) * * *

(3) The vessel may have no more than five people, including the operator, on board, except as follows:

(i) There is no restriction on the number of people on board for vessels participating in the Sea Scallop Area Access Program as specified in § 648.60;

(ii) The Regional Administrator may authorize additional people to be on board through issuance of a letter of authorization.

(f) *Restrictions on the use of trawl nets.* (1) A vessel issued a limited access scallop permit fishing for scallops under the scallop DAS allocation program may not fish with, possess on board, or land scallops while in possession of a trawl net, unless such vessel has been issued a limited access trawl vessel permit that endorses the vessel to fish for scallops with a trawl net. A limited access scallop vessel issued a trawl vessel permit that endorses the vessel to fish for scallops with a trawl net and general category scallop vessels enrolled in the Area Access Program as specified in § 648.60, may not fish with a trawl net in the Access Areas specified in § 648.59(b) through (d).

* * * * *

■ 10. In § 648.52, paragraphs (a) and (b) are revised to read as follows:

§ 648.52 Possession and landing limits.

(a) Owners or operators of vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10 or that have used up their DAS allocations, and vessels issued a VMS general scallop permit, unless exempted under the state waters exemption program described under § 648.54, are prohibited from possessing or landing per trip more than 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, with no more than one scallop trip of 400 lb (181.44 kg) of shucked, or 50 bu (17.62 hL) of in-shell scallops, allowable in any calendar day.

(b) Owners or operators of vessels without a scallop permit, vessels issued a Non-VMS general scallop permit, and vessels issued a VMS general scallop permit that have declared out of the general scallop fishery as described in § 648.10(b)(4), except vessels fishing for scallops exclusively in state waters, are prohibited from possessing or landing per trip, more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) of in-shell scallops. Owners or operators of vessels without a scallop permit are prohibited from fishing for or possessing more than 40 lb (18.14 kg) of shucked, or 5 bu (176.2 L) if in-shell scallops and from selling, bartering, or trading scallops harvested from Federal waters.

* * * * *

■ 11. In § 648.53, paragraphs (b)(1), (b)(2), (b)(4), (b)(5), (c), (d), and (h) are revised to read as follows:

§ 648.53 DAS allocations.

* * * * *

(b) * * *

(1) Total DAS to be used in all areas other than those specified in § 648.59, are specified through the framework process as specified in § 648.55.

(2) Each vessel qualifying for one of the three DAS categories specified in the table in this paragraph (b)(2) (Full-time, Part-time, or Occasional) shall be allocated the maximum number of DAS for each fishing year it may participate in the open area limited access scallop fishery, according to its category. A vessel whose owner/operator has declared out of the scallop fishery, pursuant to the provisions of § 648.10, or that has used up its maximum allocated DAS, may leave port without being assessed a DAS, as long as it has made appropriate VMS declaration as specified in § 648.10(b)(4), does not fish for or land per trip, or possess at any time, more than 400 lb (181.4 kg) of shucked or 50 bu (17.6 hL) of in-shell scallops and complies with all other requirements of this part. The annual open area DAS allocations for each category of vessel for the fishing years indicated, after deducting DAS for observer and research DAS set-asides, are as follows:

DAS category	2006	2007
Full-time	52	51
Part-time	21	20
Occasional	4	4

* * * * *

(4) *Additional open area DAS.* If a TAC for yellowtail flounder specified in § 648.85(c) is harvested for an Access Area specified in § 648.59(b) through (d), a scallop vessel with remaining trips in the affected Access Area shall be allocated additional open area DAS

according to the calculations specified in paragraphs (b)(4)(i) through (iii) of this section.

(i) For each remaining complete trip in Closed Area I, a vessel may fish an additional 5.5 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area I would be allocated 11 additional open area DAS ($2 \times 5.5 = 11$ DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area I allocated to the scallop fishery is harvested shall be allocated 0.458 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area I would be allocated 3.05 additional open area DAS in that same fishing year (0.458 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(ii) For each remaining complete trip in Closed Area II, a vessel may fish an additional 5.4 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Closed Area II would be allocated 10.8 additional open area DAS ($2 \times 5.4 = 10.8$ DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Closed Area II allocated to the scallop fishery is harvested shall be allocated 0.450 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Closed Area II would be allocated 3 additional open area DAS in that same fishing year (0.450 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(iii) For each remaining complete trip in the Nantucket Lightship Access Area, a vessel may fish an additional 4.9 DAS in open areas during the same fishing year. A complete trip is deemed to be a trip that is not subject to a reduced possession limit under the broken trip provision in § 648.60(c). For example, a full-time scallop vessel with two complete trips remaining in Nantucket Lightship Access Area would be allocated 9.8 additional open area DAS ($2 \times 4.9 = 9.8$ DAS) if the TAC for yellowtail flounder allocated to the scallop fishery is harvested in that area. Vessels allocated compensation trips as specified in § 648.60(c) that cannot be made because the yellowtail TAC in Nantucket Lightship Access Area allocated to the scallop fishery is harvested shall be allocated 0.408 additional DAS for each unused DAS in the affected access area. Unused DAS shall be calculated by dividing the compensation trip possession limit by 1,500 lb (680 kg), (the catch rate per DAS). For example, a vessel with a 10,000-lb (4,536-kg) compensation trip remaining in Nantucket Lightship Access Area would be allocated 2.7 additional open area DAS in that same fishing year (0.458 times 10,000 lb (4,536 kg)/1,500 lb (680 kg) per day).

(5) DAS allocations and other management measures are specified for each scallop fishing year, which begins on March 1 and ends on February 28 (or February 29), unless otherwise noted. For example, the 2006 fishing year refers to the period March 1, 2006, through February 28, 2007.

(c) *DAS used in excess of 2006 DAS allocations.* Limited access vessels that lawfully use more open area DAS in the 2006 fishing year than specified in this section shall have the DAS used in excess of the 2006 DAS allocation specified in paragraph (b)(2) of this section deducted from their 2007 open area DAS allocation specified in paragraph (b)(2).

(d) *Adjustments in annual DAS allocations.* Annual DAS allocations shall be established for 2 fishing years through biennial framework adjustments as specified in § 648.55. If a biennial framework action is not undertaken by the Council and implemented by NMFS, the DAS allocations and Access Area trip allocations from the most recent fishing year shall remain in effect for the next fishing year. The Council may also recommend adjustments to DAS allocations through a framework action at any time.

* * * * *

(h) *DAS set-asides*—(1) *DAS set-aside for observer coverage.* As specified in paragraph (b)(3) of this section, to help defray the cost of carrying an observer, 1 percent of the total DAS shall be set aside from the total DAS available for allocation, to be used by vessels that are assigned to take an at-sea observer on a trip other than an Area Access Program trip. The DAS set-aside for observer coverage for the 2006 and 2007 fishing years is 165 DAS for each fishing year. Vessels carrying an observer shall be compensated with reduced DAS accrual rates for each trip on which the vessel carries an observer. For each DAS that a vessel fishes for scallops with an observer on board, the DAS shall accrue at a reduced rate based on an adjustment factor determined by the Regional Administrator on an annual basis, dependent on the cost of observers, catch rates, and amount of available DAS set-aside. The Regional Administrator shall notify vessel owners of the cost of observers and the DAS adjustment factor through a permit holder letter issued prior to the start of each fishing year. The number of DAS that are deducted from each trip based on the adjustment factor shall be deducted from the observer DAS set-aside amount in the applicable fishing year. Utilization of the DAS set-aside shall be on a first-come, first-served basis. When the DAS set-aside for observer coverage has been utilized, vessel owners shall be notified that no additional DAS remain available to offset the cost of carrying observers. The obligation to carry and pay for an observer shall not be waived due to the absence of set-aside DAS allocations.

(2) *DAS set-aside for research.* As specified in paragraph (b)(3) of this section, to help support the activities of vessels participating in certain research, as specified in § 648.56; the DAS set-aside for research for the 2006 and 2007 fishing years is 330 DAS for each fishing year. Vessels participating in approved research shall be authorized to use additional DAS in the applicable fishing year. Notification of allocated additional DAS shall be provided through a letter of authorization, or Exempted Fishing Permit issued by NMFS, or shall be added to a participating vessel's open area DAS allocation, as appropriate.

* * * * *

■ 12. In § 648.54, paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

§ 648.54 State waters exemption.

(a) * * **

(1) *DAS requirements.* Any vessel issued a limited access scallop permit is exempt from the DAS requirements specified in § 648.53(b) while fishing exclusively landward of the outer boundary of a state's waters, provided the vessel complies with paragraphs (d)

through (g) of this section, and the notification requirements of § 648.10(e).

(2) *Gear and possession limit restrictions.* Any vessel issued a limited access scallop permit that is exempt from the DAS requirements of § 648.53(b) under paragraph (a) of this section, and that has complied with the notification requirements of § 648.10(e), is also exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession restrictions specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section.

(b) *General scallop vessel gear and possession limit restrictions.* Any vessel issued a general scallop permit is exempt from the gear restrictions specified in § 648.51(a), (b), (e)(1) and (e)(2), and the possession limit specified in § 648.52(a), while fishing exclusively landward of the outer boundary of the waters of a state that has been issued a state waters exemption, provided the vessel complies with paragraphs (d) through (g) of this section. Vessels issued a VMS general scallop permit must be declared out of the general category scallop fishery as described in § 648.10(e).

* * * * *

■ 13. In § 648.55, paragraph (b) is revised to read as follows:

§ 648.55 Framework adjustments to management measures.

* * * * *

(b) The preparation of the SAFE Report shall begin on or about June 1 of the year preceding the fishing year in which measures will be adjusted. If the biennial framework action is not undertaken by the Council, or if a final rule resulting from a biennial framework is not published in the **Federal Register** with an effective date on or before March 1, in accordance with the Administrative Procedure Act, the measures from the most recent fishing year shall continue, beginning March 1 of each fishing year.

* * * * *

■ 14. Section 648.58 is revised to read as follows:

§ 648.58 Rotational Closed Areas.

(a) *Elephant Trunk Closed Area.* Through December 31, 2006, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Elephant Trunk Closed Area. No vessel may possess scallops in the Elephant Trunk Closed Area, unless such vessel is only transiting the area as provided in paragraph (c) of this section. The Elephant Trunk Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ET1	38°50′ N.	74°20′ W.
ET2	38°10′ N.	74°20′ W.
ET3	38°10′ N.	73°30′ W.
ET4	38°50′ N.	73°30′ W.
ET1	38°50′ N.	74°20′ W.

(b) *Delmarva Closed Area.* From January 1, 2007, through February 28, 2010, no vessel may fish for scallops in, or possess or land scallops from, the area known as the Delmarva Closed Area. No vessel may possess scallops in the Delmarva Closed Area, unless such vessel is only transiting the area as provided in paragraph (b) of this section. The Delmarva Closed Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
DMV1	38°10′ N.	74°50′ W.
DMV2	38°10′ N.	74°00′ W.
DMV3	37°15′ N.	74°00′ W.
DMV4	37°15′ N.	74°50′ W.
DMV1	38°10′ N.	74°50′ W.

(c) *Transiting.* No vessel possessing scallops may enter or be in the area(s) specified in paragraphs (a) and (b) of this section unless the vessel is transiting the area and the vessel's fishing gear is unavailable for immediate use as defined in § 648.23(b), or there is a compelling safety reason to be in such areas.

(d) *Vessels fishing for species other than scallops.* A vessel may fish for species other than scallops within the closed areas specified in paragraphs (a) and (b) of this section as allowed in this part, provided the vessel does not fish for, catch, or retain scallops or intend to fish for, catch, or retain scallops. Declaration through VMS that the vessel is fishing in the general category scallop fishery is deemed to be an intent to fish for, catch, or retain scallops.

15. Section 648.59 is revised to read as follows:

§ 648.59 Sea Scallop Access Areas.

(a) *Hudson Canyon Sea Scallop Access Area.* (1) Through February 29, 2008, a vessel issued a limited access scallop permit may fish for, possess, and land scallops in or from, the area known as the Hudson Canyon Sea Scallop Access Area, described in paragraph (a)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60, and provided the vessel did not complete all of its allocated trips during the 2005 fishing year, as described in § 648.60(a)(3)(i)(E). A vessel issued a general scallop permit may fish in the Hudson Canyon Sea Scallop Access Area in 2006 and 2007 provided it complies with the trip declaration requirements specified in § 648.10(b)(4) and possession restrictions specified in § 648.52.

(2) The Hudson Canyon Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
H1	39°30′ N.	73°10′ W.
H2	39°30′ N.	72°30′ W.
H3	38°30′ N.	73°30′ W.
H4/ET4	38°50′ N.	73°30′ W.
H5	38°50′ N.	73°42′ W.
H1	39°30′ N.	73°10′ W.

(3) *Number of trips.* Based on its permit category, a vessel issued a limited access scallop permit may fish any remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area, as specified in § 648.60(a)(3)(i)(C), plus any additional Hudson Canyon Access Area trips acquired through an authorized one-for-one exchange as specified in § 648.60(a)(3)(ii). A vessel with unutilized compensation trips for Sea Scallop Access Area trips terminated early during the 2005 fishing year, pursuant to § 648.60(c), may take such compensation trips in the 2006 and/or 2007 fishing year in the Hudson Canyon Access Area. A vessel owner may exchange complete unutilized trips carried forward to the 2006 and 2007 fishing years with another vessel owner as specified in § 648.60(a)(3)(ii). Compensation trips for prior trips terminated early that are carried forward from the 2005 fishing year, as specified in this paragraph (a)(3), may not be exchanged.

(b) *Closed Area I Access Area.* This area shall be managed on a 3-year cycle, with a 1-year closure, followed by a 2-year Area Access Program, as follows:

(1) Through February 28, 2007, and every third fishing year thereafter (*i.e.*, March 1, 2009, through February 28, 2010, etc.) vessels issued scallop permits, except vessels issued a NE

Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Beginning March 1, 2007, through February 28, 2009, and for every 2-year period, based on the fishing year, after the year-long closure described in paragraph (b)(1) of this section (*i.e.*, March 1, 2010 through February 29, 2012, etc.), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a scallop permit may fish for, possess, and land scallops in or from, the area known as the Closed Area I Access Area, described in paragraph (b)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area I Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIA1	41°26′ N.	68°30′ W.
CAIA2	41°09′ N.	68°30′ W.
CAIA3	41°4.54′ N.	69°0.9′ W.
CAIA1	41°26′ N.	68°30′ W.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from, the area known as the Closed Area I Sea Scallop Access Area, described in paragraph (b)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area I Sea Scallop Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in 2007 in the Closed Area I Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area I Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area I Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (b)(5)(ii)(B) of this section, subject to the possession limit specified in §§ 648.52(a) and (b) and 648.60(g), and subject to the seasonal restrictions specified in paragraph (b)(4) of this section, a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area I Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 216 trips in the 2007 fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2007 fishing year.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (b)(5)(ii)(A) of this section, provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(c) *Closed Area II Access Area.* This area shall be managed on a 3-year cycle, based on fishing years, with a 1-year closure, followed by a 2-year Area Access Program as follows:

(1) From March 1, 2007, through February 29, 2008, and every third fishing year thereafter, (i.e., March 1, 2010, through February 28, 2011, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from, the area known as the Closed Area II Access Area, described in paragraph (c)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Through February 28, 2007, and for every 2-year period after the year-long closure described in paragraph (c)(1) of this section (i.e., March 1, 2008, through February 28, 2010, etc.) and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Closed Area II Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
CAIIA1	41°00′ N.	67°20′ W.
CAIIA2	41°00′ N.	66°35.8′ W.
CAIIA3	41°18.6′ N.	66°24.8′ W.
CAIIA4	41°30′ N.	66°34.8′ W.
CAIIA5	41°30′ N.	67°20′ W.
CAIIA1	41°00′ N.	67°20′ W.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Closed Area II Sea Scallop Access Area, described in paragraph (c)(3) of this section, except during the period June 15 through January 31 of each year the Closed Area II Access Area is open to scallop vessels, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in 2006 in the Closed Area II Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Closed Area II Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Closed Area II Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (c)(5)(ii)(B) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), and subject to the seasonal restrictions specified in paragraph (c)(4) of this section, a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Closed Area II Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 865 trips in the 2006 fishing year have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2006 fishing year.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (c)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(d) *Nantucket Lightship Access Area.* (1) From March 1, 2008, through February 28, 2009, and every third fishing year thereafter (*i.e.*, March 1, 2011, through February 29, 2012, 2014, etc.) vessels issued scallop permits, except vessels issued a NE Multispecies permit and a general category scallop permit and fishing in an approved SAP under § 648.85 and under multispecies DAS, may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Access Area, described in paragraph (d)(3) of this section, unless transiting pursuant to paragraph (f) of this section.

(2) Through February 29, 2008, and for every 2-year period, based on fishing years, after each the year-long closure described in paragraph (d)(1) of this section (i.e., March 1, 2009, through February 28, 2011, etc.) and subject to the seasonal restrictions specified in paragraph (d)(4) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from, the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(3) The Nantucket Lightship Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
NLSA1	40°50′ N.	69°00′ W.
NLSA2	40°30′ N.	69°00′ W.
NLSA3	40°30′ N.	69°14.5′ W.
NLSA4	40°50′ N.	69°29.5′ W.
NLAA1	40°50′ N.	69°00′ W.

(4) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Nantucket Lightship Sea Scallop Access Area, described in paragraph (d)(3) of this section, except during the period June 15 through January 31 of each year the Nantucket Lightship Access Area is open to scallop fishing, unless transiting pursuant to paragraph (f) of this section.

(5) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in 2006 and 2007 in the Nantucket Lightship Access Area as specified in § 648.60(a)(3)(i), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains a Nantucket Lightship Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Nantucket Lightship Closed Area Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* (A) Except as provided in paragraph (d)(5)(ii)(B) of this section, subject to the possession limits specified in §§ 648.52(a) and (b), and 648.60(g), a vessel issued a general category scallop permit, may not enter in, or fish for, possess, or land sea scallops in or from the Nantucket Lightship Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 577 trips in the 2006 fishing year, and 394 trips in the 2007 fishing year, have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the 2006 and 2007 fishing years.

(B) A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS may fish in the Scallop Access Areas without being subject to the restrictions of paragraph (d)(5)(ii)(A) of this section provided that it has not enrolled in the Scallop Area Access program. Such vessel is prohibited from possessing scallops.

(e) *Elephant Trunk Sea Scallop Access Area.* (1) From January 1, 2007, through February 29, 2012, and subject to the seasonal restrictions specified in paragraph (e)(3) of this section, a vessel issued a scallop permit may fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (e)(2) of this section, only if the vessel is participating in, and complies with the requirements of, the area access program described in § 648.60.

(2) The Elephant Trunk Sea Scallop Access Area is defined by straight lines connecting the following points in the order stated (copies of a chart depicting this area are available from the Regional Administrator upon request):

Point	Latitude	Longitude
ETAA1	38°50′ N.	74°20′ W.
ETAA2	38°10′ N.	74°20′ W.
ETAA3	38°10′ N.	73°30′ W.
ETAA4	38°50′ N.	73°30′ W.
ETAA1	38°50′ N.	74°20′ W.

(3) *Season.* A vessel issued a scallop permit may not fish for, possess, or land scallops in or from the area known as the Elephant Trunk Sea Scallop Access Area, described in paragraph (d)(2) of this section, from September 1 through October 31 of each year the Elephant Trunk Access Area is open to scallop fishing as a Sea Scallop Access Area, unless transiting pursuant to paragraph (f) of this section.

(4) *Number of trips*—(i) *Limited access vessels.* Based on its permit category, a vessel issued a limited access scallop permit may fish no more than the maximum number of trips in the Elephant Trunk Sea Scallop Access Area between January 1, 2007, and February 29, 2008, as specified in § 648.60(a)(3)(i), or as adjusted as specified in § 648.60(a)(3)(i)(F), unless the vessel owner has made an exchange with another vessel owner whereby the vessel gains an Elephant Trunk Sea Scallop Access Area trip and gives up a trip into another Sea Scallop Access Area, as specified in § 648.60(a)(3)(ii), or unless the vessel is taking a compensation trip for a prior Elephant Trunk Access Area trip that was terminated early, as specified in § 648.60(c).

(ii) *General category vessels.* Subject to the possession limits specified in §§ 648.52(a) and (b) and 648.60(g), a vessel issued a general category scallop permit may not enter in, or fish for, possess, or land sea scallops in or from the Elephant Trunk Sea Scallop Access Area once the Regional Administrator has provided notification in the **Federal Register**, in accordance with § 648.60(g)(4), that 1,360 trips allocated for the period January 1, 2007, through February 29, 2008, unless adjusted as specified in § 648.60(a)(3)(i)(F), have been taken, in total, by all general category scallop vessels, unless transiting pursuant to paragraph (f) of this section. The Regional Administrator shall notify all general category scallop vessels of the date when the maximum number of allowed trips have been, or are projected to be, taken for the period

January 1, 2007, through February 29, 2008.

(f) *Transiting.* A sea scallop vessel that has not declared a trip into the Sea Scallop Area Access Program may enter the Sea Scallop Access Areas described in paragraphs (a), (b), (d), and (e), of this section, and possess scallops not caught in the Sea Scallop Access Areas, for transiting purposes only, provided the vessel's fishing gear is stowed in accordance with § 648.23(b). A scallop vessel that has declared a trip into the Sea Scallop Area Access Program may transit a Scallop Access Area while steaming to or from another Scallop Access Area, provided the vessel's fishing gear is stowed in accordance with § 648.23(b), or there is a compelling safety reason to be in such areas without such gear being stowed. A vessel may only transit the Closed Area II Access Area, as described in paragraph (c) of this section, if there is a compelling safety reason for transiting the area and the vessel's fishing gear is stowed in accordance with § 648.23(b).

■ 16. Section 648.60 is revised to read as follows:

§ 648.60 Sea scallop area access program requirements.

(a) A vessel issued a limited access scallop permit may only fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, when fishing under a scallop DAS, provided the vessel complies with the requirements specified in paragraphs (a)(1) through (a)(9), and (b) through (f) of this section. A general category scallop vessel may fish in the Sea Scallop Access Areas specified in § 648.59, subject to the seasonal restrictions specified in § 648.59, provided the vessel complies with the requirements specified in paragraphs (g) of this section.

(1) *VMS.* Each vessel participating in the Sea Scallop Access Area Program must have installed on board an operational VMS unit that meets the minimum performance criteria specified in §§ 648.9 and 648.10, and paragraph (e) of this section.

(2) *Declaration.* (i) Each vessel participating in the Sea Scallop Access Area Program must comply with the trip declaration requirements specified in § 648.10(b)(4).

(ii) To fish in a Sea Scallop Access Area, each participating vessel owner or operator shall declare a Sea Scallop Access Area trip via VMS less than 1 hour prior to the vessel leaving port, in accordance with instructions to be provided by the Regional Administrator.

(3) *Number of Sea Scallop Access Area trips.*—(i) *Limited Access Vessel trips.* (A) Except as provided in paragraph (c) of this section, and unless the number of trips is adjusted for the Elephant Trunk Access Area as specified in paragraph (a)(3)(i)(F) of this section, paragraphs (a)(3)(i)(B) through (E) specify the total number of trips that a limited access scallop vessel may take into Sea Scallop Access Areas during applicable seasons specified in § 648.59. The number of trips per vessel in any one Sea Scallop Access Area may not exceed the maximum number of trips allocated for such Sea Scallop Access Area as specified in § 648.59, unless the vessel owner has exchanged a trip with another vessel owner for an additional Sea Scallop Access Area trip, as specified in paragraph (a)(3)(ii) of this section, been allocated a compensation trip pursuant to paragraph (c) of this section, or unless the Elephant Trunk Access Area trip allocations are adjusted as specified in § 648.60(a)(3)(i)(F).

(B) *Full-time scallop vessels.* In the 2006 fishing year, a full-time scallop vessel may take three trips in the Closed Area II Access Area, and two trips in the Nantucket Lightship Access Area. In the 2007 fishing year, a full-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and five trips in the Elephant Trunk Access Area, unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(C) *Part-time scallop vessels.* In the 2006 fishing year, a part-time scallop vessel may take one trip in the Closed Area II Access Area and one trip in the Nantucket Lightship Access Area; or two trips in the Closed Area II Access Area; or two trips in the Nantucket Lightship Access Area. In the 2007 fishing year, a part-time scallop vessel may take one trip in the Closed Area I Access Area, one trip in the Nantucket Lightship Access Area, and one trip in the Elephant Trunk Access Area; or one trip in the Closed Area I Access Area and two trips in the Elephant Trunk Access Area; or one trip in the Nantucket Lightship Access Area and two trips in the Elephant Trunk Access Area; or three trips in the Elephant Trunk Access Area, unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(D) *Occasional scallop vessels.* An occasional scallop vessel may take one trip in the 2006 fishing year and one trip in the 2007 fishing year into any of the Access Areas described in § 648.59 that is open during the specified fishing years.

(E) *Hudson Canyon Access Area trips.* In addition to the number of trips specified in paragraphs (a)(3)(i)(B) through (C) of this section, vessels may fish remaining Hudson Canyon Access Area trips allocated for the 2005 fishing year in the Hudson Canyon Access Area in the 2006 and/or 2007 fishing year, as specified in § 648.59(a)(3). The maximum number of trips that a vessel could take in the Hudson Canyon Access Area in the 2005 fishing year was three trips, unless a vessel acquired additional trips through an authorized one-for-one exchange as specified in paragraph (a)(3)(ii) of this section. Full-time scallop vessels were allocated three trips into the Hudson Canyon Access Area. Part-time vessels were allocated two trips that could be distributed among Closed Area I, Closed Area II, and the Hudson Canyon Access Areas, not to exceed one trip in the Closed Area I or Closed Area II Access Areas. Occasional vessels were allocated one trip that could be taken in any Access Area that was open in the 2005 fishing year.

(F) *Procedure for adjusting the number of 2007 fishing year trips in the Elephant Trunk Access Area.* (*1*) The Regional Administrator shall reduce the number of Elephant Trunk Access Area trips using the table in paragraph (a)(3)(i)(F)(*2*) of this section, provided that an updated biomass projection is available with sufficient time to announce such an adjustment through publication of a final rule in the **Federal Register**, pursuant to the Administrative Procedure Act, on or about December 1, 2006. If information is not available in time for NMFS to publish a final rule on or about December 1, 2006, no adjustment may be made. The adjustment of the 2007 Elephant Trunk Access Area trip allocations shall be based on all available scientific surveys of scallops within the Elephant Trunk Access Area. Survey data must be available with sufficient time for review and incorporation in the biomass estimate. If NMFS determines that a survey is not scientifically sound and unbiased, those results shall not be used to estimate biomass. If no other surveys are available, the annual NOAA scallop resource survey shall be used alone to estimate exploitable scallop biomass for the Elephant Trunk Access Area.

(*2*) *Table of total allowable catch and trip allocation adjustments based on exploitable biomass estimates and revised target total allowable catch levels.* The following table specifies the adjustments that would be made through the procedure specified in paragraph (a)(3)(i)(F)(*1*) of this section under various biomass estimates and adjusted 2007 target total allowable catch (TAC) estimates:

UPDATED ESTIMATES OF ELEPHANT TRUNK ACCESS AREA BIOMASS

[In metric tons (mt) and millions of pounds (mlb)]

	Below 22,920 mt (50.5 mlb)	22,920–28,650 mt (50.5–63.1 mlb)	28,651–34,380 mt (63.2–75.7 mlb)	Above 34,381 mt (75.8 mlb)
Adjusted 2007 Target Total Allowable Catch	5,234 mt (11.5 mlb)	7,851 mt (17.3 mlb)	10,468 mt (23.08 mlb)	13,085 mt (28.8 mlb)
Adjusted 2007 TAC for Research and General Category Fishery.	103 mt 0.228 mlb	157 mt 0.346 mlb	209 mt 0.461 mlb	262 mt 0.578 mlb
Adjusted 2007 Observer TAC	52 mt 0.114 mlb	78 mt 0.173 mlb	105 mt 0.231 mlb	131 mt 0.289 mlb
Maximum Number of Limited Access Trips per Vessel	2	3	4	No adjustment
General Category Trips	570	865	1,154	No adjustment

(ii) *One-for-one area access trip exchanges.* (A) If the total number of trips allocated to a vessel into all Sea Scallop Access Areas combined is more than one, the owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized trips into one access area for another vessel's unutilized trips into another Sea Scallop Access Area. One-for-one exchanges may be made only between vessels with the same permit category. For example, a full-time vessel may not exchange trips with a part-time vessel and vice versa. Vessel owners must request the exchange of trips by submitting a completed Trip Exchange Form at least 15 days before the date on which the applicant desires the exchange to be effective. Trip exchange forms are available by request from the Regional Administrator. Each vessel owner involved in an exchange is required to submit a completed Trip Exchange Form. The Regional Administrator shall review the records for each vessel to confirm that each vessel has unutilized trips remaining to exchange. The exchange is not effective until the vessel owner(s) receive a confirmation in writing from the Regional Administrator that the trip exchange has been made effective. A vessel owner may exchange trips between two or more vessels under his/her ownership. A vessel owner holding a Confirmation of Permit History is not eligible to exchange trips between another vessel and the vessel for which a Confirmation of Permit History has been issued.

(B) The owner of a vessel issued a limited access scallop permit may exchange, on a one-for-one basis, unutilized Closed Area I and Nantucket Lightship Access Area trips allocated for the 2006 fishing year as specified in paragraph (a)(3)(i) of this section for Elephant Trunk Access Area trips allocated for the 2007 fishing year as specified in paragraph (a)(3)(i) of this section. If Elephant Trunk Access Area allocations are reduced as specified in paragraph (a)(3)(i)(F) of this section, vessels that have exchanged 2006 Closed Area I and/or Nantucket Lightship Access Area trips for 2007 Elephant Trunk Access Area trips shall have excess Elephant Trunk Access Area trips acquired through the exchange deducted from their available 2007 Elephant Trunk Access Area trip allocation.

(4) *Area fished.* While on a Sea Scallop Access Area trip, a vessel may not fish for, possess, or land scallops in or from areas outside the Sea Scallop Access Area in which the vessel operator has declared the vessel will fish during that trip, and may not enter or exit the specific declared Sea Scallop Access Area more than once per trip. A vessel on a Sea Scallop Access Area trip may not enter or be in another Sea Scallop Access Area on the same trip except such vessel may transit another Sea Scallop Access Area provided its gear is stowed in accordance with § 648.23(b).

(i) *Reallocation of trips into open areas.* If the yellowtail flounder TAC allocated for a Scallop Access Area specified in § 648.59(b) through (d) has been harvested and such area has been closed, a vessel with trips remaining to be taken in such Access Areas may fish the remaining DAS associated with the unused trip(s) in Open Areas, up to the maximum DAS specified in § 648.53(b)(4)(i) through (iii).

(ii) [Reserved]

(5) *Possession and landing limits*—(i) *Scallop possession limits.* Unless authorized by the Regional Administrator, as specified in paragraphs (c) and (d) of this section, after declaring a trip into a Sea Scallop Access Area, a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, scallops, up to the maximum amounts specified in the table in this paragraph (a)(5). No vessel fishing in the Sea Scallop Access Area may possess shoreward of the VMS demarcation line, or land, more than 50 bu (17.6 hl) of in-shell scallops.

Fishing year	Access area	Possession limit		
		Full-time	Part-time	Occasional
2006	Closed Area II	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb (3,402 kg)
	Nantucket Lightship			
2007	Closed Area I	18,000 lb (8,165 kg)	16,800 lb (7,620 kg)	7,500 lb (3,402 kg)
	Nantucket Lightship			
	Elephant Truck			
2006 and 2007	Hudson Canyon	18,000 lb (8,165 kg)	18,000 lb (8,165 kg)	7,500 lb (3,402 kg)

(ii) *NE multispecies possession limits and yellowtail flounder TAC.* Subject to the seasonal restriction established under the Sea Scallop Area Access Program and specified in § 648.59(b)(4), (c)(4), and (d)(4), and provided the vessel has been issued a scallop multispecies possession limit permit as specified in § 648.4(a)(1)(ii), after declaring a trip into a Sea Scallop Access Area and fishing within the Access Areas described in § 648.59(b)

through (d), a vessel owner or operator of a limited access scallop vessel may fish for, possess, and land, per trip, up to a maximum of 1,000 lb (453.6 kg) of all NE multispecies combined, subject to the minimum commercial fish size restrictions specified in § 648.83(a)(2), and the additional restrictions for Atlantic cod, haddock, and yellowtail flounder specified in paragraphs (a)(5)(ii)(A) through (C) of this section.

(A) *Atlantic cod.* Such vessel may bring onboard and possess only up to 100 lb (45.4 kg) of Atlantic cod per trip, provided such fish is intended for personal use only and cannot be not sold, traded, or bartered.

(B) *Haddock.* Such vessels may possess and land haddock up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels are prohibited from possessing or landing haddock from January 1 through June 30.

(C) *Yellowtail flounder*—(*1*) *Yellowtail flounder TACs.* Such vessel may catch yellowtail flounder provided the Regional Administrator has not issued a notice that the scallop fishery portion of the TACs specified in § 648.85(c) for the Closed Area I, Closed Area II, and Nantucket Lightship Access Scallop Areas have been harvested. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify scallop vessel owners that the scallop fishery portion of the TAC for a yellowtail flounder stock has been or is projected to be harvested by scallop vessels in any Access Area. Upon notification in the **Federal Register** that a TAC has been or is projected to be harvested, scallop vessels are prohibited from declaring and initiating a trip within the Access Area(s), where the TAC applies, for the remainder of the fishing year. The yellowtail flounder TACs allocated to scallop vessels may be increased by the Regional Administrator after December 1 of each year pursuant to § 648.85(c)(2).

(*2*) *SNE/MA yellowtail flounder possession limit.* Such vessels fishing within the Nantucket Lightship Access Area described in § 648.59(d) may fish for, possess, and land yellowtail flounder up to the overall possession limit of all NE multispecies combined, as specified in paragraph (a)(5)(ii) of this section, except that such vessels may not fish for, possess, or land more than 250 lb (113.6 kg) per trip of yellowtail flounder between June 15 and June 30, provided the Regional Administrator has not issued a notice that the scallop fishery portion of the the yellowtail flounder TAC as specified in § 648.85(c)(i) has been harvested.

(*3*) *GB yellowtail flounder possession limit.* After declaring a trip into and fishing within the Closed Area I or Closed Area II Access Area described in § 648.59(b) and (c), the vessel owner or operator of a limited access scallop vessel may fish for, possess, and land up to 1,000 lb (453.6 kg) per trip of yellowtail flounder subject to the amount of other NE multispecies onboard, provided that the Regional Administrator has not issued a notice that the yellowtail flounder TAC specified in § 648.85(c) has been harvested. If the yellowtail flounder TAC established for the Eastern U.S./Canada Area pursuant to § 648.85(a)(2) has been or is projected to be harvested, as described in § 648.85(a)(3)(iv)(C)(*3*), scallop vessels are prohibited from harvesting, possessing, or landing yellowtail flounder in or from the Closed Area I and Closed Area II Access Areas.

(iii) [Reserved]

(6) *Gear restrictions.* (*i*) The minimum ring size for dredge gear used by a vessel fishing on a Sea Scallop Access Area trip is 4 inches (10.2 cm) in diameter. Dredge or trawl gear used by a vessel fishing on a Sea Scallop Access Area trip must be in accordance with the restrictions specified in § 648.51(a) and (b).

(*ii*) Vessels fishing in the Closed Area I, Closed Area II, and Nantucket Lightship Closed Area Sea Scallop Access Areas described in § 648.59(b) through (d) are prohibited from fishing with trawl gear as specified in § 648.51(f)(1).

(7) *Transiting.* While outside a Sea Scallop Access Area on a Sea Scallop Access Area trip, the vessel must have all fishing gear stowed in accordance with § 648.23(b), unless there is a compelling safety reason to be transiting the area without gear stowed.

(8) *Off-loading restrictions.* The vessel may not offload its catch from a Sea Scallop Access Area trip at more than one location per trip.

(9) *Reporting.* The owner or operator must submit reports through the VMS, in accordance with instructions to be provided by the Regional Administrator, for each day fished when declared in the Sea Scallop Area Access Program, including trips accompanied by a NMFS-approved observer. The reports must be submitted in 24-hour intervals, for each day beginning at 0000 hours and ending at 2400 hours. The reports must be submitted by 0900 hours of the following day and must include the following information:

(i) Total pounds of scallop meats kept, total number of tows, and the Fishing Vessel Trip Report log page number.

(ii) Total pounds of yellowtail flounder kept and total pounds of yellowtail flounder discarded.

(b) [Reserved]

(c) *Compensation for Sea Scallop Access Area trips terminated early.* If a Sea Scallop Access Area trip is terminated before catching the allowed possession limit, the vessel may be authorized to fish an additional trip in the same Sea Scallop Access Area based on the following conditions and requirements.

(1) The vessel owner/operator has determined that the Sea Scallop Access Area trip should be terminated early for reasons deemed appropriate by the operator of the vessel;

(2) The amount of scallops landed by the vessel for the trip must be less than the maximum possession limit specified in paragraph (a)(5) of this section;

(3) The vessel owner/operator must report the termination of the trip prior to leaving the Sea Scallop Access Area by VMS email messaging, with the following information: Vessel name, vessel owner, vessel operator, time of trip termination, reason for terminating the trip (for NMFS recordkeeping purposes), expected date and time of return to port, and amount of scallops on board in pounds;

(4) The vessel owners/operator must request that the Regional Administrator authorize an additional trip as compensation for the terminated trip by submitting a written request to the Regional Administrator within 30 days of the vessel's return to port from the terminated trip; and

(5) The Regional Administrator shall authorize the vessel to take an additional trip and shall specify the amount of scallops that the vessel may land on such trip pursuant to the calculation specified in paragraph (c)(5)(i) of this section. Such authorization shall be made within 10 days of receipt of the formal written request for compensation.

(i) The amount of scallops that can be landed on an authorized additional compensation Sea Scallop Access Area trip shall equal the possession limit specified in paragraph (a)(5) of this section minus the amount of scallops landed on the terminated trip. For example, if the possession limit for a full-time vessel is 18,000 lb (8,165 kg) per trip, and the vessel lands 6,500 lb (2,948.4 kg) of scallops and requests compensation for the terminated trip, the possession limit for the additional trip is 11,500 lb (5,216.3 kg) or 18,000

lb (8,165 kg) minus 6,500 lb (2,948.4 kg)).

(ii) If a vessel is authorized more than one additional compensation trip into any Sea Scallop Access Area as the result of more than one terminated trip in the same Access Area, the possession limits for the authorized trips may be combined, provided the total possession limit on a combined additional compensation trip does not exceed the possession limit for a trip as specified in paragraph (a)(5) of this section. For example, a vessel that has two broken trips with corresponding additional compensation trip authorizations of 10,000 lb (4,536 kg) and 8,000 lb (3,629 kg) may combine the authorizations to allow one compensation trip with a possession limit of 18,000 lb (8,165 kg).

(iii) A vessel operator must comply with all notification requirements prior to taking an additional compensation trip, and for each such trip, must enter a trip identification number by entering the number in the VMS for each such trip. The trip identification number will be included in the Regional Administrator's authorization for each additional compensation trip. If a vessel operator is combining additional compensation trips, the trip identification numbers from each authorization must be entered into VMS.

(iv) *Unutilized 2005 Hudson Canyon compensation trips.* A vessel that terminated a 2005 Hudson Canyon Access Area trip shall be issued authorization to take an additional trip as compensation for the trip terminated early pursuant to paragraph (c)(5) of this section. Such additional trips may be taken at any time during the 2006 or 2007 fishing years, as specified in § 648.59(a)(3).

(v) *Additional compensation trip carryover.* If an Access Area trip conducted during the last 60 days of the open period or season for the Access Area is terminated before catching the allowed possession limit, and the requirements of paragraph (c) of this section are met, the vessel operator shall be authorized to fish an additional trip as compensation for the terminated trip in the following fishing year. The vessel owner/operator must take such additional compensation trips, complying with the trip notification procedures specified in paragraph (a)(2)(iii) of this section, within the first 60 days of that fishing year the Access Area first opens in the subsequent fishing year. For example, a vessel that terminates a Nantucket Lightship Access Area trip on December 10, 2006, must declare that it is beginning its additional compensation trip during the first 60 days that the Access Area is open (June 15, 2007, through August 15, 2007). If an Access Area is not open in the subsequent fishing year, then the additional compensation trip authorization would expire at the end of the Access Area Season in which the trip was broken. For example, a vessel that terminates a Closed Area II trip on December 10, 2006, may not carry its additional compensation trip into the 2007 fishing year because Closed Area II is not open during the 2007 fishing year, and must complete any compensation trip by January 31, 2007.

(d) *Possession limit to defray costs of observers*—(1) *Observer set-aside limits by area*—(i) *Hudson Canyon Access Area.* For 2006 and 2007 combined, the observer set-aside for the Hudson Canyon Access Area is 149,562 lb (67.8 mt).

(ii) *Closed Area I Access Area.* For the 2007 fishing year, the observer set-aside for the Closed Area I Access Area is 43,207 lb (20 mt).

(iii) *Closed Area II Access Area.* For the 2006 fishing year, the observer set-aside for the Closed Area II Access Area is 173,085 lb (79 mt).

(iv) *Nantucket Lightship Access Area.* For the 2006 and 2007 fishing years, the observer set-asides for the Nantucket Lightship Access Area are 115,390 lb (52 mt) and 78,727 lb (36 mt), respectively.

(v) *Elephant Trunk Access Area.* From January 1, 2007, through February 29, 2008, the observer set-aside for the Elephant Trunk Access Area is 272,000 lb (123 mt), unless adjusted as specified in paragraph (a)(3)(i)(F) of this section.

(2) *Increase in the possession limit to defray the costs of observers.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section to defray costs of at-sea observers deployed on area access trips subject to the limits specified in paragraph (d)(1) of this section. An owner of a scallop vessel shall be notified of the increase in the possession limit through a permit holder letter issued by the Regional Administrator. If the observer set-aside is fully utilized prior to the end of the fishing year, the Regional Administrator shall notify owners of scallop vessels that, effective on a specified date, the increase in the possession limit is no longer available to offset the cost of observers. Unless otherwise notified by the Regional Administrator, vessel owners shall be responsible for paying the cost of the observer, regardless of whether the vessel lands or sells sea scallops on that trip, and regardless of the availability of set-aside for an increased possession limit.

(e) *Possession limits and/or number of trips to defray the costs of sea scallop research*—(1) *Research set-aside limits and number of trips by area*—(i) *Hudson Canyon Access Area.* For the 2006 and 2007 fishing years combined, the research set-aside for the Hudson Canyon Access Area is 299,123 (135.7 mt).

(ii) *Closed Area I Access Area.* For the 2007 fishing year, the research set-aside for the Closed Area I Access Area is 84,414 lb (38 mt).

(iii) *Closed Area II Access Area.* For the 2006 fishing year, the research set-aside for the Closed Area II Access Area is 346,170 lb (157 mt).

(iv) *Nantucket Lightship Access Area.* For the 2006 and 2007 fishing years, the research set-asides for the Nantucket Lightship Access Area are 230,780 lb (105 mt) and 157,454 lb (71 mt), respectively.

(v) *Elephant Trunk Access Area.* From January 1, 2007, through February 29, 2008, the research set-aside for the Elephant Trunk Access Area is 544,000 lb (247 mt), unless adjusted as specified in (a)(3)(i)(E) of this section.

(2) *Increase of possession limit to defray the costs of sea scallop research.* The Regional Administrator may increase the sea scallop possession limit specified in paragraph (a)(5) of this section or allow additional trips into a Sea Scallop Access Area to defray costs for approved sea scallop research up to the amount specified in paragraph (e)(1) of this section.

(3) *Yellowtail flounder research TAC set-aside.* Vessels conducting research approved under the process described in § 648.56, and in the Access Areas specified in § 648.59(b) through (d) may harvest cumulative yellowtail flounder up to a total amount that equals 0.2 percent of the yellowtail flounder TACs established annually, according to the specification procedure described in § 648.85(a)(2), and subject to the possession limits specified in paragraph (a)(5)(ii)(C) of this section. Once 0.2 percent of the yellowtail flounder TACs established according to the specification procedure described in § 648.85(a)(2) has been harvested by research vessels, research may no longer be authorized in the applicable Access Area.

(f) *VMS polling.* For the duration of the Sea Scallop Area Access Program, as described in this section, all sea scallop vessels equipped with a VMS unit shall be polled at a minimum of twice per hour, regardless of whether the vessel is enrolled in the Sea Scallop Area Access Program. Vessel owners shall be

responsible for paying the costs of polling twice per hour.

(g) *General category scallop vessels.* (1) A vessel issued a general category scallop permit, except a vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the general category Access Area fishery, may only fish in the Closed Area I, Closed Area II, and Nantucket Lightship Sea Scallop Access Areas specified in § 648.59(b) through (d), subject to the seasonal restrictions specified in § 648.59(b)(4), (c)(4), and (d)(4), and subject to the possession limit specified in § 648.52(a), and provided the vessel complies with the requirements specified in paragraphs (a)(1), (a)(2), (a)(6) through (a)(9), (d), (e), (f), and (g) of this section, and § 648.85(c)(3)(ii). A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the Sea Scallop Area Access program as specified in paragraph (a)(2) of this section is not subject to the restrictions and requirements specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and this paragraph (g), and is prohibited from retaining scallops on such trips.

(2) *Gear restrictions.* A general category vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) must fish with dredge gear only. The combined dredge width in use by, or in possession on board, general category scallop vessels fishing in the Access Areas described in § 648.59(b) through (d) may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(3) *Scallop TAC.* A general category vessel authorized to fish in the Access Areas specified in § 648.59(b) through (d) may land scallops, subject to the possession limit specified in § 648.52(a), unless the Regional Administrator has issued a notice that the scallop TAC in the Access Area has been or is projected to be harvested. Upon a determination from the Regional Administrator that the scallop TAC for a specified Access Area, as specified in this paragraph (g)(3), has been, or is projected to be harvested, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act.

(i) *Closed Area I Access Area.* 86,414 (38 mt) in 2007.

(ii) *Closed Area II Access Area.* 346,170 (157 mt) in 2006.

(iii) *Nantucket Lightship Access Area.* 230,780 lb (105 mt) in 2006, and 157,454 lb (71 mt) in 2007.

(iv) *Elephant Trunk Access Area.* 544,000 lb (247 mt) from January 1, 2007, through February 29, 2008, unless adjusted as specified in paragraph (a)(3)(i)(E) of this section.

(v) *Possession Limits*—(A) *Scallops.* A vessel issued a NE Multispecies permit and a general category scallop permit that is fishing in an approved SAP under § 648.85 under multispecies DAS that has not enrolled in the general category Access Area fishery is prohibited from possessing scallops. A general category scallop vessel authorized to fish in the Access Areas specified in § 648.59(b) through (e) may possess scallops up to the possession limit specified in § 648.52(b), subject to a limit on the total number of trips that can be taken by all such vessels into the Access Areas, as specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii). Upon a determination by the Regional Administrator that the total number of trips allowed for general category vessels have been or are projected to be taken, the Regional Administrator shall publish notification of this determination in the **Federal Register**, in accordance with the Administrative Procedure Act, and general category vessels may no longer fish within the specified Access Area.

(B) *Other species.* Except for vessels issued a general category scallop permit and fishing under an approved NE multispecies SAP under NE multispecies DAS, general category vessels fishing in the Access Areas specified in § 648.59(b) through (d) are prohibited from possessing any species of fish other than scallops.

(4) *Number of trips.* A general category scallop vessel may not fish for, possess, or land scallops in or from the Access Areas specified in § 648.59(b) through (e) after the effective date of the notification published in the **Federal Register**, stating that the total number of trips specified in § 648.59(b)(5)(ii), (c)(5)(ii), (d)(5)(ii), and (e)(4)(ii) have been, or are projected to be, taken by general category scallop vessels.

■ 17. In § 648.85, paragraphs (c)(1) introductory text and (c)(3)(ii) are revised to read as follows:

§ 648.85 Special management programs.

* * * * *

(c) * * *

(1) *Yellowtail flounder bycatch TAC allocation.* An amount of yellowtail flounder equal to 10 percent of the total yellowtail flounder TAC for each of the stock area specified in paragraphs (c)(1)(i) and (c)(1)(ii) of this section may be harvested by scallop vessels subject to the restrictions of this paragraph. Limited access scallop vessels enrolled in the Sea Scallop Area Access Program and fishing within the Area Access areas defined at § 648.59(b) through (d) may harvest yellowtail flounder up to 9.8 percent of the applicable yellowtail flounder TAC. Scallop vessels participating in approved research under the process described in § 648.56, and fishing in the Access Areas specified in § 648.59(b) through (d), may harvest 0.2 percent of the applicable yellowtail flounder TAC. The amount of yellowtail flounder that may be harvested in each fishing year under this section shall be specified in a small entity compliance guide.

* * * * *

(3)* * *

(ii) If the Regional Administrator determines that the yellowtail flounder bycatch TAC allocation specified under paragraph (c)(1)(i) or (c)(1)(ii) of this section has been, or is projected to be harvested, scallop vessels may not fish within the applicable Access Area for the remainder of the fishing year. The Regional Administrator shall publish notification in the **Federal Register**, in accordance with the Administrative Procedure Act, to notify vessels that they may no longer fish within the applicable Access Area for the remainder of the fishing year.

[FR Doc. 06–5136 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 101

[CBP Dec. 06–15; USCBP–2005–0001]

Closing of the Port of Noyes, Minnesota, and Extension of the Limits of the Port of Pembina, North Dakota

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Homeland Security regulations pertaining to the field organization of the Bureau of Customs and Border Protection by closing the port of entry of Noyes, Minnesota, and extending the limits of the port of entry of Pembina, North Dakota, to include the rail facilities located at Noyes. The closure and extension are the result of

the closure by the Canadian Customs and Revenue Agency of the Port of Emerson, Manitoba, Canada, which is located north of the Port of Noyes, and the close proximity of the Port of Noyes to the Port of Pembina.

DATES: Effective July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Dennis Dore, Office of Field Operations, 202–344–2776.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 2005, the Bureau of Customs and Border Protection (CBP) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (70 FR 47151) proposing to close the Port of Noyes, Minnesota, and extend the limits of the Port of Pembina, North Dakota, to include the rail facilities located at Noyes. The reason for the proposed rulemaking was that on June 8, 2003, the Canadian Customs and Revenue Agency closed the East Port of Emerson, Manitoba, Canada, which is located north of the Port of Noyes. The factors influencing their decision to close the Port of Emerson included the age of the facility, the close proximity of a port at Emerson West, declining workload, and resource considerations. The Port of Noyes, which is located two miles from the CBP Port of Pembina, processes on average three trucks, 50 vehicles, 154 passengers and three trains per day. CBP did not receive any comments on the NPRM.

As part of a continuing program to utilize more efficiently its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, CBP is closing the Port of Noyes and extending the limits of the Port of Pembina as proposed. CBP is extending the limits of the Port of Pembina to encompass the railroad yard located at Noyes, Minnesota, owned by the Canadian Pacific Railway and the Burlington Northern Santa Fe Railway. The Port of Pembina will assume responsibility for processing trains as they arrive at Noyes. However, other traffic must utilize the border crossing within the City of Pembina and will no longer be processed at Noyes. The office facility at Noyes will continue to be used to support the needs of several Border Patrol agents and Immigration and Customs Enforcement (ICE) agents. Security gates and surveillance cameras have also been installed at the Port of Noyes to ensure continued remote monitoring of that location by the Port of Pembina.

New Port Limits of the Port of Pembina, North Dakota

Accordingly, CBP is amending 19 CFR 101.3(b)(1) to reflect that the new limits of the port of entry of Pembina, North Dakota, are as follows:

City of Pembina, North Dakota, and the rail facilities located at Noyes, Minnesota.

Authority

These changes are being made pursuant to 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624, and the Homeland Security Act of 2002, Pub. L. 107–296 (November 25, 2002).

Congressional Notification

On September 15, 2003, the Commissioner of CBP notified Congress of CBP's intention to close the Port of Noyes, Minnesota, fulfilling the congressional notification requirements of 19 U.S.C. 2075(g)(2) and section 417 of the Homeland Security Act (6 U.S.C. 217).

The Regulatory Flexibility Act and Executive Order 12866

With DHS approval, CBP establishes, expands and consolidates CBP ports of entry throughout the United States to accommodate the volume of CBP-related activity in various parts of the country. This regulatory action will not have a significant economic impact on a substantial number of small entities. Accordingly, it is certified that this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

In addition, DHS and the Office of Management and Budget have determined that this final rule does not constitute a significant regulatory action as defined under Executive Order 12866.

Signing Authority

The signing authority for this document falls under 19 CFR 0.2(a). Accordingly, the final rule is signed by the Secretary of Homeland Security.

List of Subjects in 19 CFR Part 101

Customs ports of entry, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

■ For the reasons set forth above, 19 CFR part 101 is amended as set forth below.

■ 1. The general authority citation for part 101 continues to read and the specific authority citation for § 101.3 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a.

Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b;

* * * * *

§ 101.3 [Amended]

■ 2. Amend § 101.3(b)(1) as follows:

■ a. Under the state of Minnesota, remove the entry ''Noyes'' from the ''Ports of entry'' column and the corresponding entry ''E.O. 5835, Apr. 13, 1932.'' from the ''Limits of port'' column; and

■ b. Under the state of North Dakota, adjacent to Pembina, add in the ''Limits of port'' column the citation ''CBP Dec. 06–15''.

Dated: June 2, 2006.

Michael Chertoff,

Secretary.

[FR Doc. E6–8960 Filed 6–7–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxibendazole Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for revised food safety labeling for oxibendazole paste administered orally to horses as an antiparasitic.

DATES: This rule is effective June 8, 2006.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 121–042 for use of ANTHELCIDE EQ (oxibendazole) Paste administered orally to horses as an antiparasitic. The supplemental NADA provides for revised food safety labeling. The supplemental NADA is approved as of April 12, 2006, and the regulations are amended in 21 CFR 520.1638 to reflect the approval.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1638 [Amended]

■ 2. In paragraph (c)(3) of § 520.1638, remove ''Not for use in horses intended for food.'' and add in its place ''Not for use in horses intended for human consumption.''

Dated: May 26, 2006.

Steven D. Vaughn,

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

[FR Doc. E6–8894 Filed 6–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxibendazole Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for revised food safety labeling for oxibendazole suspension administered orally to horses as an antiparasitic.

DATES: This rule is effective June 8, 2006.

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

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed a supplement to NADA 109–722 for use of ANTHELCIDE EQ (oxibendazole) Suspension administered orally to horses as an antiparasitic. The supplemental NADA provides for revised food safety labeling. The supplemental application is approved as of April 17, 2006, and the regulations are amended in 21 CFR 520.1640 to reflect the approval.

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

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

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

List of Subjects in 21 CFR Part 520

Animal drugs.

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

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

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

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

§ 520.1640 [Amended]

■ 2. Amend paragraph (c)(3) of § 520.1640 by removing ''Not for use in horses intended for food.'' and adding in its place ''Not for use in horses intended for human consumption.''.

Dated: May 26, 2006.

Steven D. Vaughn,

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

[FR Doc. E6–8953 Filed 6–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice 5437]

RIN 1400–AC16

Au Pair Exchange Programs

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department of State (Department) adopts as final certain proposed amendments to existing au pair regulations. These changes will permit au pair sponsors to request a one-time extension of six, nine, or 12 months beyond an au pair participant's original 12-month period of program participation).

DATES: *Effective Date:* This rule is effective July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or email at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: In February 2004, the Department of State announced a pilot program whereby Department designated au pair sponsors could request the extension of program participation beyond the original 12-month maximum period afforded au pair participants. The Department has completed its review of the Au Pair Pilot Extension Program and has determined that au pair extensions enhance the overall success of this program. Both host families and au pair participants have enthusiastically embraced the extension concept. Accordingly, the Department is adopting the amendment of program regulations to permit designated sponsors of the au pair program to submit requests to the Department for consideration of program extensions for six, nine, or 12 month durations for first-year au pair participants beyond the maximum duration of participation allowed under Section 62.31(c)(1).

Analysis of Comments

The Department received a total of 1 comment on the proposed rule for Au Pair extension requests. However, the

comment requested substantive changes to the existing au pair regulations and did not address the specific changes stated in the proposed rule.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a final rule, after it was published as a proposed rule on February 2, 2006.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural Exchange Programs.

■ Accordingly, 22 CFR part 62 is to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The Authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

■ 2. Section 62.31 is amended by revising paragraph (k) and adding paragraphs (o) and (p) to read as follows:

§ 62.31 Au pairs.

* * * * *

(k) *Educational component.* Sponsors must:

(1) Require that during their initial period of program participation, all EduCare au pair participants complete not less than 12 semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions and that all other au pair participants complete not less than six semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of au pairs in accredited U.S. post secondary institutions and to pay the cost of such academic course work in an amount not to exceed $1,000 for EduCare au pair participants and in an amount not to exceed $500 for all other au pair participants.

(2) Require that during any extension of program participation, all participants (*i.e.*, Au Pair or EduCare) satisfy an additional educational requirement, as follows:

(i) For a nine or 12-month extension, all au pair participants and host families shall have the same obligation for coursework and payment therefore as is required during the initial period of program participation.

(ii) For a six-month extension, EduCare au pair participants must complete not less than six semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of participation, host family participants must agree to facilitate the enrollment and attendance of au pairs at accredited U.S. post secondary institutions and to pay the cost of such academic coursework in an amount not to exceed $500. All other au pair participants must complete not less than three semester hours (or their equivalent) of academic credit in formal educational settings at accredited U.S. post-secondary institutions. As a condition of program participation, host family participants must agree to facilitate the enrollment and attendance of au pairs at accredited U.S. post secondary institutions and to pay the cost of such academic coursework in an amount not to exceed $250.

* * * * *

(o) *Extension of Program.* The Department, in its sole discretion, may approve extensions for au pair participants beyond the initial 12-month program. Applications to the Department for extensions of six, nine, or 12 months, must be received by the Department not less than 30 calendar days prior to the expiration of the exchange visitor's initial authorized stay in either the Au Pair or EduCare program (*i.e.*, 30-calendar days prior to the program end date listed on the exchange visitor's Form DS–2019). The

request for an extension beyond the maximum duration of the initial 12-month program must be submitted electronically in the Department of Homeland Security's Student and Exchange Visitor Information System (SEVIS). Supporting documentation must be submitted to the Department on the sponsor's organizational letterhead and contain the following information:

(1) Au pair's name, SEVIS identification number, date of birth, the length of the extension period being requested;

(2) Verification that the au pair completed the educational requirements of the initial program; and

(3) Payment of the required non-refundable fee (see 22 CFR 62.90) via Pay.gov.

(p) *Repeat Participation.* Exchange visitors who have participated in the Au Pair Program are not eligible for repeat participation.

Dated: June 2, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–8958 Filed 6–7–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9254]

RIN 1545–BB25

Guidance Under Section 1502; Suspension of Losses on Certain Stock Dispositions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Tuesday, March 14, 2006 (71 FR 13008). The regulations apply when a member of a consolidated group transfers subsidiary stock at a loss. They also apply when a member holds loss shares of subsidiary stock and the subsidiary ceases to be a member of the group.

DATES: This correction is effective March 14, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa Abell (202) 622–7700 or Martin Huck (202) 622–7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations (TD 9254) that are the subject of this correction are under section 1502 of the Internal Revenue Code.

Need for Correction

As published, final regulations (TD 9254) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the final regulations (TD 9254) which was the subject of FR Doc. 06–2411, is corrected as follows:

On page 13009, column 2, in the preamble, under the paragraph heading ''Special Analyses'', line 4 from the bottom of the paragraph, the language ''these regulations was submitted to the'' is corrected to read ''these regulations were submitted to the''.

Guy R. Traynor,

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

[FR Doc. E6–8890 Filed 6–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–46; Re: Notice No. 45]

RIN: 1513–AB02

Establishment of the San Antonio Valley Viticultural Area (2004R–599P)

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

ACTION: Final rule; Treasury decision.

SUMMARY: This Treasury decision establishes the San Antonio Valley viticultural area in southwestern Monterey County, California, within the existing Central Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: *Effective Date:* July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (the FAA Act, 27 U.S.C. 201 *et seq.*) requires that alcohol beverage labels provide consumers with adequate information regarding product identity and prohibits the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers these regulations.

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

Definition

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

Requirements

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

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographical features, such as climate, soils, elevation, and physical features,

that distinguish the proposed viticultural area from surrounding areas;

• A description of the specific boundary of the proposed viticultural area, based on features shown on United States Geological Survey (USGS) maps; and

• A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

San Antonio Valley Petition and Rulemaking

General Background

Paul Getzelman, Paula Getzelman, and Steve Cobb of Lockwood, California, petitioned TTB to establish the ''San Antonio Valley'' viticultural area in southwestern Monterey County, California, in a valley situated in the Santa Lucia mountain range. The area is entirely within the existing multi-county Central Coast viticultural area (27 CFR 9.75). According to the petitioners, there are approximately 235 square miles, or 150,400 acres of land, within the San Antonio Valley viticultural area. Over 700 of these acres are planted to vines.

We summarize below the evidence presented in support of the petition.

Name Evidence

According to the petitioners, the name ''San Antonio Valley'' dates back to 1771, when a small party of Spanish missionaries headed by Father Junipero Serra entered the oak-mantled valley in what was to become southern Monterey County. Near the river that he christened ''El Rio de San Antonio,'' they established a mission and named it ''San Antonio de Padua'' in honor of Saint Anthony of Padua. They later moved the mission to a location a couple of miles north at the confluence of the San Miguel and San Antonio Rivers, which provided the missionaries a more suitable place to plant grape vines for making sacramental wine for the Mission.

The petitioners cite the following reference sources as evidence of the historical and current usage of the name ''San Antonio Valley'':

• ''Memories of the San Antonio Valley,'' by Rachel Gillett, San Antonio Valley Historical Society, 1990. Ms. Gillet refers repeatedly to the area as ''San Antonio Valley.'' She states that the township of San Antonio was surveyed in 1865, near the El Camino Real or King's Highway (currently Jolon Road). She further notes that a San Antonio post office operated in the township from 1867 to 1887.

• ''California Place Names; The Origin and Etymology of Current Geographical Names,'' by Erwin G. Gudde and William Bright, University of California Press, Fourth Edition. The authors note that the name San Antonio, which appears in the titles of many land grants and claims, has survived in a number of places, including in the names of the San Antonio River, San Antonio Mission, San Antonio Creek, and San Antonio Valley.

• ''Monterey County Place Names, a Geographical Dictionary,'' by Donald Thomas Clark, Kestrel Press, 1991. The author writes of the San Antonio Valley, ''this is the valley through which the San Antonio River flows.''

• Pelican Network Guide, an Internet travel site, states the following about the San Antonio Valley: ''Nearly secret, San Antonio Valley is an intriguing * * * destination. About two and a half hours from Silicon Valley, yet far more remote in history, it provides environmental, literary, cultural, and historical rewards. San Antonio Valley is the setting for John Steinbeck's 'To an Unknown God', an early novel of his spiritual and ecological themes.'' (*See http://www.pelicannetwork.net/getaways.sanantonio.valley.htm.*)

The petitioners state that although the valley has been known by various names, often due to changes in ownership under the Spanish land grant system, the name San Antonio Valley has endured. According to the petitioners, local residents have long known the area as San Antonio Valley. The name ''San Antonio'' is used throughout the area-the San Antonio Union School, San Antonio Reservoir, and San Antonio River all can be found on the USGS map for Williams Hill, California. The petitioners note that while the southern portion of the proposed viticultural area is also known as Lockwood Valley, the name ''Lockwood'' is most accurately applied to a township in the southern portion of the San Antonio Valley.

Boundary Evidence

The boundaries for the proposed viticultural area are the natural geographical boundaries of the San Antonio Valley. The proposed area, which includes approximately 150,400 acres of flat land and gently rolling hills, extends to the surrounding hillsides that rise to an elevation of approximately 2,200 feet. This valley, formed by the watershed of the San Antonio River, is situated in the Santa Lucia mountain range between the Pacific coast and the Salinas Valley. The San Antonio River flows across the Santa Lucia range in a southeasterly direction, then turns to the east and flows into the Salinas River. A dam built in the 1950s on the river near the San Luis Obispo County line created the San Antonio Reservoir, which dominates the southeastern corner of the proposed San Antonio Valley viticultural area.

The proposed viticultural area's northwest boundary slices through part of the Fort Hunter Liggett Military Reservation. While the fort is currently under the jurisdiction of the United States Government, the petitioners note that it could be offered for sale to the public in the future. Because the military reservation encompasses much of the area in and around the boundary of the proposed San Antonio Valley viticultural area and shares the same growing conditions, the petitioners speculate that future uses of the land could include vineyards.

Distinguishing Features

According to the petitioners, the San Antonio Valley's basin shape, elevation, climate, and soils contribute to significantly different growing conditions from those found in the adjoining areas within the extensive Central Coast viticultural area. The petitioners note that the Spanish missionaries were the first to recognize the valley's unique grape growing conditions. This viewpoint is reflected in the Pelican Network Guide, which states: ''The Spaniards, who liked the site for wine making because of its soil and climate, were right on the money.'' The growing conditions found in the proposed San Antonio Valley viticultural area are described by the petitioners below.

Elevation

The elevation of the proposed San Antonio Valley viticultural area ranges from 850 feet to as high as 2,530 feet. The proposed area is surrounded by the higher Santa Lucia range to the west and south and a lower ridge averaging 1,500 feet in elevation to the north and east. According to the petitioners, the shape and elevation of the proposed area results in higher daytime and lower nighttime temperatures than in neighboring areas with lower elevations, such as the Monterey viticultural area (27 CFR 9.98) where the elevation ranges from 50 to 540 feet. The petitioners assert that the daily heating-cooling cycle produced by the proposed San Antonio Valley viticultural area's higher elevation allows grapes to achieve full, rich fruit flavor and color while retaining a crisp acidity.

Soils

Soil data submitted by the petitioners affirms that the San Antonio Valley has a distinctive soil profile comprised of

nearly 40 different soil series, the majority of them alluvial in nature. The remaining soils found in the uplands consist of material from weathered sandstone and shale. Current vineyards are planted on flat to moderately sloping terrain. The principal soil series are Arbuckle gravelly loam, Chamise shaly loam, Lockwood loam and shaly loam, Placentia sandy loam, Placentia-Arbuckle complex, Rincon clay loam, Nacimiento silty clay loam, and Pinnacles coarse sandy loam. The submitted soil data for the area came from ''Soil Survey of Monterey County, California,'' published by the Soil Conservation Service of the U.S. Department of Agriculture.

The petitioners note that these soils differ from the soils of neighboring areas of Monterey County. In the San Bernabe viticultural area (27 CFR 9.171), for example, the soils, remnants of ancient sand dunes, are mostly of the eolian type. The adjacent Hames Valley viticultural area (27 CFR 9.147) has a very homogeneous soil profile with 75 percent of the soils derived from the Lockwood series. In contrast, the San Antonio Valley has a much more varied soil profile with the majority of the soil series being alluvial in nature.

Climate

The petitioners state that the San Antonio Valley's climate is much less affected by marine air than other areas of the Central Coast. A stable layer of marine air typically dominates coastal California weather causing higher humidity, cooler maximum temperatures, and warmer minimum temperatures. This effect occurs with greater duration in valleys close to the coast, such as Carmel Valley, Edna Valley, Santa Ynez Valley, and the lower Salinas Valley. Its influence decreases as one travels inland, especially in the upper areas of the Salinas Valley. According to the petitioners, the inland position of the San Antonio Valley and its basin shape act to block the intrusion of this marine air. Only when the upper level of atmospheric pressure allows the layer of marine air to expand to greater than its typical depth of 1,000—1,500 feet does the San Antonio Valley experience a marine air influence. This lack of a marine air influence creates a unique microclimate for the area, with drier, hotter days in summer and cooler nights in the spring and fall.

As evidence of this climatic distinction, the petitioners submitted temperature comparisons based on data from the National Weather Center. A comparison of growing season average monthly temperatures between San Antonio Valley and nearby areas (Carmel Valley, Gonzales, Arroyo Seco, King City, and Paso Robles) shows that San Antonio Valley is considerably cooler than the other areas during April. The petitioners state that this is due to the San Antonio Valley's basin shape and drier conditions, factors that they state also cause the San Antonio Valley to experience more frequent frost episodes. However, from June through September the proposed San Antonio viticultural area averages warmer temperatures than the other areas, with the exception of Paso Robles, an area further inland than the San Antonio Valley.

The petitioners also submitted a comparison of both total growing season degree days and monthly degree days for the same places. (A measurement of heat accumulation during the growing season, one degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth; see ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974.) These comparisons show that San Antonio Valley typically accumulates more than 3,000 degree days during the growing season. Paso Robles accumulates 3,600 degree days for the same period, while Carmel Valley, Gonzales, and Arroyo Seco all accumulate fewer than 2,400 degree days each. King City accumulates roughly as many degree days for the growing season as San Antonio Valley. However, the monthly comparison shows that in King City the degree days accumulate steadily through the months, while in the San Antonio Valley the increase and decrease in degree days is much more dramatic, with most of the increase occurring during the summer months.

In addition to the temperature comparisons described above, the petitioners also submitted a microclimate comparison of the proposed San Antonio Valley viticultural area and two adjacent existing viticultural areas, Paso Robles and Hames Valley (27 CFR 9.84 and 9.147, respectively). The data covered a two-week period from September 16–29, 2003, and was collected at sites located on the Fort Hunter Liggett Military Reservation within the proposed viticultural area, at Bradley in the Hames Valley viticultural area, and at the Paso Robles Airport within the Paso Robles viticultural area. The petitioners submitted the data in the form of graphs exhibiting differences in temperature, dew point, humidity, and wind speeds between the three areas.

According to the graphs, wind speeds for the period were significantly lower in San Antonio Valley than in Hames Valley or Paso Robles. The petitioners state that this is because the topography of the proposed viticultural area blocks the strongest daily afternoon winds created by marine air influence. Dew points for the period were shown to be at least 10 degrees lower in the proposed San Antonio Valley viticultural area than in the other viticultural areas, reflecting the proposed viticultural area's lower humidity. The temperature data, according to the petitioners, shows that the proposed San Antonio Valley viticultural area also has a temperature profile that differs markedly from that of the Hames Valley or Paso Robles viticultural areas. Generally, this data shows that the proposed area is less affected by marine air intrusions. The petitioners note that during times of marine air influence, the proposed San Antonio Valley viticultural area has a much greater temperature variance than the two existing viticultural areas where the marine air moderates the temperatures. They also note that on days with little marine air influence, the proposed area experiences less temperature variation than the two existing areas.

Thus, the data submitted by the petitioners shows the climate in the proposed San Antonio Valley viticultural area to be significantly different in regard to temperature, wind, humidity, and degree day accumulations from surrounding existing viticultural areas. These differences, they contend, are a reflection of the proposed area's basin geography, making the grape growing environment in the proposed San Antonio Valley viticultural area unique relative to other Central Coast viticultural areas.

Notice of Proposed Rulemaking and Comments Received

On May 19, 2005, TTB published a notice of proposed rulemaking regarding the establishment of the San Antonio Valley viticultural area in the **Federal Register** (70 FR 28865) as Notice No. 45. In that notice, TTB requested comments by July 18, 2005, from all interested persons. TTB received two comments in response to the notice.

The first comment, from the Monterey County Vintners & Growers Association, supported the establishment of the new area, stating that its designation provides consumers with a better tool for distinguishing between the wine producing areas of Monterey County. The second comment, from Anthony

Riboli, owner of San Antonio Winery in Los Angeles, California, opposed the creation of the viticultural area. Mr. Riboli states that he believes consumers will confuse the viticultural area name with the name of his winery. He did not, however, submit any evidence to support this position. He also notes that he owns a trademark for the brand name ''San Antonio Winery.''

TTB does not agree with the comment of Anthony Riboli that consumers will confuse the name of his winery, San Antonio Winery, with the name of the proposed viticultural area. The name ''San Antonio'' is a common place name that is used throughout the United States, most notably for the well-known city in Texas, and therefore we do not believe that consumers would specifically associate the name ''San Antonio Valley'' with Mr. Riboli's winery in Los Angeles. In addition, as we proposed in Notice No. 45, we will recognize only the entire name ''San Antonio Valley'' as a name of viticultural significance upon establishment of the proposed viticultural area. Thus, the establishment of this viticultural area will have no impact on the San Antonio Winery's ability to use its brand name on its wine labels (*See* the Impact on Current Wine Labels discussion below).

Furthermore, we do not believe that Mr. Riboli's trademark registration of the brand name ''San Antonio Winery'' has any bearing on this case. We believe the modifier ''valley'' within the name ''San Antonio Valley'' would sufficiently differentiate the viticultural area name from the San Antonio Winery name.

Additionally, it has long been the position of TTB and its predecessor, the Bureau of Alcohol, Tobacco, and Firearms (ATF), that trademark registration of a name does not limit our authority to establish a viticultural area with the same or similar name. In T.D. ATF–278, which established the Wild Horse Valley viticultural area, ATF stated:

> It is not the policy of ATF to become involved in purely private disputes involving proprietary rights, such as trademark infringement suits. However, in the event a direct conflict arises between some or all of the rights granted by a registered trademark under the Lanham Act and the right to use the name of a viticultural area established under the FAA Act, it is the position of ATF that the rights applicable to the viticultural area should control. ATF believes that the evidence submitted by the petitioner establishes that the designation of the Wild Horse Valley viticultural area is in conformance with the laws and regulations. Accordingly, ATF finds that Federal registration of the term ''Wild Horse'' does not limit the Bureau's authority to establish a viticultural area known as ''Wild Horse Valley.'' (See 53 FR 48244, November 30, 1988.)

This policy on the relationship between trademarks and viticultural areas was upheld in *Sociedad Anonima Vina Santa Rita* v. *Dept. of Treasury,* 193F. Supp. 2nd 6 (D.D.C 2001). In that decision, the court held that ''while the Lanham Act affords Plaintiff certain rights and causes of action with respect to the use of its marks, the ATF's decision to approve the Santa Rita Hills [viticultural area] does not impede those rights.'' (See *Santa Rita* at 22.) In other words, by this rule, TTB is not creating a name but recognizing a pre-existing geographic fact.

TTB Finding

After careful review of the San Antonio Valley viticultural area petition and the comments received, TTB finds that the evidence submitted supports the establishment of the proposed viticultural area. Therefore, under the authority of the Federal Alcohol Administration Act and part 4 of our regulations, we establish the ''San Antonio Valley'' viticultural area in Monterey County, California, effective 30 days from this document's publication date.

Boundary Description

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

Maps

The petitioners provided the required maps, and we list them below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. With the establishment of this viticultural area and its inclusion in part 9 of the TTB regulations, its name, ''San Antonio Valley,'' is recognized as a name of viticultural significance. Consequently, wine bottlers using ''San Antonio Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use as an appellation of origin the name of a viticultural area specified in part 9 of the TTB regulations, at least 85 percent of the grapes used to make the wine must have been grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label.

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

Regulatory Flexibility Act

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

Executive Order 12866

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

Drafting Information

Jennifer Berry of the Regulations and Rulings Division drafted this document.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

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

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.194 to read as follows:

§ 9.194 San Antonio Valley.

(a) *Name.* The name of the viticultural area described in this section is ''San Antonio Valley''. For purposes of part 4

of this chapter, ''San Antonio Valley'' is a term of viticultural significance.

(b) *Approved Maps.* The appropriate maps for determining the boundary of the San Antonio Valley viticultural area are ten United States Geological Survey 1:24,000 scale topographic maps. They are titled:

(1) Hames Valley, California, 1949, photorevised 1978;

(2) Tierra Redonda Mountain, California, 1949, photorevised 1979;

(3) Bradley, California, 1949, photorevised 1979;

(4) Bryson, California, 1949, photorevised 1979;

(5) Williams Hill, California, 1949, photorevised 1979;

(6) Jolon, California, 1949;

(7) Alder Peak, California, 1995;

(8) Bear Canyon, California, 1949, photoinspected 1972;

(9) Cosio Knob, California, 1949, photorevised 1984; and

(10) Espinosa Canyon, California, 1949, photorevised 1979.

(c) *Boundary.* The San Antonio Valley viticultural area is located in Monterey County, California. The boundary of the San Antonio Valley viticultural area is as described below:

(1) The beginning point is at the southeast corner of section 14, T23S, R9E, on the Hames Valley map;

(2) From the beginning point, proceed southeast in a straight line for approximately 5 miles across sections 24 and 25, T23S, R9E, and sections 30, 31, and 32, T23S, R10E, and section 5, T24S, R10E, to the southeast corner of section 5, on the Tierra Redonda Mountain map; then

(3) Continue southeast in a straight line for approximately 3.25 miles through sections 9, 16, 15, and 22, T24S, R10E, to the mid-point of the eastern boundary of section 22 on the Bradley map; then

(4) Proceed straight south for approximately 2.5 miles along the eastern boundary line of sections 22, 27, and 34, T24S, R10E, to the Monterey-San Luis Obispo County line; then

(5) Follow the Monterey-San Luis Obispo County line west for approximately 7.0 miles, back onto the Tierra Redonda Mountain map, to the southwest corner of section 34, T24S, R9E; then

(6) Proceed northwest in a straight line for approximately 17 miles, crossing sections 33, 32, 29, 30, and 19, T24S, R9E, and sections 24, 13, 14, 10, 9, and 4, T24S, R8E, on the Bryson map, section 5, T24S, R8E in the southwest corner of the Williams Hill map, section 32, T23S, and sections 23, 22, 15, and 16, T23S, R7E, on the Jolon map, to an 1,890-foot peak located approximately 2,100 feet west of section 8, T23S, R7E; then

(7) Continue northwest in a straight line for approximately 9 miles, crossing the Alder Peak map between Milpitas Grant and Stony Valley, and sections 9, 4, and 5, T22S, R6E, on the Bear Canyon map, to a 2,713-foot peak located in section 5, T22S, R6E; then

(8) Proceed east-northeast in a straight line for approximately 3.9 miles, passing onto the Hunter Liggett Military Reservation and crossing the San Antonio River, to a 2,449-foot peak on the Hunter Liggett Military Reservation; then

(9) Proceed northeast in a straight line for approximately 2.5 miles, crossing Mission Creek, across sections 30 and 29, T21S, R7E, on the Cosio Knob map to the 2,530-foot peak of Cosio Knob; then

(10) From Cosio Knob, proceed east-southeast in a straight line for approximately 9.5 miles across sections 29, 28, 27, 26, 35, and 36, T21S, R7E, sections 31 and 32, T21S, R8E, and sections 5, 4, 3, and 2, T22S, R8E, on the Espinosa Canyon map, to a 1,811-foot peak located in section 2; then

(11) Proceed southeast in a straight line for approximately 10.4 miles across sections 2, 11, 12, and 13, T22S, R8E, and sections 18 and 19, T22S, R9E, on the Espinosa Canyon map, sections 19, 30, 29, 32, and 33, T22S, R9E, on the northwest corner of the Williams Hill map, and sections 4, 3, 10, 11, and 14, T23S, R9E, on the Hames Valley map, to the beginning point at the southeast corner of section 14, T23S, R9E.

Signed: March 6, 2006.

John J. Manfreda,

Administrator.

Approved: March 16, 2006.

Timothy E. Skud,

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

[FR Doc. E6–8854 Filed 6–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[Docket No. MO–038–FOR]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Previously we substituted direct Federal enforcement for portions of the Missouri program. Missouri regained full authority for its program on February 1, 2006. Missouri proposed to amend its approved regulatory program and submitted a temporary emergency regulatory program rule (emergency rule) to revise Missouri's regulations regarding bonding of surface coal mining and reclamation operations. The emergency rule will allow Missouri to transition from a ''bond pool'' approach to bonding to a ''full cost bond'' approach in a timely manner. Missouri proposed to revise its program to improve operational efficiency.

DATES: *Effective Date:* June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Chief, Alton Field Division. Telephone: (618) 463–6460. E-mail: *ifomail@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

II. Submission of the Amendment

Previously we substituted direct Federal enforcement for portions of the Missouri program. Missouri regained full authority for its program on February 1, 2006. By letter dated October 31, 2005, Missouri submitted an emergency rule to amend its approved regulatory program under SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MO–665). The purpose of the emergency rule is to revise Missouri's regulations regarding bonding of surface coal mining and reclamation operations to allow Missouri to transition from a ''bond pool'' approach to bonding to a ''full cost bond'' approach in a timely manner. The amendment will also improve operational efficiency. The emergency rule became effective in Missouri on January 1, 2006. Missouri has indicated that, in the near future, it will submit a permanent regulatory program rule (permanent rule) regarding its bonding regulations and that this rule will contain regulatory language that is substantially identical to the language in this emergency rule. If Missouri submits the permanent rule with language that has the same meaning as the emergency rule, we will publish a final rule and Missouri's permanent rule will become part of the Missouri program.

We announced receipt of the amendment in the November 29, 2005, **Federal Register** (70 FR 71425). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on December 29, 2005. We did not receive any comments.

During our review of the amendment, we identified concerns about types of bonds, and criteria and schedule for release of reclamation liability. We notified Missouri of these concerns by telephone and E-mail on November 23 and 29, 2005 (Administrative Record Nos. MO–665.2, MO–665.3, and MO–665.11), and on December 2 and 8, 2005 (Administrative Record Nos. MO–665.5 and MO–665.7).

Missouri responded by E-mail on November 23, 2005, and December 21, 2005, by sending us a revised amendment (Administrative Record Nos. MO–665.2, MO–665.3, and MO–665.10). Because the additional information and/or revisions merely clarified certain provisions of Missouri's amendment, we did not reopen the public comment period.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below. Any revisions that we do not specifically discuss below concern nonsubstantive wording or editorial changes.

A. Minor Revisions to Missouri's Regulations

Missouri's definition for ''regulatory authority,'' found at 10 CSR [Code of State Regulations] 40–8.010(82), means the Land Reclamation Commission (commission), the director, or their designated representatives and employees unless otherwise specified in the State's rules. Missouri proposed to replace the words ''commission'' or ''regulatory authority'' with the word ''director'' in the following regulations: 10 CSR 40–7.011(2)(A), (3)(C), (4)(B), (6)(B)1., 5., 6., and 7., (6)(C)1. and 8., (6)(D)2., and (6)(D)2.B, 3.B, 3.B(I) and 5.C; and 10 CSR 40–7.041(1)(A), (B)1. and (B)2. Missouri proposed to improve operational efficiency by specifying that the director is to perform certain duties. We find that the substitution of the word ''director'' for the words ''commission'' or ''regulatory authority'' will not render Missouri's regulations less effective than the Federal regulations because in accordance with Missouri's definition for regulatory authority, the director is a regulatory authority as is the commission and the certain duties specified in the regulations cited above are not duties reserved solely for the commission according to section 444.810 of Missouri's surface coal mining law. Therefore, we are approving these revisions.

B. Revisions to Missouri's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations.

Topic	Missouri regulation (10 CSR)	Federal counterpart regulation (30 CFR)
Requirement to File a Bond	40–7.011(2)(B)	800.11(d).
Bond Amounts	40–7.011(4)	800.14(a) and (b).
Changing Bond Amounts	40–7.011(5)	800.15.
Personal Bonds Secured by Letters of Credit	40–7.011(6)(C)2.	800.21(b)(2).
Definition for ''Parent Corporation''	40–7.011(6)(D)1.F.	800.23(a).
Self-Bonding	40–7.011(6)(D)2., (6)(D)2.B., (6)(D)2.D.(I) through (III), (6)(D)3., and (6)(D)6.	800.23(b), (b)(2), (b)(4)(i) through (iii), (c), and (f).
Criteria and schedule for release of reclamation liability.	40–7.021(2)(B)5. and 6.	800.40(c).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. 10 CSR 40–7.011 Bond Requirements

1. 10 CSR 40–7.011(1) Definitions

a. Missouri proposed to revise its definition for personal bond in paragraph (1)(C) to read as follows:

> Personal bond means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by negotiable certificates of deposit or irrevocable letters of credit which may be drawn upon by the director if reclamation is not completed or if the permit is revoked prior to completion of reclamation.

The Federal definition for collateral bond found at 30 CFR 800.15(b) means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by one or more of the following: a cash account; negotiable bonds of the United States, a State, or municipality; negotiable certificates of deposit; irrevocable letters of credit; a perfected, first-lien security interest in real property; or other investment-grade rated securities having a rating of AAA, AA, or A or an equivalent rating issued by a nationally recognized securities rating service. The Federal regulation at 30 CFR 800.50 provides for the regulatory authority to forfeit bonds and use funds collected

from bond forfeiture to complete the reclamation plan or portion thereof, on the permit area or increment to which bond coverage applies.

Missouri has chosen to limit the vehicles that support an indemnity agreement to negotiable certificates of deposit and irrevocable letters of credit. Missouri also provides that the director may use funds from personal bonds if reclamation is not completed or if the permit is revoked before the completion of reclamation. We are, therefore, approving Missouri's definition for personal bond because it is no less effective than the above Federal regulations.

b. Missouri proposed to revise its definition for Phase I bond in paragraph (1)(D) to read as follows:

> Phase I bond means performance bond conditioned on the release of sixty percent (60%) of the bond upon the successful completion of Phase I reclamation of a permit area in accordance with the approved reclamation plan.

There is no Federal definition for Phase I bond, however, the Federal regulation at 30 CFR 800.40(c) states that the regulatory authority may release all or part of the bond for the entire permit area or incremental area if the regulatory authority is satisfied that all the reclamation or a phase of the reclamation covered by the bond or portion thereof has been accomplished in accordance with specific schedules for reclamation of Phases I, II, and III. The schedule for Phase I reclamation, found at 30 CFR 800.40(c)(1), involves the operator completing the backfilling, re-grading (which may include the replacement of topsoil), and drainage control of a bonded area in accordance with the approved reclamation plan. When this schedule is complete, the regulatory authority may release 60 percent of the bond. We are approving Missouri's definition for Phase I bond because it is no less effective than the Federal regulation at 30 CFR 800.40(c)(1).

2. 10 CSR 40–7.011(6) Types of Bonds

a. *10 CSR 40–7.011(6)(A) Surety bonds.*

Missouri proposed to revise paragraph (6)(A)8. regarding surety bonds. This paragraph inappropriately refers to a ''bank'' or ''bank charter'' when the subject matter of this paragraph pertains to a surety company. Missouri proposed to delete the language that refers to a ''bank'' or ''bank charter.'' Also, Missouri proposed to correct the incorrect reference citation, 10 CSR 40–7.031(A)(6), so that it correctly reads 10 CSR 40–7.031(1)(F)2. We are approving Missouri's revisions regarding the deletion of the terms ''bank'' and ''bank charter'' because they are inappropriately included in this paragraph that pertains only to surety companies. We are also approving the correction of the incorrect reference citation.

Finally, Missouri proposed that, upon the incapacity of the surety because of bankruptcy or insolvency, or suspension or revocation of its license, the permittee must promptly notify the director. Upon this notification, the director must issue a notice of violation (NOV) against the operator who is without bond coverage specifying that the operator must replace the bond in no more than 90 days. If the NOV is not abated in accordance with the schedule, a cessation order must be issued requiring immediate compliance with 10 CSR 40–3.150(4), Cessation of Operations—Permanent.

The Federal regulation at 30 CFR 800.16(e)(2) sets forth a requirement that upon the incapacity of a bank or surety company by reason of bankruptcy or insolvency, or suspension or revocation of a charter or license, the permittee must be deemed to be without bond coverage and must promptly notify the regulatory authority. When the regulatory authority receives the notification, it must notify the operator in writing to replace the bond in a period not to exceed 90 days. If the operator does not provide an adequate bond, the operator must cease mining and immediately begin reclamation operations in accordance with the approved reclamation plan.

We are approving the above revision because it is no less effective than the Federal regulation at 30 CFR 800.16(e)(2).

b. *10 CSR 40–7.011(6)(B) Personal bonds secured by certificates of deposit.*

i. Missouri proposed to revise paragraphs (6)(B)2., 4., 6., and 7. regarding personal bonds secured by certificates of deposit. Paragraph (6)(B)4. refers to banks or savings and loan companies issuing the certificates of deposit, while paragraphs (6)(B)2., 6., and 7 only refer to banks issuing certificates of deposit. Missouri proposed to revise these paragraphs to make them consistent with paragraph (6)(B)4. Missouri also proposed to remove the term ''Federal Savings and Loan Insurance Corporation (FSLIC)'' from this paragraph because the FSLIC was abolished and the Federal Deposit Insurance Corporation (FDIC) now insures savings and loan companies. We are approving these revisions because the Federal regulation at 30 CFR 800.21(a)(4) implies that banks or savings and loan companies are acceptable sources for certificates of deposit by its reference to certificates of deposits insured by the FDIC or the FSLIC.

ii. Missouri proposed to revise paragraph (6)(B)4. by adding that permittees may not submit, from a single bank or savings and loan company, certificates of deposit totaling more than the maximum insurable amount as determined by the FDIC. We are approving this revision because the Federal regulation at 30 CFR 800.21(a)(4) contains the provision that an individual certificate of deposit cannot be accepted in an amount that is greater than the maximum insurable amount as determined by the FDIC.

iii. Missouri proposed to revise paragraph (6)(B)7. by changing the number of days that an operator has for replacing bond coverage from 60 to 90 days if the operator is without bond because of a bank's or savings and loan company's insolvency or bankruptcy or suspension or revocation of its charter or license. Missouri also proposed to add a requirement to paragraph (6)(B)7. that prohibits an operator from resuming mining operations until after the director has determined that an acceptable bond has been posted. We are approving the revision because the Federal regulation at 30 CFR 800.16(e) provides that the operator must replace the bond in a period not to exceed 90 days and that the operator must not resume mining operations until the regulatory authority has determined that an acceptable bond has been posted.

c. *10 CSR 40–7.011(6)(C) Personal bonds secured by letters of credit.*

i. Missouri proposed to revise paragraph (6)(C)4. as follows:

> The letter of credit shall be issued by a bank authorized to do business in the United States. If the issuing bank is located in another state, a bank located in Missouri must confirm the letter of credit. Confirmations shall be irrevocable and on a form provided by the director;

The Federal regulation at 30 CFR 800.21(b)(1) requires letters of credit to be issued by a bank organized or authorized to do business in the United States. Therefore, we are approving Missouri's proposed revision because it is no less effective than the Federal regulation.

ii. Missouri proposed to revise paragraph (6)(C)9. to require the bond to have a mechanism by which a bank must give prompt notice to the director and the permittee of any action filed alleging the insolvency or bankruptcy of the bank or permittee or alleging any violations which would result in the suspension or revocation of the bank's charter or license to do business.

Missouri also proposed that upon the incapacity of any bank by reason of insolvency or bankruptcy or suspension or revocation of its charter or license, the permittee shall be deemed to be without bond and the director must, upon notification of the incapacity, issue an NOV to the operator who is without bond. The NOV must specify a period not to exceed 90 days in which to replace the bond coverage. In addition, if the NOV is not abated in accordance with the abatement schedule, a cessation order must be issued requiring the immediate compliance with 10 CSR 40–3.150(4) Cessation of Operations—Permanent and the mining operations must not resume until the director has determined that an acceptable bond has been posted.

The Federal regulation at 30 CFR 800.16(e)(1) requires the bond to have a mechanism for a bank or surety company to promptly notify the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the bank, surety company, or permittee or alleging any violations which would result in the suspension or revocation of the bank's or surety company's charter or license to do business. The Federal regulation at 30 CFR 800.16(e)(2) deems the permittee to be without bond coverage upon the incapacity of the bank or surety company by reason of insolvency or bankruptcy or suspension or revocation of its charter or license and requires the permittee to promptly notify the regulatory authority of the incapacity. The regulatory authority upon this notification must notify, in writing, the operator who is without bond coverage, to replace bond coverage in a period not to exceed 90 days. If an adequate bond is not posted, the operator must (1) Cease mining, (2) comply with 30 CFR 816.132 or 30 CFR 817.132, Cessation of Operations: Permanent, and (3) immediately begin reclamation operations in accordance with the reclamation plan.

We are approving Missouri's revisions because they are no less effective than the above Federal regulations.

d. *10 CSR 40–7.011(6)(D) Self-Bonding.*

i. Missouri proposed to revise paragraph (6)(D)8. by changing the time period for replacing bond from 60 days to 90 days if the financial conditions of the permittee or third-party guarantors change so that they no longer satisfy the requirements for being able to post self bonds. Missouri also proposed that if the bond is not replaced in accordance with the schedule set by the director, the operator must immediately begin to conduct reclamation operations in accordance with the reclamation plan.

The Federal regulation at 30 CFR 800.23(g) provides that if the financial conditions of the applicant, parent, or non-parent corporate guarantor change so that the criteria for being able to post self bonds are not met, the permittee must immediately notify the regulatory authority and must post an alternative form of bond within 90 days. If the permittee does not post the alternate bond, the operator must cease mining operations and immediately begin to conduct reclamation operations in accordance with the reclamation plan.

We are approving Missouri's revision because it is no less effective than the Federal regulation at 30 CFR 800.23(g).

3. 10 CSR 40–7.011(7) Replacement of Bonds

Missouri proposed to revise paragraph (7)(A). This paragraph allows permittees to replace existing surety or personal bonds with other surety or personal bonds. Missouri proposed to add self bonds so that permittees may replace existing surety or personal or self bonds with other surety or personal or self bonds.

The Federal regulation at 30 CFR 800.30(a) provides that the regulatory authority may allow a permittee to replace existing bonds with other bonds that provide adequate coverage.

We are approving Missouri's revision because it is no less effective than the Federal regulation at 30 CFR 800.30(a).

D. 10 CSR 40–7.021(2) Criteria and Schedule for Release of Reclamation Liability

1. Missouri proposed to revise paragraphs (2) and (2)(E). Paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Except as described in subsection (2)(E), reclamation liability shall be released in three (3) phases.

Missouri proposed to delete the phrase, ''Except as described in subsection (2)(E),'' so that revised paragraph (2) reads as follows:

(2) Criteria and Schedule for Release of Reclamation Liability. Reclamation liability shall be released in three (3) phases.

Paragraph (2)(E) reads as follows:

(E) All bonding liability may be released in full from undisturbed areas when further disturbances from surface mining have ceased. No bonding shall be released from undisturbed areas before Phase I liability applying to adjacent disturbed lands is released, except that the commission may approve a separate bond release from an area of undisturbed land if the area is not excessively small and can be separated from areas that have been or will be disturbed by a distinct boundary, which can be easily located in the field and which is not so irregular as to make record keeping unusually difficult. The permit shall terminate on all areas where all bonds have been released.

Missouri proposed to delete all the language in this paragraph except the last sentence, so that revised paragraph (2)(E) reads as follows:

(E) The permit shall terminate on all areas where all bonds have been released.

The Federal regulations that pertain to the requirement for releasing Phase I, II, and III performance bonds are found at 30 CFR 800.40(c), however, there are no direct Federal counterpart regulations to 10 CSR 40–7.021(2) and (2)(E). The language being removed from 10 CSR 40–7.021(2) references 10 CSR 40–7.021(2)(E) and both of these paragraphs pertain to the full release of bond, under certain conditions, from undisturbed areas where further disturbance from surface mining have ceased. The Federal regulation at 30 CFR 800.15(c) allows bond adjustments which involve undisturbed land and states that these adjustments are not considered bond release subject to the procedures of 30 CFR 800.40. We are approving the removal of the language from 10 CSR 40–7.021(2) and (2)(E) because the removal of this language is not inconsistent with and will not render Missouri's regulations less effective than the Federal regulations.

2. Missouri proposed to revise paragraph (2)(A) regarding the criteria for release of Phase I liability. Paragraph (2)(A) reads as follows:

(A) An area shall qualify for release of Phase I liability upon completion of backfilling and grading, topsoiling, drainage control and initial seeding of the disturbed area. Phase I bond shall be retained on unreclaimed temporary structures, such as roads, siltation structures, diversions and stockpiles, on an acre for acre basis.

Missouri proposed to delete the phrase, ''on an acre for acre basis,'' from the last sentence of this paragraph.

The Federal counterpart regulation is found at 30 CFR 800.40(c)(1) and provides that Phase I reclamation is complete after the operator completes the backfilling, regrading (which may include the replacement of topsoil), and drainage control of the bonded area in accordance with the approved reclamation plan. We are approving the deletion of the above phrase from Missouri's regulation because it will not render the State regulation less effective than the Federal counterpart regulation.

3. Missouri proposed to revise paragraph (2)(B)4. regarding the criteria for qualifying for release of Phase II liability to read as follows:

4. A plan for achieving Phase III release has been approved for the area requested for release and the plan has been incorporated into the permit;

There is no direct Federal counterpart regulation for paragraph (2)(B)4. However, the Federal regulation at 30 CFR 784.13(a) requires each application to contain a plan for the reclamation of the lands within the proposed permit area. Missouri's proposed regulation is no less effective than the above Federal regulations and we are approving it.

4. Missouri proposed to revise paragraph (2)(D) regarding bond release by deleting the language and replacing it with new language and by adding new paragraphs 1. through 3. to read as follows:

(D) Bonds release.

1. Phase I—After the operator completes the backfilling, grading, topsoiling, drainage control, and initial seeding of the disturbed area in accordance with the approved reclamation plan, the director shall release 60 percent of the bond for the applicable area.

2. Phase II—After vegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, the director shall release an additional amount of bond. When determining the amount of bond to be released after successful vegetation has been established, the director shall retain that amount of bond for the vegetated area which would be sufficient to cover the cost of reestablishing vegetation if completed by a third party and for the period specified for in 10 CSR 40–7.021(1)(B) for reestablishing vegetation.

3. Phase III—After the operator has completed successfully all surface coal mining and reclamation activities, the director shall release the remaining portion of the bond, but not before the expiration period specified for the period of liability in 10 CSR 40–7.021(1)(B).

The Federal counterpart regulations are found at 30 CFR 800.40(c)(1) through (c)(3) and set forth the criteria for releasing bond based upon the three phases of reclamation. We are approving Missouri's proposed revision because it is substantively the same as the Federal counterpart regulations.

E. 10 CSR 40–7.031 Permit Revocation, Bond Forfeiture and Authorization To Expend Reclamation Fund Monies

Missouri proposed to revise paragraph (2) regarding the procedures for permit suspension or revocation and paragraph (4) regarding declaration of permit revocation. More specifically, Missouri proposed to revise paragraphs (2)(E)1. and (4), and to delete paragraphs (2)(E)2.C and D in order to remove provisions related to the Missouri Coal Mine Land Reclamation Fund. Missouri also proposed to add new paragraphs (4)(A) through (B)2. to specify what monies the director may use for reclamation purposes for bonds forfeited before January 1, 2006, and for those forfeited on or after January 1, 2006.

The Federal regulations at 30 CFR 800.11(a) through (d) set forth the provisions for a permit applicant to file, with the regulatory authority, a bond or bonds for performance that is conditioned upon the faithful performance of all the requirements of the Act, the regulatory program, the permit, and the reclamation plan. The regulations also include a ''full cost bond'' bonding system. The Federal regulation at 30 CFR 800.11(e) provides that we may approve an alternative bonding system as part of a State program. The previously approved Missouri Coal Mine Land Reclamation Fund is a ''bond pool'' fund that is part of Missouri's alternative bonding system and is used to complete reclamation on permit sites for which the permits have been revoked and the associated bonds have been forfeited. Missouri proposed to terminate its alternative bonding system and to adopt a ''full cost bond'' bonding system effective January 1, 2006. With this transition to a ''full cost bond'' bonding system, Missouri proposed that only permit sites whose bonds have been forfeited before January 1, 2006, are eligible to have monies expended from the ''bond pool'' fund for the purpose of completing reclamation of the sites. Missouri also proposed that permit sites whose bonds have been forfeited on or after January 1, 2006, are eligible to have monies expended from the forfeited ''full cost bonds'' for the purpose of completing reclamation of the sites. We are approving Missouri's revisions as they are no less effective than the Federal regulations because permit sites under the alternative bonding system and the ''full cost bond'' bonding system have funds available for reclaiming coal mining and reclamation sites whose bonds have been forfeited.

Finally, Missouri proposed to add new paragraphs (4)(B)1. and 2. to read as follows:

1. In the event the estimated amount forfeited is insufficient to pay for the full cost of reclamation, the operator shall be liable for remaining costs. The director may complete or authorize completion of reclamation of the bonded area and may recover from the operator all costs of reclamation in excess of the amount forfeited.

2. In the event the amount of performance bond forfeited is more than the amount necessary to complete reclamation, the unused funds shall be returned by the director to the party from whom they were collected.

The Federal counterpart regulations are found at 30 CFR 800.50(d)(1) and (2). We are approving Missouri's revisions because they are substantively identical to the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record Nos. MO–665.1 and MO–665.9). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On November 10, 2005, and December 13, 2005, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record Nos. MO–665.1 and MO–665.9). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 10, 2005, and December 13, 2005, we requested comments on Missouri's amendment (Administrative Record No. MO–665.1 and MO–665.9), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Missouri sent us on October 31, 2005, and as revised on November 23, 2005, and December 21, 2005.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulations did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 12, 2006.

Leonard Meier,

Acting Regional Director, Mid-Continent Region.

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 925.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
October 31, 2005	June 8, 2006	10 CSR 40–7.011(1)(C) and (D), (2)(A) and (B), (3)(C), (4) and (5), (6)(A)6., 8., & 9., (6)(B)1., 2., & 4. through 7., (6)(C)1. through 4., 8. & 9., (6)(D)1.F., 2., 2.B., 2.D.(I) through (III), 3., 5.C., 6., 8., and (7)(A); 10 CSR 40–7.021(1)(A), (2), (2)(A), (2)(B)3. through 6., (2)(C)2., (2)(D) and (E); 10 CSR 40–7.031(2)(E)1. and 2., (2)(E)2.C. & D., (3)(C), and (4) through (4)(B)2.; and 10 CSR 40–7.041.

[FR Doc. E6–8926 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[UT–043–FOR]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving a revised amendment to the Utah regulatory program (the ''Utah program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed changes to the Utah Administrative Rules concerning permit change, renewal, transfer, sale and assignment, cross sections and maps, processing and approval of extensions to the approved permit area, determining civil penalty amounts, and assessing daily civil penalties. Utah revised its program to clarify and strengthen certain parts of the rules.

DATES: *Effective Date:* June 8, 2006.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division; telephone: (303) 844–1400, extension 1424; e-mail address: *jfulton@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You also can find later actions concerning Utah's program and program amendments at 30 CFR 944.10, 944.15 and 944.30.

II. Submission of the Proposed Amendment

By letter dated November 28, 2005, Utah sent us an amendment to its program (Administrative Record Number UT–1181) under SMCRA (30 U.S.C. 1201 *et seq.*). We received the amendment on December 28, 2005. Utah sent the amendment to make the changes at its own initiative. The State proposed to revise five sections of its coal rules.

In a revision of Utah Administrative Rule (Utah Admin. R.) 645–301–160, the State proposed to add a heading that reads, ''Permit change, renewal, transfer, sale, and assignment.'' Following that heading is a proposed reference to procedures to change, renew, transfer, assign, or sell existing coal mining and reclamation permit rights that are found at Utah Admin. R. 645–303.

The amendment also proposed to change Utah's permit application requirements for cross sections and maps at Utah Admin. R. 645–301–512.100. This change would allow preparation of certain cross sections and maps by a professional geologist or a qualified, registered, professional land surveyor. The State also proposed editorial changes to this section to make it read more clearly with the proposed substantive revisions described above.

A proposed revision to Utah Admin. R. 645–303–222 would require applications for extensions to the approved permit area to be processed and approved using the procedural requirements of Utah Admin. R. 645–303–226 for review and processing of significant permit revisions. As part of this proposed change, the State also proposed to remove the requirement at Utah Admin. R. 645–303–222 that extensions to the approved permit area, except for incidental boundary changes, be processed and approved as new permit applications and not be approved under Utah Admin. R. 645–303–221 through R. 645–303–228.

Another revision proposed in this amendment would change Utah's schedule of points and corresponding dollar amounts for civil penalty assessments found at Utah Admin. R. 645–401–330. The proposed revision changed the range of civil monetary penalties from $10 through $3,560 to $22 through $4,840. It also changed the range of assessed points corresponding to those civil monetary penalties from 1 through 87 points to 1 through 64 points.

Finally, the State's amendment proposed a change at Utah Admin. R. 645–401–410 that would require an assessment officer to assess a civil penalty for a minimum of two separate

days for any violation that continues for two or more days and is assigned more than 64 points. This proposed change also would remove the existing threshold of 80 points.

We announced receipt of the proposed amendment in the February 13, 2006, **Federal Register** (71 FR 7489; Administrative Record Number UT–1192). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 15, 2006. We received comments from two Federal agencies.

We identified a concern about proposed Utah Admin. R. 645–303–222 during our review of the amendment. As proposed, the rule would require the Division of Oil, Gas and Mining (DOGM) to process and approve applications for permit area extensions, except incidental boundary revisions, using the procedural requirements for permit revisions at Utah Admin. R. 645–303–226. The amendment would remove the existing requirement that DOGM process and approve permit area extensions, except incidental boundary revisions, through applications for new permits. The proposed rule is not consistent with Utah Code Annotated (UCA) section 40–10–12(1)(c), which requires permit area extensions, except incidental boundary revisions, to be made by application for another permit. We notified Utah of our concern in a telephone conversation on January 23, 2006 (Administrative Record Number UT–1190), and an e-mail message dated February 14, 2006 (Administrative Record Number UT–1193).

Utah responded in a letter dated February 16, 2006 (Administrative Record Number UT–1194), by withdrawing the proposed change to Utah Admin. R. 645–303–222 from amendment UT–043–FOR.

We did not reopen the public comment period for the revised amendment because Utah's withdrawal of the proposed change to Utah Admin. R. 645–303–222 only reduced the scope of the amendment and leaves the existing approved rule in effect and unchanged.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as revised.

A. Minor Revision to Utah's Rules

Utah proposed a minor editorial change to the following previously-approved rule by adding a new heading and rule at Utah Admin. R. 645–301–160. The new rule is an editorial addition that merely restates the heading of Utah Admin. R. 645–303 and directs the reader to existing rules for permit change, renewal, transfer, sale and assignment that are in that section.

Because this change is minor, we find that it will not make Utah's rules less effective than the corresponding Federal regulations.

B. Revisions to Utah's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Utah proposed revisions to the following rule containing language that is the same as or similar to the corresponding sections of the Federal regulations:

Utah Admin. R. 645–301–512.100, preparation and certification of certain cross sections and maps required in permit applications (corresponds to 30 CFR 780.14(c) and 784.23(c) in the Federal regulations).

Because this proposed rule contains language that is the same as or similar to the corresponding Federal regulations, we find that it is no less effective than the corresponding Federal regulations.

C. Revisions to Utah's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations and Statute

1. Utah Admin. R. 645–303–222, Review and Approval of Extensions to the Approved Permit Area

Proposed Utah Admin. R. 645–303–222 would require DOGM to process and approve permit area extensions (except incidental boundary changes) using procedures for significant permit revisions found at Utah Admin. R. 645–303–226. The proposed revision also would remove the existing requirement that DOGM process permit area extensions (except incidental boundary changes) through applications for new permits and not under the procedures for permit changes found at Utah Admin. R. 645–303–221 through R. 645–303–228.

Federal counterparts to existing Utah Admin. R. 645–303–222 are found at section 511(a)(3) of SMCRA and in the Federal regulations at 30 CFR 774.13(d). Both Federal provisions require permit area extensions, except incidental boundary revisions, to be processed as applications for new permits.

Title 40, Chapter 10, *et seq.*, entitled, ''Coal Mining and Reclamation,'' of the Utah Code Annotated is the primary underlying statutory authority for Utah's coal mining rules found at Title R645 *et seq.* UCA 40–10–12(1)(c) states ''[a]ny extensions to the area covered by the permit, except incidental boundary revisions, must be made by application for another permit.'' This provision is Utah's statutory counterpart to existing Utah Admin. R. 645–303–222.

As proposed, Utah Admin. R. 645–303–222 is not consistent with the plain wording of State law at UCA 40–10–12(1)(c). We expressed our concern in a telephone conversation with Utah on January 23, 2006 (Administrative Record Number UT–1190) and in an e-mail message dated February 14, 2006 (Administrative Record Number UT–1193). In a letter dated February 16, 2006, (Administrative Record Number UT–1194), the State chose to withdraw this proposed rule from the amendment, recognizing the need to revise the Utah Code Annotated. Withdrawal of the proposed change to Utah Admin. R. 645–303–222 from amendment UT–043-FOR leaves the existing, approved rule unchanged and in effect, notwithstanding the Board of Oil, Gas and Mining's formal promulgation of the revised rule effective February 6, 2004 (noted in a January 5, 2006, telephone conversation; Administrative Record Number UT–1186). As originally submitted with this amendment, proposed Utah Admin. R. 645–303–222 is not part of the approved Utah regulatory program.

2. Utah Admin. R. 645–401–330, Point System for Penalties and Determination of Civil Penalty Amounts

Utah proposed to revise its point system for civil penalties at Utah Admin. R. 645–401–330. The State's approved system assesses from 1 to 100 points for violations and assigns corresponding civil monetary penalties of $10 to $3,560 to each number in that range of points. The maximum monetary penalty is reached at the 87 points level and corresponds to assessed totals of 87 to 100 points, as indicated by a ''plus'' (+) after the number 87. This amendment would change the assessed point total at which the maximum penalty is reached from 87 to 64 points and would increase most civil monetary penalties, with a maximum penalty of $4,840 reached at 64 points. The amendment also would remove the ''plus'' (+), leaving the 64 points level corresponding to the maximum penalty without specifically indicating what penalty or penalties would correspond

to assessments totaling 65 through 100 points.

The counterpart Federal regulation at 30 CFR 845.14 prescribes a very similar civil penalty point system, though the range of points and penalty amounts differ somewhat. That regulation assigns a maximum penalty of $6,500 to the assessed total of 70 points and does not specifically indicate penalty amounts that correspond to assessments totaling 71 points through the maximum possible total of 85 points. We increased the civil monetary penalties in this regulation most recently on November 22, 2005 (70 FR 70698), as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701).

The civil penalty point system in Utah's proposed rule need not be the same as the counterpart Federal civil penalty point system. In the November 22, 2005, **Federal Register** (*Id.*, at 70699), we said—

> [s]ection 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties which are 'no less stringent than' those set forth in SMCRA. Our regulations at 30 CFR 840.13(a) specify that each State program shall contain penalties which are no less stringent than those set forth in section 518 of the Act and shall be consistent with 30 CFR part 845. However, in a 1980 decision on OSM's regulations governing [civil monetary penalties], the U.S. District Court for the District of Columbia held that because section 518 of SMCRA fails to enumerate a point system for assessing civil penalties, the imposition of this requirement upon the States is inconsistent with SMCRA. In response to the Secretary's request for clarification, the Court further stated that it could not uphold requiring the States to impose penalties as stringent as those appearing in 30 CFR 845.15. Consequently, we cannot require that the [civil monetary penalty] provisions contained in a State's regulatory program mirror the penalty provisions of our regulations at 30 CFR 845.14 and 845.15.

In a similar discussion of civil penalty point systems in the December 15, 1980, **Federal Register**, we added that, in the same 1980 decision (*In re: Permanent Surface Mining Regulations Litigation*, Civil Action No. 79–114, May 16, 1980; ''round 2'') the Court said—

> [S]tates need only develop a penalty system incorporating the four criteria in Section 518(a) of SMCRA, the procedural requirements of 30 CFR 845.17 through 845.20, the requirement of 845.12 that all cessation orders must be assessed, and the requirement of 845.15(b) that a minimum of $750.00 per day be assessed for all cessation orders issued for failure to abate a violation.

The four criteria of section 518(a) of SMCRA for determining penalty amounts are history of previous violations, seriousness of a violation, negligence, and demonstrated good faith.

Utah proposed to change its existing civil penalty point system and increase most penalty amounts in this amendment, not remove them. Its previously approved procedures for assessing violations remain otherwise unchanged, including the four assessment components of history, seriousness, negligence, and good faith and requirements for cessation order assessments and daily penalties for failure to abate cessation orders. As such, the proposed rule meets the objective of civil penalties as stated in 30 CFR 845.2, which is to ''deter violations and to ensure maximum compliance with the terms and purposes of [SMCRA] on the part of the coal mining industry.'' We therefore find that the civil penalty provisions proposed in this amendment at Utah Admin. R. 645–401–330 are no less stringent than those set forth in section 518 of SMCRA and are consistent with 30 CFR part 845.

3. Utah Admin. R. 645–401–410, Assessing Daily Civil Penalties

Proposed Utah Admin. R. 645–401–410 would require DOGM to assess a civil penalty for a minimum of two separate days for any violation that continues for two or more days and is assigned more than 64 points, instead of the existing 80 points. This proposed change would make the rule consistent with changes at Utah Admin. R. 645–401–330 that also are proposed in this amendment. As described in the previous finding, one change the State also proposed at Utah Admin. R. 645–401–330 would reduce the assessed total of points at which it imposes the maximum civil monetary penalty from 87 points to 64 points.

The wording of proposed Utah Admin. R. 645–401–410 is very similar to the Federal counterpart regulation at 30 CFR 845.15. Utah's rule refers to factors listed in Utah Admin. R. 645–301–300 that an assessment officer considers when assessing daily civil penalties, including history of violations, seriousness, negligence, and good faith. It also requires consideration of the extent to which the permittee gained any economic benefit by not complying and assessing civil penalties for violations assigned more than 64 points. The primary differences are the proposed State rule's references to other State rules and the threshold assessed total of 64 points. Referenced Utah Admin. R. 645–401–300 and 645–401–320 are Utah's rules for its civil penalty point system and are the State's counterparts to referenced 30 CFR 845.13 and 845.13(b) in the Federal regulations. Proposed Utah Admin. R. 645–401–410 and counterpart 30 CFR 845.15 set their respective threshold totals of more than 64 and 70 points, as one of two criteria for imposing a civil monetary penalty for at least two separate days.

Utah's proposed rule is very similar to the counterpart Federal regulation and need not be exactly the same. As we observed in the previous finding, we cannot require States' civil penalty systems to mirror the Federal regulations. Section 518(i) of SMCRA requires that the civil penalty provisions of each State program contain penalties that are no less stringent than those set forth in SMCRA. Utah proposed in this amendment to revise its existing civil penalty point system, not remove it. Its previously approved procedures for assessing violations remain otherwise unchanged. The proposed rule meets the objective of civil penalties as stated in 30 CFR 845.2, which is to ''deter violations and to ensure maximum compliance with the terms and purposes of [SMCRA] on the part of the coal mining industry.'' Therefore, we find the civil penalty provision proposed at Utah Admin. R. 645–401–410 is no less stringent than section 518(i) of SMCRA and is consistent with 30 CFR part 845.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Number UT–1185), but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record Number UT–1185).

The Utah State Office of the U.S. Department of the Interior, Bureau of Land Management (BLM), submitted comments on the amendment in a letter dated January 20, 2006 (Administrative Record Number UT–1188). BLM commented on Utah's proposed changes to Utah Admin. R. 645–301–512.100 and 645–401–330.

Concerning proposed Utah Admin. R. 645–301–512.100, BLM commented that it has found it expedient to require all but geologic materials to be certified by a professional mining engineer

registered in Utah, noting that such engineers typically are in managerial positions at mining operations. It added that Utah requires experience and testing to demonstrate competence unique to the mining field that someone trained in civil, mechanical, or other engineering or scientific disciplines might not have. BLM also commented that it only accepts certifications by professional land surveyors of materials for land ownership or mine locations, noting that such surveyors typically are not qualified by training or experience and are not licensed to certify mining-related or geologic materials.

Proposed Utah Admin. R. 645–301–512.100 would allow certain cross sections and maps to be prepared by, or under the direction of, and certified by, qualified, registered, professional engineers, professional geologists, or qualified, registered, professional land surveyors with assistance from experts in related fields such as hydrology, geology and landscape architecture. Black's Law Dictionary (7th Ed.; 1999) defines ''qualified'' as

1. Possessing the necessary qualifications; capable or competent * * *.

Black's Law Dictionary defines ''qualification'' as

1. The possession of qualities or properties (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office, or to perform a public duty or function * * *.

The proposed rule specifically requires registered, professional land surveyors who would prepare or direct the preparation of, and certify, certain cross sections and maps to be ''qualified'' to do those functions and to do them with assistance from experts in related fields such as hydrology, geology and landscape architecture. In context of the proposed rule and the definitions quoted above, qualified, registered professional land surveyors would be capable or competent individuals who, with expert assistance, have the capacity and are fit to prepare or direct the preparation of, and certify, certain cross sections and maps.

Further, as we stated in finding III. B. of this final rule, Utah's proposed rule contains language that is the same as or similar to the language of the corresponding Federal regulation at 30 CFR 780.14(c) and 784.23(c). Those Federal regulations allow qualified, registered, professional land surveyors to prepare or direct the preparation of, and certify, certain cross sections and maps in any State that authorizes them to do so with assistance from experts in related fields such as landscape architecture. We assume that, by proposing Utah Admin. R. 645–303–512.100, Utah is authorizing qualified, registered, professional land surveyors to perform these functions with appropriate expert assistance in accordance with all applicable State standards for professional qualifications and conduct. Moreover, the standard we use for review of Utah's program is that it be no less effective than the Federal regulations and no less stringent than SMCRA. In finding III.B of this final rule, we found proposed Utah Admin. R. 645–303–512.100 to be no less effective than the counterpart Federal regulations at 30 CFR 780.14(c) and 784.23(c) because it is worded the same as or similar to those regulations. We cannot require Utah to have rules that are more effective than the Federal regulations or more stringent than SMCRA.

With regard to proposed Utah Admin. R. 645–401–330, BLM's comment assumed the proposed increases in civil penalties reflect inflationary factors and noted that it otherwise had no specific comments except to say that the increased civil monetary penalties will have some minimal effect ''on the viability of certain coal energy resources and will probably be borne by the end consumers of energy.''

As we state below in the Procedural Determinations in Section VI of this final rule, a Statement of Energy Effects is not required for this rule under *Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy* because it is not expected to have a significant adverse effect on the supply, distribution, or use of energy. Further, as we noted previously in our finding at Part III.C.2. in this final rule, section 518(i) of SMCRA requires each State program to have civil penalty provisions that are no less stringent than those in SMCRA. The Federal regulations at 30 CFR 840.13(a) further specify that each State program must have penalties that are no less stringent than those in section 518 of SMCRA and that are consistent with 30 CFR part 845. As proposed at Utah Admin. R. 645–401–330 in this amendment, we find Utah's civil monetary penalties are no less stringent than those set forth in section 518 of SMCRA and are consistent with 30 CFR part 845.

We also received a comment from the Intermountain Region of the U.S. Department of Agriculture, Forest Service, in an e-mail message dated February 1, 2006 (Administrative Record Number UT–1191). The Forest Service commented that it supported the changes proposed in UT–043–FOR, noting that they appear to be positive improvements to the State's rules. It also supported the proposed rule (Utah Admin. R. 645–301–512.100) that would allow a professional geologist to certify certain cross sections and maps, and said it assumed the proposed change is tied to Utah's new process for certifying professional geologists. We assume that, by proposing Utah Admin. R. 645–303–512.100, Utah is authorizing professional geologists to prepare, direct the preparation of, and certify certain cross sections and maps in accordance with all applicable State standards for professional qualifications and conduct. As noted in finding III.B. of this final rule, we find proposed Utah Admin. R. 645–301–512.100 is no less effective than counterpart 30 CFR 780.14(c) and 784.23(c) because it contains language that is the same as or similar to the language of those corresponding Federal regulations.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in this amendment pertains to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment. However, we asked EPA for its comments on the amendment under 30 CFR 732.17(h)(11)(i) (Administrative Record Number UT–1183). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On January 4, 2006, we requested the ACHP's comments on Utah's amendment (Administrative Record Number UT–1184). We requested the SHPO's comments in a letter dated January 25, 2006 (Administrative Record Number UT–1189). Neither the ACHP nor the SHPO responded to our requests.

V. OSM's Decision

Based on the above findings, we approve Utah's November 28, 2005, amendment, as revised on February 16, 2006.

To implement this decision, we are amending the Federal regulations at 30

CFR part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. The Federal regulation at 30 CFR 732.17(g) prohibits any changes to approved State programs that are not approved by OSM. In the oversight of the Utah program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Utah to enforce only approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect on a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied on the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based on the fact that the State submittal which is the subject of this rule is based on counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the fact that the State submittal, which is the subject of this rule, is based on counterpart Federal regulations for which an analysis was prepared and a

determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 27, 2006.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 28, 2005 and February 16, 2006.	June 8, 2006.	Utah Adm. R. 645–301–160, 645–301–512.100, 645–401–330, and 645–401–400.

[FR Doc. E6–8927 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–05–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1151

Bylaws

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Final rule.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has adopted an amendment to its bylaws. The amendment was adopted to update and improve the Board's operations.

DATES: This rule is effective June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa Fairhall, Access Board, 1331 F Street, NW., Suite 1000, Washington, DC 20004–1111. Telephone number 202–272–0046 (voice); 202–272–0082 (TTY). E-mail address: *Fairhall@access-board.gov*.

SUPPLEMENTARY INFORMATION: In March 2006, the Access Board amended its bylaws to codify its practice of electing Vice-Chairs for subject matter committees. This amendment was adopted to update and improve the Board's operating procedures. Because the amendment is to the Board's internal rules of organization, procedure, or practice, advance notice and opportunity for public comment are not required by the Administrative Procedures Act (section 553(b)). The amendment is being published so that all interested persons will be fully informed about the procedures governing the Access Board.

List of Subjects in 36 CFR Part 1151

Authority delegations (Government agencies), Organization and functions (Government agencies).

Authorized by vote of the Access Board on March 15, 2006.

David L. Bibb,

Chairperson, Architectural and Transportation Barriers Compliance Board.

■ Pursuant to 29 U.S.C. 792, as amended, and for the reasons set forth in the preamble, chapter XI of title 36 of the Code of Federal Regulations is amended as follows:

PART 1151—BYLAWS

■ 1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 792.

■ 2. Revise paragraph (b)(2) of § 1151.6 to read as follows:

§ 1151.6 Committees.

* * * * *

(b) * * *

(2) Chair, Vice-Chair. The Chair and Vice-Chair of a subject matter committee shall be elected by the Board after the election of the Chair and Vice-Chair of the Board. The Chair of a subject matter committee shall serve as a member of the Board's Executive Committee.

* * * * *

[FR Doc. E6–8887 Filed 6–7–06; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1548

[Docket No. TSA–2004–19515; Amendment Nos. 1548–2]

RIN 1652–AA23

Air Cargo Security Requirements; Correction

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on May 26, 2006. That rule enhances and improves the security of air cargo transportation by requiring airport operators, aircraft operators, foreign air carriers, and indirect air carriers to implement security measures in the air cargo supply chain as directed under the Aviation and Transportation Security Act. The final rule also amends the applicability of the requirement for a ''twelve-five'' security program for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more to those aircraft with a maximum certificated takeoff weight of more than 12,500 pounds to conform to recent legislation. TSA inadvertently left out the amendatory instruction to remove the word ''passenger'' in § 1548.1. This document adds this amendatory change to part 1548.

DATES: Effective October 23, 2006.

FOR FURTHER INFORMATION CONTACT: Tamika McCree, Office of Transportation Sector Network Management (TSA–28), Transportation Security Administration, 601 South

12th Street, Arlington, VA 22202; (571–227–2632); *tamika.mccree@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 26, 2006, TSA published a final rule in a separate Part II of the **Federal Register** (71 FR 30478), revising various regulations to enhance and improve the security of air cargo transportation. TSA inadvertently left out the amendatory instruction to remove the word ''passenger'' in § 1548.1. This document adds the amendatory change as instruction number 31a.

List of Subjects

49 CFR part 1548 Air transportation, Reporting and recordkeeping requirements, Security measures.

Correcting Amendment

■ For the reasons set forth in this document and in the final rule on air cargo security requirements published on May 26, 2006 (71 FR 30478), the Transportation Security Administration amends part 1548 of Title 49, Code of Federal Regulations, as follows:

■ In rule FR Doc. 06–4800 published on May 26, 2006 (71 FR 30478) make the following correction: On page 30513 add the following amendment:

PART 1548—INDIRECT AIR CARRIER SECURITY

§ 1548.1 [Amended]

■ 31a. In § 1548.1 introductory paragraph, remove the word ''passenger''.

Issued in Arlington, Virginia, on June 2, 2006.

Mardi Ruth Thompson,

Deputy Chief Counsel for Regulations.

[FR Doc. E6–8852 Filed 6–7–06; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 36

RIN 1018–AU08

Refuge-Specific Public Use Regulations for Kodiak National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are opening certain private lands within the boundaries of Kodiak National Wildlife Refuge in Alaska to public use with a permit. We are taking this action to comply with our commitments made under a Conservation Easement among the United States, the State of Alaska, and Koniag, Inc. The Conservation Easement furthers the missions of the Service and the National Wildlife Refuge System and the purposes of Kodiak National Wildlife Refuge. While the Conservation Easement encompasses more than 56,000 acres, the lands affected by this rule are only those easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake on Kodiak Island, Alaska. The rule will apply as long as the Conservation Easement is in place. Without this rule, the Service would fail to comply with the terms of the Conservation Easement.

DATES: This rule is effective June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Abbey Kucera, (907) 487–2600; Fax (907) 487–2144.

SUPPLEMENTARY INFORMATION: Kodiak National Wildlife Refuge was established in 1941 by Executive Order for the purpose of protecting the natural feeding and breeding ranges of brown bears and other wildlife on Uganik and Kodiak Islands. The lands now under the Conservation Easement were once refuge lands. The Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601–1624) (Act) allowed refuge lands to be conveyed to Alaska Native Corporations established under the Act, including the 56,822.61 acres now covered by the Conservation Easement. In 2002, the State of Alaska, Koniag, Inc., and the Service signed the Conservation Easement, which calls for these lands to be managed similarly to refuge lands and allows for public use of these lands consistent with 50 CFR part 36 and subject to applicable Alaska regulations for the taking of fish and wildlife. As a condition of the easement, a refuge-issued permit is required for most public recreational uses occurring within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake.

Background About Kodiak National Wildlife Refuge

The Alaska National Interest Lands Conservation Act (16 U.S.C. 3101 *et seq.*, 43 U.S.C. 1602) expanded the purposes for which Kodiak National Wildlife Refuge was established: (i) To conserve fish and wildlife populations and habitats in their natural diversity, including but not limited to Kodiak brown bears, salmonids, sea otters, sea lions, and other marine mammals and migratory birds; (ii) to fulfill the international treaty obligations of the United States with respect to fish and wildlife and other habitats; (iii) to provide, in a manner consistent with the purposes set forth in subparagraphs (i) and (ii) above, the opportunity for continued subsistence uses by local residents; and (iv) to ensure, to the maximum extent practicable and in a manner consistent with the purposes set forth in subparagraph (i) above, water quality and necessary water quantity within the refuge.

Kodiak National Wildlife Refuge encompasses almost 2 million acres in southwestern Alaska, including about two-thirds of Kodiak Island. The city of Kodiak, where refuge headquarters is located, is about 250 air miles south of Anchorage, about 20 miles northeast of the refuge boundary on Kodiak Island, and about 60 air miles northeast of Karluk Lake.

Kodiak National Wildlife Refuge is characterized by a large range of habitats within a relatively small geographic area. Because of this, the refuge supports some of the highest densities of brown bears, nesting bald eagles, and spawning salmon found anywhere in North America. The mountainous interior of Kodiak Island, with several peaks over 4,000 feet in elevation, is covered by lush, dense vegetation during the summer, with alpine vegetation on the highest slopes. No place on the refuge is more than 15 miles from the ocean. Access to the refuge is primarily by float plane and boat. Karluk River and Karluk Lake have runs of five species of Pacific salmon (chinook, sockeye, coho, pink, and chum) and steelhead. Rainbow trout, Dolly Varden, and Arctic char are also found there.

Kodiak National Wildlife Refuge was established primarily to protect the brown bear. With an estimated population of 2,100 bears, the refuge contains some of the best brown bear habitat, and supports one of the highest concentrations of brown bear, in the world. These bears feed on spawning salmon and forage throughout most of the refuge. The Karluk River drainage is one of the most important feeding areas for bears, with up to 200 bears using the Karluk area from mid-June to the end of September.

Under our regulations implementing the Alaska National Interest Lands Conservation Act (50 CFR 36.31), all refuge lands in Alaska are open to public recreational activities as long as such activities are conducted in a

manner compatible with the purposes for which the refuge was established. Such recreational activities include, but are not limited to: Sightseeing, nature observations and photography, hunting, fishing, boating, camping, hiking, picnicking, and other related activities (50 CFR 36.31(a)). The National Wildlife Refuge Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, defines ''wildlife-dependent recreation'' and ''wildlife-dependent recreational use'' as ''hunting, fishing, wildlife observation and photography, or environmental education and interpretation'' (16 U.S.C. 668ee(2)). We encourage these uses, and they will receive emphasis in management of the public use of the refuge.

Key Provisions of the Conservation Easement

The Conservation Easement established a management group composed of one representative from each of the following: Koniag, Inc., Kodiak National Wildlife Refuge, and the Alaska Department of Fish and Game. This management group is the means by which the three entities combine resources and ideas on improving habitat quality, quality of experience for visitors, and protection of fish and wildlife in accordance with the Conservation Easement.

Under the Conservation Easement, Koniag, Inc., agrees to confine use of all easement lands to fish and wildlife management and conservation activities, subsistence gathering activities, archaeological investigations, and recreational activities. We agree to establish, maintain, and enforce a permit system that imposes specific limits on the level and location of public recreational use on that portion of the easement within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. The Conservation Easement establishes a limited-use period of June 10 through July 15, which is the time of peak run for king salmon and, subsequently, greatest visitor use. The Conservation Easement also requires us to conduct a study to establish appropriate visitor use limits.

Required Study

We began the required study in 2002, and Koniag Inc., managed use of the Karluk River that year. During the limited-use period (June 10 through July 15), Koniag, Inc., charged a user fee of $125 per person per year but imposed no visitor limit.

In 2003, the Kodiak National Wildlife Refuge took over management responsibilities. The refuge limited visitor use during the limited-use period but did not impose a user fee. The Conservation Easement calls for free public use under refuge management and requires us to limit the number of recreational visitors to the area during the limited-use period to a maximum of 70 scheduled visitors on any day. This limit applied to both visitors obtaining permits from us (maximum of 28 per day) and visitors using the area as clients of guides authorized by Koniag, Inc., (maximum of 42 per day). Under the authority of temporary restrictions that the Refuge Manager issued, we required permits for visitors to the area from 2003 through 2005.

Parties of up to six people applied together for permits, and the refuge issued permits for each member of the party. Each individual was allowed to obtain only one nontransferable permit for a visit of up to 7 consecutive days during the limited-use period. Parties had to apply by a deadline that the refuge established and would have been selected by a lottery if there were more visitors than scheduled visits available. To date, we have not had visitor use reach the limit of 70 people per day during the limited-use period. During the remainder of the year (July 16 through June 9), there are no limits on the number of permits available.

The study explored the possible effects changes in river management had on visitor experience. We analyzed data from both guided and unguided visitors to explore potential differences with respect to their feelings towards conflict, crowding, use, and solitude. We concluded that current management of the river under the permit system is acceptable to visitors and that the current use limits were a reasonable approach to managing visitor use and complying with the terms of the Conservation Easement.

Conclusion

In summary, the Conservation Easement allows the Service to open and manage public use of private lands. It also requires us to establish a permit system for most public use of easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. This regulation replaces the temporary restrictions and allows us to continue to implement the Conservation Easement. The refuge plans to:

(1) Maintain the 70-person daily limit during the limited-use period (June 10 to July 15),

(2) Manage the area for natural setting and character by limiting infrastructure expansion, and

(3) Distribute uses temporally and spatially throughout the limited-use period (June 10 to July 15).

This regulation does not extinguish the public's right to use public access easements reserved under section 17(b) of the Alaska Native Claims Settlement Act.

Plain Language Mandate

In this rule, we use ''you'' to refer to the reader and ''we'' to refer to the Service. We use the word ''allow'' instead of ''permit'' when we do not require a permit for an activity. Where the word ''permit'' occurs, a permit is required.

Statutory Authority

The National Wildlife Refuge System Administration Act (Administration Act) of 1966 (16 U.S.C. 668dd–668ee, as amended) and the Refuge Recreation Act (Recreation Act) of 1962 (16 U.S.C. 460k–460k–4) govern the administration and public use of refuges.

The Recreation Act authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that doing so is practicable and not inconsistent with the primary purpose(s) for which Congress and the Service established the areas. The Recreation Act requires that any recreational use of refuge lands be compatible with the primary purpose(s) for which we established the refuge and not inconsistent with other previously authorized operations.

The Administration Act and Recreation Act also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Section 1302(a) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192(a)) and the National Wildlife Refuge Administration Act, as amended by the Refuge Improvement Act of 1997, (16 U.S.C. 668dd) authorize us to enter into the Conservation Easement with Koniag, Inc., and the State of Alaska.

Response to Comments Received

In the September 30, 2005, **Federal Register** (70 FR 57242), we published a proposed rule and invited public comments. We also provided notices locally in Kodiak and Larson Bay that announced the publication of the proposed rule and invited public comments. We received one comment letter on the proposed rule from the State of Alaska. The State of Alaska

requested that we: (1) Clarify that the proposed rule would apply only to lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake; (2) eliminate explanatory language from the proposed rule, specifically paragraph (j)(3)(ii); and (3) use the word ''uplands'' rather than the word ''lands'' in the rule to clarify that the rule does not apply to water.

In response to this comment, the final rule clearly states that the rule applies only to easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. We also use this specific language throughout this **Federal Register** document to clarify the lands subject to this rule. In addition, we are not including proposed paragraph (j)(3)(ii), which contained explanatory material, in this final rule. Instead, the explanatory material is included in preamble of this **Federal Register** document. Finally, we did not use the word ''uplands'' in this rule. Instead, we use the phrase ''easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake'' from Section 5(a) of the Conservation Easement.

Effective Date

This rule is effective upon publication in the **Federal Register**. We have determined that any further delay in implementing these refuge-specific regulations would not be in the public interest, in that a delay could hinder public use of the private lands within the boundaries of Kodiak National Wildlife Refuge. This rule does not impact the public generally in terms of requiring lead time for compliance. Rather, it allows activities that would otherwise be prohibited. Therefore, we find good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication in the **Federal Register**.

Regulatory Planning and Review

Executive Order (E.O.) 12866

In accordance with the criteria in E.O. 12866, the Service asserts that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under E.O. 12866.

a. This rule would not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A brief assessment to clarify the costs and benefits associated with this rule follows.

This rule would require a permit for recreational activities on some Conservation Easement lands, specifically lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake, which are owned by Koniag, Inc., and are within the boundaries of Kodiak National Wildlife Refuge in Alaska. To access the area, visitors must: (1) Have a permit from the refuge; (2) be a concessionaire or a client of a concessionaire authorized by Koniag, Inc.; (3) be an authorized subsistence user as defined in the Conservation Easement; or (4) limit their use to public easements reserved under section 17(b) of the Alaska Native Claims Settlement Act. The baseline (status quo) is defined as the conditions before the temporary restriction was adopted. Therefore, all permits associated with the Conservation Easement land are new.

Visitation to the easement land consists primarily of anglers because of the world class king salmon fishing on the Karluk River. In addition to angling, other activities may include hiking, camping, hunting, and watching wildlife such as Kodiak brown bears.

During the limited-use period from June 10 to July 15, the maximum number of recreational visitors that can access the area requiring a permit is limited to 70 people per day (28 holding refuge permits and 42 clients of guides holding Koniag, Inc., permits). Outside of this limited-use time period (July 16 to June 9), there is no limit on the number of visitors. In all of 2004, 339 visitors were guided with permits from Koniag, Inc., and 240 visitors were unguided with permits from Kodiak National Wildlife Refuge. Approximately 110 refuge permits were for the limited-use period, and 130 refuge permits were for outside of the limited-use period. Thus, 579 people visited the Karluk River and Lake Conservation Easement land where a permit was required for recreation in 2004.

During the temporary restriction on the number of recreational visitors that could access the area during the limited-use period, official monitoring of visitation has shown that no applicants have been denied access to easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. Therefore, we do not expect that the permit requirement will have an effect on the number of users on the easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake.

Costs Incurred

There are no monetary fees for any of these permits. Any costs incurred would be due to the time needed to fill out the permit application. Please see the ''Paperwork Reduction Act'' section of this document for more information.

Benefits Accrued

a. This rule allows the public to continue to use the lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. It provides an official system to gather the information necessary to track visitor use and help ensure visitor safety. We expect this rule will better distribute the number of visitors throughout the peak season in the future if use increases. While we do not expect the number of visitors to change in the immediate future, if use does increase in the future, visitors could continue to experience conditions similar to those today along Karluk River and Lake and the refuge could distribute the number of visitors throughout the peak season to avoid fishing congestion.

b. This rule would not create inconsistencies with other Federal agencies' actions. This action pertains solely to the management of Conservation Easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake within Kodiak National Wildlife Refuge.

c. This rule would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule does not affect entitlement programs. There are no grants or other Federal assistance programs associated with public use of the Conservation Easement.

d. This rule would not raise novel legal or policy issues. This rule requires a permit to access the Koniag, Inc., Conservation Easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. This rule continues the practice of allowing recreational public use of many lands managed by national wildlife refuges.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), whenever a Federal 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 (i.e., small businesses, small organizations, and small government jurisdictions) (5 U.S.C. 601 *et seq.*). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. Thus, for a regulatory flexibility analysis to be required, impacts must exceed a threshold for ''significant impact'' and a threshold for a ''substantial number of small entities.'' See 5 U.S.C. 605(b). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule would not have a significant economic impact on a substantial number of small entities.

Small businesses that may be affected would include those located in Kodiak Island Borough, Alaska. Because this rule is not expected to affect recreational activities in the area, this rule would not have a significant effect on small businesses engaged in activities in the borough. Therefore, we certify that this rule would not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act. A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act 5 U.S.C. 804(2). This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required.

Takings (E.O. 12630)

In accordance with E.O. 12630, the rule does not have any takings implications. This regulation will affect only Conservation Easement lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake owned by a willing participant, Koniag, Inc., by allowing public use of private lands.

Federalism (E.O. 13132)

This rule has no Federalism implications to warrant the preparation of a Federalism Assessment under E.O. 13132. Permit holders who choose to fish are regulated by Alaska Department of Fish and Game regulations. In negotiating the Conservation Easement, we coordinated with State and Tribal governments, and the State of Alaska is a party to the Conservation Easement.

Civil Justice Reform (E.O. 12988)

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. A violation of the rule is classified as a misdemeanor offense.

Energy Supply, Distribution, or Use (E.O. 13211)

On May 18, 2001, the President issued 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. The rule has no effect on energy supplies, distribution, and use. Therefore, this action is a not a significant energy action, and no Statement of Energy Effects is required.

Consultation and Coordination With Indian Tribal Governments (E.O. 13175)

In accordance with E.O. 13175, we have evaluated possible effects on federally recognized Indian tribes and have determined there are no effects. Koniag, Inc., consulted with area tribal governments in drafting the Conservation Easement. Other provisions of the Conservation Easement give preference for certain visitor services on easement lands to Koniag, Inc., shareholders who reside in Larsen Bay or Karluk and to the tribal governments of Larsen Bay and Karluk.

Paperwork Reduction Act

This regulation does not contain any information collection requirements other than those already approved by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0014. See 50 CFR 36.3 for information concerning that approval. We will amend our information collection to include the burden hours associated with this regulation. These burden hours involve the time required to complete the permit application. Applicants need approximately 15 minutes to apply for a permit and to fax or mail it to the refuge. The majority of applications are completed electronically and faxed to the refuge. The average annual time commitment for visitors is approximately 60 hours (15 minutes × 240 applications). 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.

Endangered Species Act Section 7 Consultation

No species listed as endangered under the Endangered Species Act is known to occur within the easement lands, including lands within a ½-mile band of land on either side of the Karluk River and lands within ½ mile of the shoreline of Karluk Lake. In 2004, a section 7 consultation under the Endangered Species Act was conducted for the Draft Revised Comprehensive Conservation Plan, Kodiak National Wildlife Refuge. This plan includes the proposed management of all Conservation Easement lands. The plan was found to be fully consistent with section 7 of the Endangered Species Act by the Service and the National Marine Fisheries Service.

National Environmental Policy Act

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)) (NEPA) and 516 DM 6, Appendix 1. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. A categorical exclusion from NEPA documentation applies under the Department of the Interior Manual, 516 DM 8 B(10).

Primary Author

Abbey Kucera, Supervisory Natural Resources Specialist, Kodiak National Wildlife Refuge, is the primary author of this document.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

■ For the reasons set forth in the preamble, we amend title 50, chapter 36, subpart E of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460(k) *et seq.*, 668dd–668ee, as amended, 742(a) *et seq.*, 3101 *et seq.*; and 44 U.S.C. 3501 *et seq.*

■ 2. Amend § 36.39(j) by adding paragraph (3) to read as follows:

§ 36.39 Public use.

* * * * *

(j) Kodiak National Wildlife Refuge.

* * *

* * * * *

(3) *Permit requirement for Conservation Easement lands.* Pursuant to the terms of a Conservation Easement held by the United States and the State of Alaska, we manage public use of certain lands owned by Koniag, Inc. These lands are inholdings within the exterior boundaries of the Kodiak National Wildlife Refuge. The Conservation Easement was recorded in the Kodiak Recording District, Alaska, on December 6, 2002, as document number 2002–003448–0. The lands subject to the Conservation Easement to which the permit requirement in this paragraph apply are all lands within ½ mile of the west shore of Karluk Lake, from the lake outlet to the southern boundary of T. 32 S., R. 30 W. (surveyed), Seward Meridian; all lands within ½ mile of the east shore of Karluk Lake, from the lake outlet to a point due east of the north end of Camp Island; and all lands within a ½-mile band of land on either side of the Karluk River, from the Karluk Lake outlet downstream to the refuge boundary. A map is available from the refuge showing the location of the easement lands that are subject to the permit requirement. You are prohibited from using these lands unless:

(i) You have a nontransferable permit from the refuge;

(ii) You are a concessionaire or a client of a concessionaire authorized by Koniag, Inc., to provide revenue-producing visitor services;

(iii) You are an authorized user in accordance with section 7(d) of the Conservation Easement; or

(iv) You are limiting your use of the property to public access easements established under section 17(b) of the Alaska Native Claims Settlement Act.

Dated: May 22, 2006.

Matt Hogan,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E6–8873 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 71, No. 110
Thursday, June 8, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24959; Directorate Identifier 2005–NM–258–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 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 all Fokker Model F.28 Mark 0070 and 0100 airplanes. This proposed AD would require a one-time detailed inspection to detect corrosion on the wing rear spar lower girder, and related investigative and applicable corrective actions if necessary. This proposed AD results from reports of corrosion of the wing rear spar lower girder between wing station (STA) 8700 and wing STA 9200. We are proposing this AD to detect and correct corrosion of the wing rear spar lower girder, which could result in reduced structural integrity of the wing rear spar.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

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–2006–24959; Directorate Identifier 2005–NM–258–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

The Civil Aviation Authority—The Netherlands (CAA–NL), which is the airworthiness authority for the Netherlands, notified us that an unsafe condition may exist on all Fokker Model F.28 Mark 0070 and 0100 airplanes. The CAA–NL advises that it has received reports of corrosion of the wing rear spar lower girder between wing station (STA) 8700 and wing STA 9200 on several Fokker Model F.28 Mark 0100 airplanes. The exfoliation corrosion was found when the aileron pulley assembly was removed from the airplane. In at least one case, replacement of a section of the rear spar lower girder was necessary to return the airplane back to service. This particular part of the wing is visible only through a narrow slot between the aileron pulley assembly and the rear spar, and through small lightening holes in the aileron pulley attachment bracket. Therefore, it is possible that any corrosion in this area could remain undetected during routine inspections of fuselage zones 536 and 636 done in accordance with Tasks 062505–00–01 and 062605–00–01 of the Fokker 70/100 Maintenance Review Board Document. The cause of the corrosion is unknown. Corrosion of the wing rear spar lower girder, if not corrected, could result in corrosion remaining undetected, resulting in reduced structural integrity of the wing rear spar.

The design of the wing rear spar lower girder on Fokker Model F.28 Mark 0070 airplanes is the same as on Model F.28 Mark 0100 airplanes; therefore, the unsafe condition could exist on all of these airplanes.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletin SBF100–57–038, dated April 15, 2005. The service bulletin describes procedures for doing a one-time detailed inspection of the wing rear spar lower girder between STA 8700 and STA 9200 for corrosion, and related investigative and applicable corrective actions if necessary. If corrosion is found, the related investigative actions

include removing the aileron pulley assembly, removing the corrosion from the wing rear spar lower girder, and measuring the depth of the damaged spots. The corrective actions include repairing the wing rear spar lower girder if the damage is outside of specified limits and repairing the surface treatment. The service bulletin also describes procedures for reporting inspection and damage findings to the manufacturer. The CAA–NL mandated the service information and issued Dutch airworthiness directive NL–2005–006, dated April 29, 2005, to ensure the continued airworthiness of these airplanes in the Netherlands.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the Netherlands and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA–NL has kept the FAA informed of the situation described above. We have examined the CAA–NL's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Among the Proposed AD, the Dutch Airworthiness Directive, and the Service Bulletin.'' The proposed AD would also require sending the inspection results to the FAA.

Differences Among the Proposed AD, the Dutch Airworthiness Directive, and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions using a method that we or the European Aviation Safety Agency (EASA) (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair we or the EASA approve would be acceptable for compliance with this proposed AD.

The service bulletin specifies procedures to take when the damage is more than 1.3 millimeters (mm) deep and when the remaining material of the rear spar lower girder is less than 2.1 mm thick, but it does not specify what to do if the depth is exactly 1.3 mm and the thickness is exactly 2.1 mm. We have determined that, for this proposed AD, any damage found that measures more than or equal to 1.3 mm deep or when the remaining material of the rear spar lower girder is less than or equal to 2.1 mm thick, must be repaired in accordance with a method approved by us; or the EASA (or its delegated agent).

Clarification of Inspection Type

The Dutch airworthiness directive refers only to an ''inspection'' for corrosion of the wing rear spar lower girder. We have determined that the procedures in the service bulletin should be described—as they are in the service bulletin—as a ''detailed inspection.'' We have included Note 1 in this proposed AD to define this type of inspection.

Interim Action

This proposed AD is considered to be interim action. The inspection reports that would be required by this proposed AD would enable the manufacturer to obtain better insight into the nature, cause, and extent of the corrosion, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection of wing rear spar lower girder	2	$80	$0	$160	44	$7,040

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):

Fokker Services B.V.: Docket No. FAA–2006–24959; Directorate Identifier 2005–NM–258–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Fokker Model F.28 Mark 0070 and 0100 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from reports of corrosion of the wing rear spar lower girder between wing station (STA) 8700 and wing STA 9200. We are issuing this AD to detect and correct corrosion of the wing rear spar lower girder, which, if not detected, could result in reduced structural integrity of the wing rear spar.

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.

Wing Rear Spar Lower Girder Inspection/Related Investigative/Corrective Actions

(f) Within 4,000 flight hours or 21 months after the effective date of this AD, whichever occurs first: Do a detailed inspection to detect corrosion on the wing rear spar lower girder between wing STA 8700 and wing STA 9200, and do all related investigative and applicable corrective actions by accomplishing all the actions specified in the Accomplishment Instructions of Fokker Service Bulletin SBF100–57–038, dated April 15, 2005, except as provided by paragraphs (g) and (h) of this AD. Do all related investigative and corrective actions before further flight. If any damage found that measures more than or equal to 1.3 millimeters (mm) deep, or if the thickness of the remaining material of the rear spar lower girder is less than or equal to 2.1 mm thick, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

(g) If, during the accomplishment of the corrective actions required by paragraph (f) of this AD, the service bulletin specifies contacting the manufacturer for certain repair instructions: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the EASA (or its delegated agent).

Reporting Inspection and Damage Results

(h) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f) of this AD to Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; fax +31 252 627211; e-mail *Technicalservices.FokkerServices@stork.com*; at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD. Use the reporting forms in Figures 3 and 4 of Fokker Service Bulletin SBF100–57–038, dated April 15, 2005. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Dutch airworthiness directive NL–2005–006, dated April 29, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on May 30, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8897 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24978; Directorate Identifier 2006–NM–108–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 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 McDonnell Douglas Model 717–200 airplanes. This proposed AD would require modifying the fuel boost pump container of the center tank. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent exposing the fuel pump container vapor area to electrical arcing during a fuel pump motor case or connector burn through, which could result in a fuel tank explosion.

DATES: We must receive comments on this proposed AD by July 24, 2006.

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, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137;

telephone (562) 627–5253; fax (562) 627–5210.

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–2006–24978; Directorate Identifier 2006–NM–108–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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Investigation by the manufacturer has revealed that during normal operation fuel exits the fuel boost pump container of the center tank, and the motor/connector end of the fuel pump becomes uncovered by fuel. This condition has been attributed to two open pipe boss assemblies mounted on the container skin, which allows fuel to exit the container. This condition, if not corrected, could result in the fuel pump container vapor area being exposed to electrical arcing during a fuel pump motor case or connector burn through, which could result in a fuel tank explosion.

Relevant Service Information

We have reviewed Boeing Service Bulletin 717–28–0013, dated July 28, 2004. The service bulletin describes procedures for modifying the fuel boost pump container of the center tank by installing hat and cover assemblies. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

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 ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

Although the service bulletin recommends accomplishing the modification ''at a scheduled maintenance period when manpower, materials, and facilities are available, but not to exceed the next scheduled opening of the right wing fuel tank,'' we have determined that this imprecise compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modifications. In light of all of these factors, we find a compliance time of 78 months for completing the required actions to be warranted, in that it represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with the airplane manufacturer.

Costs of Compliance

There are about 145 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 per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	2	$80	$1,145	$1,305	114	$148,770

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):

McDonnell Douglas: Docket No. FAA–2006–24978; Directorate Identifier 2006–NM–108–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Model 717–200 airplanes, certificated in any category; as identified in Boeing Service Bulletin 717–28–0013, dated July 28, 2004.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent exposing the fuel pump container vapor area to electrical arcing during a fuel pump motor case or connector burn through, which could result in a fuel tank explosion.

Compliance

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

Modification

(f) Within 78 months after the effective date of this AD, modify the fuel boost pump container of the center tank by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 717–28–0013, dated July 28, 2004.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Los Angeles 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.

Issued in Renton, Washington, on May 31, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8899 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24958; Directorate Identifier 2006–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes, Equipped With General Electric CF6–50 Series Engines

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 Airbus Model A300 airplanes. This proposed AD would require modifying the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight. This proposed AD would also require two other actions that must be accomplished before or concurrently with the modification: installing a structural change in the fan cowl to avoid interference; and installing a dedicated, shielded electrical circuit. This proposed AD results from a report that the manufacturer has developed a third line of defense against the inadvertent deployment of the thrust reverser of A300 airplanes that are equipped with General Electric CF6–50 series engines (in accordance with FAA guidelines). We are proposing this AD to prevent inadvertent deployment of the thrust

reverser in flight, which could result in reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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: Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

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–2006–24958; Directorate Identifier 2006–NM–075–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 airplanes. The DGAC advises that the manufacturer has developed an improved design of the thrust reverser of A300 airplanes that are equipped with General Electric CF6–50 engines. The improved design acts as a third line of defense against inadvertent deployment of the thrust reverser in flight. The DGAC states that this new design conforms to the requirements of Appendix C, ''Thrust Reverser System Safety Analysis,'' of the FAA document titled ''Criteria for Assessing Transport Turbojet Fleet Thrust Reverser Safety,'' dated June 1, 1994. Airbus has reassessed the safety of the thrust reverser system on all of its wide-body airplanes based on Appendix C of this document. The FAA document is based upon the premise that no failure of thrust reverser components anticipated to occur in service should prevent continued safe flight and landing of an airplane. Appendix C states that the thrust reverser system is acceptable if catastrophic deployment is shown to be extremely improbable. Inadvertent deployment of the thrust reverser in flight, if not corrected, could result in reduced controllability of the airplane.

Relevant Service Information

Airbus has issued Service Bulletin A300–78–0022, dated September 27, 2005. The service bulletin describes procedures for modifying the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight. On the airplane, the modification includes retrofitting the circuit breaker monitoring wiring, activating the electrical circuit, and testing the complete system. On the engine/nacelle, the modification includes retrofitting the electrical harness routing from each lock to the pylon interfaces, installing support brackets for the electrical harness on each side of the engine pylon, installing new pneumatic tubing in the engine/pylon area and on the thrust reverser, and installing a dual switcher valve on the right-hand thrust reverser half.

Airbus Service Bulletin A300–78–0022 also specifies prior or concurrent accomplishment of the following service bulletins:

PRIOR/CONCURRENT SERVICE BULLETINS

Airbus service bulletin	Action
A300–54–0098, dated September 27, 2005	Install a structural change in the fan cowl to avoid interference between the third line of defense hardware installed on the thrust reverser and the fan cowl.
A300–78–0021, dated September 27, 2005	Install a dedicated, shielded electrical circuit, segregated from the current thrust reverser control system.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–206, dated December 21, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the

provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

This proposed AD would affect about 30 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

Action	Work hours	Parts	Cost per airplane	Fleet cost
Install third line of defense	6	$440	$920	$27,600
Install structural change in the fan cowl (prior/concurrent requirement)	312	5,680	30,640	919,200
Install dedicated, shielded electrical circuit (prior/concurrent requirement)	94	28,700	36,220	1,086,600

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):

Airbus: Docket No. FAA–2006–24958; Directorate Identifier 2006–NM–075–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to A300 airplanes, certificated in any category; equipped with General Electric CF6–50 series engines.

Unsafe Condition

(d) This AD results from a report that the manufacturer has developed a third line of defense against the inadvertent deployment of the thrust reverser of A300 airplanes that are equipped with General Electric CF6–50 series engines (in accordance with FAA guidelines). We are issuing this AD to prevent inadvertent deployment of the thrust reverser in flight, which could result in reduced controllability 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.

Modification

(f) Within 48 months after the effective date of this AD, modify the airplane and the engine/nacelle to install a third line of defense against inadvertent deployment of the thrust reverser in flight, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–78–0022, dated September 27, 2005.

Prior/Concurrent Installations

(g) Prior to or concurrently with the modification in paragraph (f) of this AD, do the installations specified in Table 1 of this AD in accordance with the Accomplishment Instructions of the service bulletins listed in Table 1.

TABLE 1.—PRIOR/CONCURRENT ACTIONS

Action	Airbus service bulletin
(1) Install a structural change in the fan cowl to avoid interference between the third line of defense hardware installed on the thrust reverser and the fan cowl.	A300–54–0098, dated September 27, 2005.

TABLE 1.—PRIOR/CONCURRENT ACTIONS—Continued

Action	Airbus service bulletin
(2) Install a dedicated, shielded electrical circuit, segregated from the current thrust reverser control system.	A300–78–0021, dated September 27, 2005.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(i) French airworthiness directive F–2005–206, dated December 21, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on May 30, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8900 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24948; Directorate Identifier 2005–NM–030–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 707–100 Long Body, –100B Long Body, –100B Short Body, –E3F, –300, –300B, and –300C Series Airplanes; Model 727–100 and –200 Series Airplanes; Model 737–200, –200C, –300, –400, and –500 Series Airplanes; Model 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747SR, and 747SP Series Airplanes; Model 757–200 and 757–200PF Series Airplanes; and Model 767–200 and –300 Series Airplanes; Equipped With Observer or Attendant Seats

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) that applies to certain Boeing airplanes. The existing AD currently requires inspection of the attachment of the shoulder restraint harness to the mounting bracket on certain observer and attendant seats to determine if a C-clip is used in the attachment, and corrective action, if necessary. This proposed AD would remove certain airplanes from the applicability and add others. This proposed AD results from the determination that some airplanes had been inadvertently included in or excluded from the applicability of the existing AD and that certain additional new airplanes are now subject to the identified unsafe condition. We are proposing this AD to prevent detachment of the shoulder restraint harness of the attendant or observer seat from its mounting bracket during service, which could result in injury to the occupant of the seat.

DATES: We must receive comments on this proposed AD by July 24, 2006.

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.

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

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; 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 ''Docket No. FAA–2006–24948; Directorate Identifier 2005–NM–030–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or may can 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

On November 16, 2001, we issued AD 2001–24–02, amendment 39–12518 (66 FR 59681, November 30, 2001). That AD applies to certain Boeing Model 707–100 long body, –100B long body, –100B short body, –E3A, –300, –300B, and –300C series airplanes; Model 727–100 and –200 series airplanes; Model 737–

200, –200C, –300, –400, and –500 series airplanes; Model 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747SR, and 747SP series airplanes; Model 757–200 and 757–200PF series airplanes; and Model 767–200 and –300 series airplanes.

AD 2001–24–02 requires inspecting the attachment of the shoulder restraint harness to the mounting bracket on certain observer and attendant seats to determine if a C-clip is used in the attachment, and corrective action, if necessary. That AD resulted from reports of the shoulder restraint harness of the attendant and observer seat detaching from the mounting bracket. We issued that AD to prevent injury to the occupant of the seat.

Actions Since Existing AD Was Issued

Since we issued AD 2001–24–02, we have learned that the applicability must be revised to add certain airplanes and remove others.

Relevant Service Information

AD 2001–24–02 refers to Boeing Service Bulletins 727–25–0295, Revision 1, dated May 17, 2001, and 737–25–1412, Revision 1, dated May 17, 2001, as the appropriate sources of service information for affected Model 727 and 737 series airplanes. Boeing has since issued Service Bulletin 727–25–0295, Revision 2, dated February 6, 2003, to clarify Figure 1 in the service bulletin. Boeing has also issued Special Attention Service Bulletin 737–25–1412, Revision 2, dated September 18, 2003, and Revision 3, dated December 2, 2004. Revision 2 of the Special Attention service bulletin adds airplanes PW231 through PW252 inclusive; Revision 3 removes airplanes PW001 through PW054 inclusive and PW091 through PW094 inclusive; those airplanes were inadvertently excluded or included in previous versions of the service bulletin. The service bulletin procedures are unchanged from those described in Revision 1.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to develop on other airplanes of the same type design. For this reason, we are proposing this AD, which would supersede AD 2001–24–02 and would retain the requirements of the existing AD. This proposed AD would also revise the applicability to remove certain airplanes and add others.

Changes to Existing AD

We have revised the applicability of this AD to also identify model designations as published in the most recent type certificate data sheet for the affected models.

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Costs of Compliance

Since we issued AD 2001–24–02, we have increased the labor rate used in the cost estimate calculations from $60 to $80 per work hour. However, with respect to the total cost impact for the fleet, this increase in the hourly labor rate would be offset by the decrease in the number of affected airplanes in this proposed AD.

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

ESTIMATED COSTS

Base model	Number of work hours (@¼-work hour/seat)	Hourly labor rate	Total cost per airplane	Number of airplanes/U.S. registry	Total fleet cost	Number of airplanes/ worldwide
707	1	$80	$80	21	$1,680	250
727	1	80	80	881	70,480	1,986
737	2	80	160	459	73,440	885
747	5	80	400	83	33,200	554
757	2	80	160	257	41,120	262
767	3	80	240	207	49,680	596

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 removing amendment 39–12518 (66 FR 59681, November 30, 2001) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2006–24948; Directorate Identifier 2005–NM–030–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 24, 2006.

Affected ADs

(b) This AD supersedes AD 2001–24–02.

Applicability

(c) This AD applies to airplanes, certificated in any category, identified in Table 1 of this AD; equipped with any observer or attendant seat.

TABLE 1.—APPLICABILITY

Models and series	As identified in Boeing service bulletin—
Model 707–100 long body, 707–100B long body, 707–100B short body, 707–E3F, 707–300, 707–300B, and 707–300C series airplanes.	3499, Revision 1, dated May 17, 2001.
Model 727–100 and 727–200 series airplanes	727–25–0295, Revision 2, dated February 6, 2003.
Model 737–200, 737–200C, 737–300, 737–400, and 737–500 series airplanes.	737–25–1412, Revision 3, dated December 2, 2004.
Model 747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747SR, and 747SP series airplanes.	747–25–3244, Revision 4, dated June 26, 2003.
Model 757–200 and 757–200PF series airplanes	757–25–0223, Revision 1, dated May 17, 2001.
Model 767–200 and 767–300 series airplanes	767–25–0288, Revision 3, dated August 1, 2002.

Unsafe Condition

(d) This AD results from reports of the shoulder restraint harness of the attendant or observer seat detaching from the mounting bracket. We are issuing this AD to prevent injury to the occupant of the seat.

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.

Inspection and Corrective Action

(f) Except for the airplanes identified in paragraph (g) of this AD: Within 36 months after January 4, 2002 (the effective date of AD 2001–24–02), do a one-time general visual inspection of the attachment of the shoulder restraint harness of each observer or attendant seat to determine if a C-clip is used in the attachment. Do the inspection according to the applicable service bulletin identified in Table 2 of this AD. If the shoulder harness is looped through the bracket and attached to itself with a C-clip, do paragraph (f)(1) or (f)(2) of this AD. If the inspection required by paragraph (f) of this AD is done after the effective date of this AD, paragraph (f)(1) or (f)(2), if required, must be done before further flight after the inspection required by this paragraph.

(1) Remove and discard the C-clip, and reattach the shoulder harness to the mounting bracket, according to the service bulletin. Accomplishment of these actions before the effective date of this AD according to the applicable service bulletin version identified in Table 3 of this AD is also acceptable for compliance with the requirements of paragraph (f)(1) of this AD.

(2) Install a second C-clip with the clip's opening positioned in the opposite direction of the opening of the existing C-clip, according to the optional method described in Steps 19 and 20 of Figure 1 or 2 of the service bulletin.

(g) For Model 737–200, –200C, –300, –400, and –500 series airplanes with variable numbers PW231 through PW252 inclusive: Within 36 months after the effective date of this AD, do a one-time general visual inspection of the attachment of the shoulder restraint harness of each observer or attendant seat to determine if a C-clip is used in the attachment. Do the inspection according to the applicable service bulletin identified in Table 2 of this AD. If the shoulder harness is looped through the bracket and attached to itself with a C-clip, do paragraph (f)(1) or (f)(2) of this AD before further flight.

TABLE 2.—SERVICE BULLETINS

Model	Boeing service bulletin	Required version
707–100 long body, –100B long body, –100B short body, –E3F, –300, –300B, and –300C.	3499	Revision 1, dated May 17, 2001.
727–100 and –200	727–25–0295	Revision 1, dated May 17, 2001; or Revision 2, dated February 6, 2003.
737–200, –200C, –300, –400, and –500	737–25–1412	Revision 1, dated May 17, 2001; or Revision 2, dated September 18, 2003; or Revision 3, dated December 2, 2004.
747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747SR, and 747SP.	747–25–3244	Revision 1, dated May 17, 2001; or Revision 2, dated April 25, 2002; or Revision 3, dated August 1, 2002 or Revision 4, dated June 26, 2003.
757–200 and 757–200PF	757–25–0223	Revision 1, dated May 17, 2001.
767–200 and –300	767–25–0288	Revision 1, dated May 17, 2001; or Revision 2, dated April 25, 2002; or Revision 3, dated August 1, 2002.

TABLE 3.—ACCEPTABLE SERVICE BULLETIN REVISIONS

Model	Boeing service bulletin	Date
707–100 long body, –100B long body, –100B short body, E3F, –300, –300B, and –300C series airplanes	3499	April 27, 2000.
727–100 and –200 series airplanes	727–25–0295	April 27, 2000.

TABLE 3.—ACCEPTABLE SERVICE BULLETIN REVISIONS—Continued

Model	Boeing service bulletin	Date
737–200, –200C, –300, –400, and –500 series airplanes	737–25–1412	April 27, 2000.
747–100B, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747SR, and 747SP	747–25–3244	April 27, 2000.
757–200 and 757–200PF series airplanes	757–25–0223	April 27, 2000.
767–200 and –300 series airplanes	767–25–0288	April 27, 2000.

Spares

(h) Except for airplanes identified in paragraph (g) of this AD: As of January 4, 2002, do not attach the shoulder restraint harness of an observer or attendant seat on any airplane to the mounting bracket using a C-clip, unless the requirements of paragraph (f)(2) of this AD are done.

(i) For airplanes identified in paragraph (g) of this AD: As of the effective date of this AD, do not attach the shoulder restraint harness of an observer or attendant seat on any airplane to the mounting bracket using a C-clip, unless the requirements of paragraph (f)(2) of this AD are done.

Alternative Methods of Compliance (AMOCs)

(j)(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.

Issued in Renton, Washington, on May 30, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8901 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24979; Directorate Identifier 2006–NM–014–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 Series 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 Bombardier Model DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series airplanes. This proposed AD would require inspecting the left and right control column torque tube assemblies to determine the type of rivets installed and replacing incorrect or indeterminate type rivets with the correct type rivets. This proposed AD results from a report that incorrect rivets having lower than required strength were installed on the control column torque tube during production. We are proposing this AD to prevent shear failure of control column torque tube rivets, which could cause unexpected decoupling of the elevators and large unwanted deflection of the free elevator, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by July 10, 2006.

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 Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Richard Beckwith, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7302; fax (516) 794–5531.

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–2006–24979; Directorate Identifier 2006–NM–014–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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier DHC–8–100, DHC–8–200, DHC–8–300, and DHC–8–400 series

airplanes. TCCA advises that incorrect rivets having lower than required strength were installed on the control column torque tube during production. This condition, if not corrected, could result in shear failure of rivets in the control column torque tube during a jam of the pitch control circuit, when the pilot of the non-jammed pitch control tries to free the control by applying a large force. This type of rivet failure could cause unexpected decoupling of the elevators and large unwanted deflection of the free elevator, reducing the controllability of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletin 8–27–104, dated October 26, 2004, for Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes, and Service Bulletin 84–27–24, Revision A, dated September 28, 2005, for Model DHC–8–400 series airplanes. The service bulletins describe procedures for inspecting the left and right control column torque tube assemblies to determine the type of rivets installed and replacing incorrect (AD rivets) or indeterminate type rivets with the correct type rivets (DD or DN rivets). Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2005–39, dated November 21, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, 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 Information.''

Differences Between the Proposed AD and the Service Information

Bombardier Service Bulletin 8–27–104 and Service Bulletin 84–27–24, Revision A, specify replacing incorrect or unidentifiable rivets with DN rivets. This proposed AD allows replacement with either DN or DD rivets. The service bulletins state no further action is necessary if DD rivets are found installed; this proposed AD does not require replacement of the rivets if either DN or DD rivets are found installed.

Clarification of Inspection Terminology

The service bulletin refers only to an ''inspection'' for the type of rivets installed. We have determined that the procedures in the service bulletin should be described as a ''general visual inspection.'' Note 1 has been included in this AD to define this type of inspection.

Costs of Compliance

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

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection for rivet type	1	$80	$0	$80	162	$12,960.
Rivet replacement, if necessary	16	80	50	1,330	162	A maximum of $215,460.

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):

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–24979; Directorate Identifier 2006–NM–014–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by July 10, 2006.

Affected ADs

(b) None.

Applicability

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

TABLE 1.—APPLICABILITY

Bombardier airplane model—	Affected serial numbers (S/N)—
(1) DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, DHC–8–202, DHC–8–301, DHC–8–311, DHC–8–314, and DHC–8–315 airplanes.	528 through 602 inclusive, and 606.
(2) DHC–8–400, DHC–8–401, and DHC–8–402 airplanes	4003, 4004, 4006, 4008 through 4080 inclusive, and 4082.

Unsafe Condition

(d) This AD results from a report that incorrect rivets having lower than required strength were installed on the control column torque tube during production. We are issuing this AD to prevent shear failure of rivets in the control column torque tube, which could cause unexpected decoupling of the elevators and large unwanted deflection of the free elevator, and consequent reduced controllability 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.

Inspection and Replacement of Incorrect Rivets

(f) At the applicable times specified in Table 2 of this AD: Do the applicable actions in accordance with the applicable service bulletin identified in Table 2 of this AD. If all rivets identified during the inspection specified in paragraphs (f)(1)(i) or (f)(2)(i) of this AD are of the correct type (DD or DN rivets), no further action is required by this AD.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

TABLE 2.—INSPECTION AND REPLACEMENT OF INCORRECT RIVETS

Model—	Compliance time—	Action—	In accordance with—
(1) Model DHC–8–102, DHC–8–103, DHC–8–106, DHC–8–201, DHC–8–202, DHC–8–301, DHC–8–311, DHC–8–314, and DHC–8–315 airplanes.	(i) Within 5,500 flight hours after the effective date of this AD.	Do a general visual inspection of the left and right control column torque tube assemblies to determine the types of rivets installed.	Part A of the Accomplishment Instructions of Bombardier Service Bulletin 8–27–104, dated October 26, 2004.
	(ii) Before further flight	Replace any rivet of an incorrect type (AD rivets) or of a type that cannot be determined with correct type rivets (DD or DN rivets).	Part B of the Accomplishment Instructions of Bombardier Service Bulletin 8–27–104, dated October 26, 2004.
(2) Model DHC–8–400, DHC–8–401, and DHC–8–402 airplanes.	(i) Within 5,500 flight hours after the effective date of the AD.	Do a general visual inspection of the left and right control column torque tube assemblies to determine the type of rivets installed.	Part A of the Accomplishment Instructions of Bombardier Service Bulletin 84–27–24, Revision A, dated September 28, 2005.
	(ii) Before further flight	Replace any rivet of an incorrect type (AD rivets) or of a type that cannot be determined with correct type rivets (DD or DN rivets).	Part B of the Accomplishment Instructions of Bombardier Service Bulletin 84–27–24, Revision A, dated September 28, 2005.

Actions Accomplished According to Previous Issue of Service Bulletin

(g) For Model DHC–8–400, DHC–8–401 and DHC–8–402 airplanes: Inspections and rivet replacements done before the effective date of this AD according to Bombardier Service Bulletin 84–27–24, dated September 20, 2004, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, New York 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.

Related Information

(i) Canadian airworthiness directive CF–2005–39, dated November 21, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on May 31, 2006.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–8898 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–146459–05]

RIN 1545–BF04

Designated Roth Accounts Under Section 402A; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of public hearing on proposed regulations under sections 402(g), 402A, 403(b), and 408A of the Internal Revenue Code (Code) relating to designated Roth accounts.

DATES: The public hearing is being held on Wednesday, July 26, 2006, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Wednesday, July 5, 2006.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–146459–05), room 5203, Internal Revenue Service, P.O. 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–146459–05), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, R. Lisa Mojiri-Azad, 202–622–6060 or Cathy A. Vohs, 202–622–6090; Concerning the submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard Hurst at *Richard.A.Hurst@irscounsel.treas.gov* or (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is the notice of proposed rulemaking (REG–146459–05) that was published in the **Federal Register** on Thursday, January 26, 2006 (71 FR 4320).

The rules of 26 CFR 601.601(a)(3) applies to the hearing. Persons who wish to present oral comments at the hearing that submitted written comments by April 26, 2006 must submit an outline of the topics to be discussed and the amount of time to be devoted to each topic (signed original and eight (8) copies) by July 5, 2006.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Guy R. Traynor,

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

[FR Doc. E6–8885 Filed 6–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 924

[Docket No. MS–016–FOR]

State Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a partially proposed abandoned mine land reclamation (AMLR) plan under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Mississippi proposes revisions to and addition of statutes to the Mississippi Surface Coal Mining and Reclamation Law in order to authorize and establish an AMLR plan. If we approve Mississippi's proposed statutes, our approval will not give Mississippi authority to receive and expend Federal AMLR grant funds. Mississippi would need to submit to us additional information required under 30 CFR 884.13 in order for us to make the findings necessary for full approval of an AMLR plan. The State will be able to receive and spend Federal funds only after we approve its complete State AMLR plan.

This document gives the times and locations that the Mississippi AMLR plan statutes are available for your inspection, the comment period during which you may submit written comments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments on the proposed State AMLR plan statutes until 4 p.m., c.t., July 10, 2006. If requested, we will hold a public hearing on the proposed State AMLR plan statutes July 3, 2006. We will accept requests to speak at a hearing until 4 p.m., c.t. on June 23, 2006.

ADDRESSES: You may submit comments, identified by Docket No. MS–016–FOR, by any of the following methods:

- *E-mail: aabbs@osmre.gov.* Include Docket No. MS–016–FOR in the subject line of the message.
- *Mail/Hand Delivery:* Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209.
- *Fax:* (205) 290–7280.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the proposed Mississippi AMLR plan statutes, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the Mississippi AMLR plan statues by contacting OSM's Birmingham Field Office. Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Telephone: (205) 290–7282. E-mail: *aabbs@osmre.gov.*

In addition, you may review a copy of the proposed AMLR plan statutes during regular business hours at the following location: Mississippi Department of Environmental Quality, Office of Geology, 2380 Highway 80

West, Jackson, Mississippi 39289–1307, Telephone: (601) 961–5500.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *aabbs@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Abandoned Mine Land Reclamation Program

The Abandoned Mine Land Reclamation Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary of the Interior for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines.

Currently, Mississippi does not have a federally approved AMLR plan.

II. Description of the Proposed AMLR Plan Statutes

By letter dated April 5, 2006 (Administrative Record No. MS–0402), Mississippi sent us its AMLR plan statues under SMCRA (30 U.S.C. 1201 *et seq.*). The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Land Reclamation Program (30 CFR Chapter 7, Subchapter R).

This notice describes the nature of the proposed AMLR plan statutes and includes information concerning public participation in the Director's determination of whether or not the submitted AMLR plan statutes may be approved. Mississippi's submission of its statutes is the first step the State has taken in the process for establishing a comprehensive program for the reclamation of abandoned mine lands in Mississippi. By submitting its proposed AMLR plan statutes, Mississippi has indicated its wish to be primarily responsible for this program.

Mississippi's AMLR plan statutes include:

A. Section 53–9–3 Legislative Findings and Declarations

Mississippi proposes revisions to Section 53–9–3 to read as follows:

(k) The provisions of the 2001 amendments to this chapter are to provide for and implement a state program for abandoned mine reclamation which complies with the provisions of Subchapter IV of the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1231 through 1243.

B. Section 53–9–7 Definitions

Mississippi proposes revisions to Section 53–9–7 by adding definitions for ''Abandoned mine lands,'' ''Secretary,'' and ''State reclamation program.''

C. Section 53–9–89 Surface Coal Mining and Reclamation Fund; Deposit of Funds

1. Mississippi proposes to revise Section 53–9–89(1)(a) by adding an account entitled ''Abandoned Mine Lands Reclamation Account.''

2. Mississippi proposes to add new Section 53–9–89(1)(c) to read as follows:

(c) The Abandoned Mine Lands Reclamation Account shall receive all state and federal appropriations, grants and donations for the purposes of the reclamation of abandoned mine lands under this chapter, and such funds shall be made available to the commission to be used as provided in this section for the purposes of abandoned mine reclamation under this chapter and the regulations of the commission. Funds in the Abandoned Mine Land Account may be used for the following purposes:

3. Mississippi also proposes to add specific purposes at Section 53–9–89(1)(c)(i) through (v) for using the funds in accordance with section 401(c)(1), (c)(4), (c)(8), (c)(9), and (c)(13) of SMCRA.

D. Section 53–9–101 Priorities for Expenditure of Funds From Abandoned Mine Lands Reclamation Account; Certain Sites and Areas Ineligible for Expenditures; Projects Involving Protection, Repair, Replacement, Construction, or Enhancements of Certain Utilities

1. At Section 53–9–101(1), Mississippi proposes to add priorities for the expenditure of funds from the Abandoned Mine Lands Reclamation Account on eligible lands and waters. These priorities include those of section 403(a) of SMCRA.

2. At Section 53–9–101(2), Mississippi proposes to add, in accordance with section 411(a), (b), and (c) of SMCRA, provisions for certifying that all of the priorities stated in subsection (1) for eligible lands and waters have been achieved. Mississippi also added the priorities for expenditure of funds for land, water, and specific facilities after the certification.

3. At Section 53–9–101(3), Mississippi proposes to add a provision that provides that sites and areas designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 or which have been listed for remedial action under the Comprehensive Environmental Response, Compensation, and Liability Act shall not be eligible for expenditure from the Abandoned Mine Lands Reclamation Account.

4. At Section 53–9–101(4), Mississippi added the priorities for noncoal minerals and reclamation projects involving utilities adversely affected by coal or mineral mining.

E. Section 53–9–103 Only Abandoned Mine Lands Eligible for Program Expenditures

Mississippi proposes to add the following provision at Section 53–9–103:

Only abandoned mine lands are eligible for reclamation or drainage abatement expenditures from the Abandoned Mine Lands Reclamation Account.

F. Section 53–9–105 Program To Comply With Federal Law; Required Filings; Public Hearing and Comment Period; Liability

1. At Section 53–9–105(1), Mississippi proposes the following new provision:

The department, through the Office of Geology, shall establish and maintain a state reclamation program for abandoned mines which complies with Subchapter IV of the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1231 through 1243.

2. At Section 53–9–105(2), Mississippi proposes to add, in accordance with section 405(f) of SMCRA, provisions for submitting an application to the Secretary of the Interior (Secretary) for the support of the State program and implementation of specific reclamation projects.

3. At Section 53–9–105(3), Mississippi proposes to add, in accordance with section 405(g) of SMCRA, a provision regarding the reporting of costs for each proposed project.

4. At Section 53–9–105(4), Mississippi proposes to add, in accordance with section 405(j) of SMCRA, a provision that provides for reports on operations of the reclamation program as required by the Secretary.

5. At Section 53–9–105(5), Mississippi proposes to add a provision allowing public participation in the annual grant application and the eligibility, priority ranking, and selection of lands for reclamation.

6. At Section 53–9–105(6), Mississippi proposes to add, in accordance with section 405(l) of SMCRA, a provision that normally exempts the State from liability for any costs or damages as a result of action taken or omitted in the course of carrying out the State reclamation program except for gross negligence or intentional misconduct.

G. Section 53–9–107 Right of Entry Upon Property Adversely Affected by Past Coal Mining; Order and Required Findings; Right of Entry Upon Property to Conduct Studies or Exploratory Work

At Section 53–9–107(1) and (2), Mississippi proposes to add, in accordance with section 407(a) and (b) of SMCRA, provisions allowing right of entry upon the property adversely affected by past coal mining practices and any other property to have access to such property.

H. Section 53–9–109 Acquisition of Land Adversely Affected by Past Coal Mining; Sale of Acquired Land; Administrative Responsibility for Acquired Land; Grants

At Section 53–9–109, Mississippi proposes to add, in accordance with section 407(c), (d), (e), (h), and (g) of SMCRA, provisions allowing acquisition and disposition of lands if such land or interest is adversely affected by past coal mining practices and upon a determination that acquisition of such land is necessary for successful reclamation.

I. Section 53–9–111 Review of Commission Action; Formal Hearing; Landowner Rights and Remedies

At Section 53–9–111, Mississippi proposes to add, in accordance with section 407(g) of SMCRA, provisions relating to landowner rights in condemnation proceedings, including the right of a formal hearing.

J. Section 53–9–113 Itemization of Funds Expended; Filing of Statement in County Land Records Detailing Increase in Land Value from Expenditure of Fund; Statement to Constitute Lien Upon Land; Hearing and Appeal

At Section 53–9–113, Mississippi proposes to add, in accordance with section 408 of SMCRA, provisions allowing liens on completed projects funded by the Abandoned Mine Lands Reclamation Account.

K. Section 53–9–115 Governor May Request Action Against Certain Hazards Caused by Mining of Minerals Other Than Coal; Limitations on Funds Available; Acquisition of Interest in Land

At Section 53–9–115, Mississippi proposes, in accordance with section 409 of SMCRA, that the Governor may request the Secretary to authorize the commission to fill voids; seal open or abandoned tunnels, shafts, and entryways; and reclaim surface impacts of underground or surface mining of minerals other than coal which could endanger life and property, constitute a hazard to public health and safety, or degrade the environment. The funds available must be limited to those allocated to the State under section 402(g)(1) and (5) of SMCRA.

L. Section 53–9–117 Interdepartmental Cooperation; Provision of Technical Expertise, Personnel, Equipment, Materials, and Supplies

At Section 53–9–117, Mississippi proposes, in accordance with section 414 of SMCRA, the following provision:

All departments, boards, commissions and agencies of this state shall cooperate with the commission by providing available technical expertise, personnel, equipment, materials and supplies as may be required to implement and administer the provisions of the state abandoned mine lands reclamation program.

M. Section 53–9–119 Injunctions

At Section 53–9–119, Mississippi proposes, in accordance with section 413(c) of SMCRA, the following provision:

The commission, in addition to any other remedies allowed by law, may initiate in the name of the state, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this chapter.

N. Section 53–9–121 Power and Authority to Implement Program; Promulgation of Rules and Regulations; Cooperative Projects

At Section 53–9–121, Mississippi proposes, in accordance with section 413(a) and (b) of SMCRA, the following provisions:

The commission shall have the power and authority to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the abandoned mine lands reclamation program in Mississippi. The commission also shall have the power and authority to engage in cooperative projects with any other agency of the United States of America or any state or federal agency to achieve the objectives of the abandoned mine lands reclamation program in Mississippi.

O. Section 53–9–123 Authority With Regard to Land Affected by Noncoal Mining Practices; Agreement of Landowner; Required Findings; Limitations on Expenditure of Funds

At Section 53–9–123, Mississippi proposes the following provisions:

The commission shall have the authority granted in Sections 53–9–107(1) and 53–9–109, as applied to land or water resources that have been adversely affected by mining practices other than coal mining practices, only upon the agreement of the current landowner(s). The commission shall have this authority only after making the findings required by Section 53–9–107(1)(a) and (b), as modified to reflect that the effects were caused by noncoal mining practices. Funds shall not be expended from the Abandoned Mine Lands Reclamation Account on lands adversely affected by mining or processing practices other than coal mining or processing practices unless and until the landowner(s) agrees to abide with all provisions of Section 53–9–113. This section does not limit the authority of the commission to perform any act authorized by the Mississippi Air and Water Pollution Control Law, Section 49–17–1 *et seq.*, the organic act of the commission, Section 49–2–1 *et seq.*, or the Mississippi Surface Mining and Reclamation Law, Section 53–7–1 *et seq.*

III. Public Comment Procedures

Under the provisions of 30 CFR 884.13(c)(7), we are requesting comments on whether Mississippi's AMLR plan statutes satisfy the applicable State reclamation plan approval criteria of 30 CFR 884.14.

The proposed Mississippi AMLR plan statutes for abandoned mine land reclamation can be approved if:

1. The public has been given adequate notice and opportunity to comment and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies, and administrative structure to carry out the State AMLR plan.

4. The State AMLR plan meets all requirements of the OSM AMLR program provisions.

5. The State has an approved regulatory program.

6. The State AMLR plan is in compliance with all applicable State and Federal laws and regulations.

If we approve the statutes, this does not authorize Mississippi to receive or spend Federal AMLR grant funds. Mississippi would need to submit to us additional information required under 30 CFR 884.13 in order for us to make the findings necessary for full approval of an AMLR plan. The State will be able

to receive and spend Federal funds only after we approve its complete State AMLR plan.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (see DATES). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Birmingham Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include ''Attn: MS–016–FOR'' and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their 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 review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on June 23, 2006. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss Mississippi's proposed AMLR plan, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans because each program is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans submitted by a State or Tribe are based solely on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR part 884 of the Federal regulations.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of abandoned mine land reclamation programs. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 405(d) of SMCRA requires State abandoned mine land reclamation programs to be in compliance with the procedures, guidelines, and requirements established under SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects 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. This determination is based on the fact that the Mississippi plan does not provide for reclamation and restoration of land and water resources adversely affected by past coal mining on Indian lands. Therefore, the Mississippi plan has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because agency decisions on proposed State and Tribal abandoned mine land reclamation plans are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the

Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 924

Intergovernmental relations, Surface mining, Underground mining.

Dated: May 30, 2006.

Brent Wahlquist,

Acting Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. E6–8925 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–05–P

Notices

Federal Register
Vol. 71, No. 110
Thursday, June 8, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0094]

Notice of Request for Extension of Approval of an Information Collection; Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before August 7, 2006.

ADDRESSES: You may submit comments by either of the following methods: Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2006–0094 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0094, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0094.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for irradiation as a phytosanitary treatment of imported fruits and vegetables, contact Dr. Inder P. Gadh, Senior Risk Manager-Treatments, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 734–8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables.

OMB Number: 0579–0155.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) is authorized, among other things, to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests into the United States.

The regulations in 7 CFR part 319 include specific requirements for the importation of fruits and vegetables. For example, fruits and vegetables from certain regions of the world must be treated for insect pests in order to be eligible for entry into the United States.

The regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against all inspect pests including fruit flies, the mango seed weevil, and others. It may be used as an alternative to other approved treatments for these pests in fruits and vegetables, such as fumigation, cold treatment, heat treatment, and other techniques.

These regulations involve the collection of information, including a compliance agreement, 24-hour notification, labeling, dosimetry recordings, requests for dosimetry device approval, requests for facility approval, trust fund agreement, and annual work plan, as well as recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0768064 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel, importers.

Estimated annual number of respondents: 25.

Estimated annual number of responses per respondent: 395.8.

Estimated annual number of responses: 9,895.

Estimated total annual burden on respondents: 760 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of June 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–8934 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mendocino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Mendocino County Resource Advisory Committee will meet June 15, 2006 (RAC) in Willits, California. Agenda items to be covered include: (1) Approval of minutes, (2) Handout Discussion, (3) Public Comment, (4) Financial Report, (5) Sub-committees, (6) Matters before the group, (7) Discussion—approval of projects, and (8) Next agenda and meeting date.

DATES: The meeting will be held on June 16, 2006, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Mendocino County Museum, located at 400 E. Commercial St., Willits, California.

FOR FURTHER INFORMATION CONTACT: Roberta Hurt, Committee Coordinator, USDA, Mendocino National Forest, Covelo Ranger District, 78150 Covelo Road, Covelo, CA 95428. (707) 983–8503; e-mail *rhurt@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff by June 12, 2006. Public comment will have the opportunity to address the committee at the meeting.

Dated: May 25, 2006.

Blaine Baker,

Designated Federal Official.

[FR Doc. 06–5211 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, June 16, 2006. 9:30 a.m., Commission Briefing and Meeting.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Briefing Agency

Commission Briefing: Affirmative Act and Law Schools

- Introductory Remarks by Chairman.
- Speaker's Presentations.
- Questions by Commissioners and Staff Director.

Agenda

I. Approval of Agenda

II. Approval of Minutes of May 4, and May 5, 2006 Meetings

III. Announcements

IV. Staff Director's Report

V. Program Planning

- FY 2008 Statutory Report on Religious Discrimination and Prisoner Rights.
- Schedule for Briefing on Racially Identifiable School Districts in Omaha, NE.
- Report from the Briefing on Campus Anti-Semitism.

VI. Management and Operations

- Web site: Posting Addendum to Transcript of November 2005 Briefing on Campus Anti-Semitism.
- Proposed Information Quality Guidelines.
- Working Group on Briefing Reports.
- Strategic Planning.

VII. State Advisory Committee Issues

- Religious Discrimination and Prisoner Rights.
- Recharter Package for the North Carolina State Advisory Committee.

VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Audrey Wright, Office of the Staff Director (202) 376–7700.

Kenneth L. Marcus,

Staff Director, Acting General Counsel.

[FR Doc. 06–5276 Filed 6–6–06; 3:39 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–831

Fresh Garlic from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2006, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on fresh garlic (''garlic'') from the People's Republic of China (''PRC'') pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq. or Jim Nunno, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340, or (202) 482–0783, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On February 1, 2006, the Department published the notice of initiation of the second sunset review of the antidumping duty order on garlic from the PRC pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Reviews*, 71 FR 5243 (February 1, 2006). The Department received the Notice of Intent to Participate from the Fresh Garlic Producers Association and its individual members: Christopher Ranch LLC; The Garlic Company; Valley Garlic; and Vessey and Company, Inc. (collectively ''the domestic interested parties''), within the deadline specified in section 351.218(d)(1)(i) of the Department's Regulations (''Sunset Regulations''). The domestic interested parties claimed interested party status

under sections 771(9)(C) and (F) of the Act, as domestic producers and packagers of fresh garlic and a trade association whose members produce and process a domestic like product in the United States. We received complete substantive responses only from the domestic interested parties within the 30-day deadline specified in section 351.218(d)(3)(i) of the Deparment's regulations. We received no responses from the respondent interested parties. As a result, pursuant to section 751(c)(5)(A) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department conducted an expedited (120-day) sunset review of this order.

Scope of the Order:

The products subject to the antidumping duty order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non–fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non–fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to Customs and Border Protection to that effect.

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, dated June 1, 2006, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''June 2006.'' The paper copy and electronic versions of the Decision Memorandum are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on garlic from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margin:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
PRC–wide	376.67

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: June 1, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–8940 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(C–427–819)

Low Enriched Uranium from France: Notice of Court Decision and Suspension of Liquidation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 18, 2006, the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department's'') March 2, 2006, Final Results of Redetermination on Remand pursuant to *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, Slip. Op. 06–3 (CIT, January 5, 2006) (''LEU Remand Redetermination''), which pertains to the Final Affirmative Countervailing Duty Determination on Low Enriched Uranium (''LEU'') from France.

Consistent with the decision of the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), the Department will continue to order the suspension of liquidation of the subject merchandise, where appropriate, until there is a conclusive decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct U.S. Customs and Border Protection to liquidate all relevant entries from Eurodif S.A./Compagnie Generale Des Matieres Nucleaires (collectively, ''Eurodif'' or ''respondents'').

EFFECTIVE DATE: May 28, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background

On December 21, 2001, the Department published a notice of final affirmative determination in the countervailing duty investigation of LEU from France. *See Notice of Final Affirmative Countervailing Duty Determination: Low Enriched Uranium from France*, 66 FR 65901 (December 21, 2001) (''*LEU Final Determination*''), and accompanying Issues and Decision Memorandum: Final Affirmative Countervailing Determination: Low Enriched Uranium from France. The *LEU Final Determination* was subsequently amended. *See Amended Final Determination and Notice of Countervailing Duty Order: Low Enriched Uranium from France*, 67 FR 6689 (February 13, 2002).

Respondents challenged the Department's final determination before the CIT. The case was later appealed and the Federal Circuit, in *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, 411 F.3d 1355 (Fed. Cir. 2005) (''*Eurodif I*''), ruled in favor of respondents. The court panel later clarified its ruling, issuing a decision in *Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc., et. al. v. United States*, 423 F. 3d. 1275

(Fed. Cir. 2005) (''*Eurodif II*''), which affirmed *Eurodif I*.

On January 5, 2006, the CIT remanded the case to the Department for action consistent with the decisions of the Federal Circuit in *Eurodif I* and *Eurodif II*. *See Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc. et. al. v. United States*, Slip. Op. 06–3 (CIT, January 5, 2006). Specifically, the CIT directed the Department to revise its final determination and order in accordance with the decisions in *Eurodif I* and *Eurodif II*.

On March 2, 2006, the Department issued its final results of redetermination and recalculated the subsidy rate applicable to Eurodif, to comply with the decisions of *Eurodif I* and *Eurodif II*. *See* LEU Remand Redetermination. On May 18, 2006, the CIT sustained the Department's redetermination in all respects and, thus, affirmed the Department's revised analysis and calculations. *See Eurodif S.A., Compagnie Generale Des Matieres Nucleaires, and Cogema Inc. et. al. v. United States*, Slip. Op. 06–76 (CIT, May 18, 2006).

Suspension of Liquidation

The Federal Circuit, in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit, which is not ''in harmony'' with the Department's final determination or results. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's May 18, 2006, decision.

In the event that the CIT's ruling is not appealed, the Department will publish an amended final results and liquidate relevant entries covering the subject merchandise.

Dated: May 31, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

[FR Doc. E6–8941 Filed 6–7–06; 8:45 am]

BILLING CODE: 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on Minnesota Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the U.S. Environmental Protection Agency.

ACTION: Notice of Intent to Approve the Minnesota Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the Minnesota Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Minnesota coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. 1455b, requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal States and Territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Minnesota coastal nonpoint program on June 23, 2003. NOAA and EPA have drafted approval decisions describing how Minnesota has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Minnesota coastal nonpoint program available for a 30-day public comment period. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on NOAA Web site at *http://coastalmanagement.noaa.gov/czm/6217/findings.html* or may be obtained upon request from: Helen Bass, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x175, e-mail *Helen.Bass@noaa.gov*

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by July 10, 2006.

ADDRESSES: Comments should be made to: John King, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x188, e-mail *John.King@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: John Kuriawa, Coastal Programs Division, (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, phone (301) 713–3155, x202, e-mail *John.Kuriawa@noaa.gov*.
(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: June 1, 2006.

John H. Dunnigan,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Benjamin H. Grumbles,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 06–5197 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060106A]

Marine Mammals; File No. 116–1843

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821, has applied in due form for a permit to import three beluga whales (*Delphinapterus leucas*) for the purposes of public display.

DATES: Written or telefaxed comments must be received on or before July 10, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

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

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 116–1843.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested 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).

The applicant requests authorization to import three male, adult beluga whale (*Delphinapterus leucas*) from the Marineland of Canada in Ontario, Canada to Sea World of Florida in Orlando, Florida. The applicant requests this import for the purpose of public display. The receiving facility, Sea World of Florida, 7007 Sea World Drive, Orlando, Florida 32821 is: (1) open to the public on regularly scheduled basis with access that is not limited or restricted other than by charging for an admission fee; (2) offers an educational program based on professionally accepted standards of the AZA and the Alliance for Marine Mammal Parks and Aquariums; and (3) holds an Exhibitor's License, number 58–C–0077, issued by the U.S. Department of Agriculture under the Animal Welfare Act (7 U.S.C. 2131 – 59).

In addition to determining whether the applicant meets the three public display criteria, NMFS must determine whether the applicant has demonstrated that the proposed activity is humane and does not represent any unnecessary risks to the health and welfare of marine mammals; that the proposed activity by itself, or in combination with other activities, will not likely have a significant adverse impact on the species or stock; and that the applicant's expertise, facilities and resources are adequate to accomplish successfully the objectives and activities stated in the application.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 2, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–8959 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 060602142-6142-01]

The President's Spectrum Policy Initiative Spectrum Sharing Innovation Test-Bed

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce

ACTION: Notice of Inquiry.

SUMMARY: The reports developed by the U.S. Department of Commerce in response to the President's Spectrum Policy Initiative included a recommendation that the National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) develop a plan to increase sharing of spectrum between Federal and non-Federal users which includes evaluation of technologies that are proposed to enhance sharing.[1] This Notice seeks public comment to address the implementation of the Spectrum Sharing Innovation Test-Bed (Test-Bed) where Federal and non-Federal users can study the feasibility of increasing the efficient use of the spectrum.

DATES: Written comments and papers in response to this Notice are requested to be submitted on or before July 10, 2006.

ADDRESSES: Submit an original and two copies of written comments to the Office of the Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4713, Attention: Spectrum Sharing Innovation Test-Bed Notice, Washington, DC 20230. Paper submissions should include a three and one-half inch computer diskette in HTML, ASCII, Word, or WordPerfect format (please specify version). Diskettes should be labeled with the name and organizational affiliation of the filer, and the name of the word processing program used to create the document. Alternatively, comments and papers may be submitted electronically to testbed@ntia.doc.gov. Comments submitted via electronic mail also should be submitted in one or more of the formats specified above. Comments submitted in response to this Notice will be posted on NTIA's Web site.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice, contact: Edward Drocella, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 6725, Washington, DC 20230, (202) 482–2608, or edrocella@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In May 2003, President Bush established the Spectrum Policy Initiative to promote the development and implementation of a United States spectrum policy for the 21st century. In response to the Spectrum Policy Initiative, the Secretary of Commerce established a Federal Government Spectrum Task Force and initiated a series of public meetings to address policies affecting spectrum use by the Federal, state, and local governments, and the private sector. The recommendations resulting from these activities were included in two reports released by the Secretary of Commerce in June 2004 (Commerce Reports). Based on the recommendations contained in these reports, the President directed the federal agencies on November 30, 2004, to plan the implementation of the

[1] *Spectrum Policy for the 21st Century -- The President's Spectrum Policy Initiative: Report 1 Recommendations of the Federal Government Spectrum Task Force* and *Spectrum Policy for the 21st Century -- The President's Spectrum Policy Initiative: Report 2 Recommendations From State and Local Governments and Private Sector Responders,* National Telecommunications and Information Administration, U.S. Department of Commerce (June 2004), available at http://www.ntia.doc.gov/reports/.

recommendations contained in the reports.[2]

One of the recommendations directed NTIA, in coordination with the FCC, to establish a Test-Bed to examine the feasibility of increased sharing between Federal and non-Federal users.[3] Specifically, the Test-Bed recommendation states:

Within two years of this report's publication, NTIA and the FCC should establish a pilot program to allow for increased sharing between Federal and non-Federal users. NTIA and the FCC should each identify a segment of spectrum of equal bandwidth within their respective jurisdiction for this program. Each segment should be approximately 10 MHz for assignment on a shared basis for Federal and non-Federal use. The spectrum to be identified for this pilot program could come from bands currently allocated on either an exclusive or shared basis. Two years after the inception of the pilot program, NTIA and the FCC should provide reports outlining the results and suggesting appropriate procedures for expanding the program as appropriate.

The recommendation to establish the Test-Bed recognized that the current use of spectrum for Federal and non-Federal communications necessitates increased sharing to benefit both Federal and non-Federal users of the spectrum. Establishment of the objectives, rules, guidelines, and responsibilities for the Test-Bed will be essential to the success of this sharing effort and will be vital to the consideration of any future follow-on sharing initiatives.

Examples of technologies/services that could be considered in the Test-Bed include: High-power broadband, public safety interoperability, adaptive technologies (geo-location, frequency avoidance, waveform detection), advanced antenna technologies, sharing between Federal and non-Federal mobile satellite systems, advanced modulation techniques, multiple input/multiple output systems, extensions to third generation wireless services for public safety and federal users, mobile mesh networking, and geographic sharing. The Test-Bed may also be used to evaluate new frequency assignment/coordination techniques such as the web-based capability in the 70/80/90 GHz bands or sharing using the interference temperature concept.[4]

II. Invitation to Comment

Establishment of the objectives, rules, guidelines, and responsibilities will be essential to the success of the Test-Bed. The questions related to the Test-Bed will be divided into five categories: (A) Identification of the technologies/services to be considered in the Test-Bed; (B) establishment of the process, principles, and guidelines governing the Test-Bed; (C) identification of the candidate frequency band(s) for the Test-Bed; (D) activation/termination of the Test-Bed; and (E) evaluation of the Test-Bed.

In conjunction with providing information for consideration by NTIA, interested parties are requested to address the following questions and file comments that will assist NTIA in implementing a Test-Bed that will benefit both Federal and non-Federal users. Commenters may include any other issue that is relevant to the areas outlined below and should provide copies of studies, reports, research or other empirical data referenced in their responses. Comments will be posted on NTIA's Web site at http://www.ntia.doc.gov. These questions are intended to promote discussion and comment across a range of issues and are not intended to limit the scope of the comments filed in response to this Notice.

A. Identification of Technologies/Services Considered in the Test-Bed

What technologies, services, assignment techniques, or sharing techniques should be implemented in the Test-Bed?

What relationships should the technologies, services, assignment techniques, or sharing techniques have with the candidate frequency band(s) identified for the Test-Bed?

Should the Test-Bed be limited to prototype/operational equipment or can hardware simulation also be employed? If simulation can be employed, explain the conditions under which it is appropriate.

How does the proposed technology or service achieve the goal of the Test-Bed (e.g., increase sharing)? Please provide a detailed description explaining how the proposed technology or service increases sharing with other radio services.

B. Identification of the Candidate Frequency Band(s) for the Test-Bed

The Test-Bed recommendation included in the Commerce Reports called for approximately 20 MHz to be dedicated to the Test-Bed. How much spectrum should be identified for the Test-Bed?

What candidate frequency band(s) should be used in the Test-Bed? What criteria should be used in identifying candidate frequency band(s) for the Test-Bed? Please provide supporting information for frequency band(s) selected.

What limitations should apply to the candidate frequency band(s) identified for the Test-Bed (e.g., geographic, power, antenna gain, time of day, etc.)?

What steps should be taken to protect incumbent users in the candidate frequency bands? Should an initial electromagnetic compatibility analysis (e.g., computer simulations) be performed to develop the operating conditions for the Test-Bed (e.g., limits on radiated power levels, restrictions on antenna, geographic limitations)?

C. Establishment of the Process, Principles, and Guidelines Governing the Test-Bed

What resources (including the equipment to be evaluated in the Test-Bed), funding, personnel, or test facilities are necessary for the Test-Bed?

How should the process, principles, and guidelines for the Test-Bed be specified (e.g., Cooperative Research and Development Agreement (CRADA), FCC Experimental License)?

What information should be included in the controlling document (e.g., CRADA or FCC Experimental License) for the Test-Bed? How should the terms and conditions be specified for the Test-Bed (e.g., general, band-by-band)?

What procedures should be defined for resolving conflicts that might arise between operational incumbents and the technologies/services implemented in the Test-Bed?

At the completion of the Test-Bed, what should happen to the technology/service that is operating in the candidate frequency band? Should the technology/service be permitted to continue operating on a permanent basis and new spectrum identified for the next Test-Bed? If the technology/service is shown to be compatible, should a procedure be developed to find a permanent frequency band?

Under what circumstances should the initial conditions of the Test-Bed be modified (e.g., spectrum resources

[2] White House Executive Memorandum, *Improving Spectrum Management for the 21st Century* (November 2004).

[3] By this Notice of Inquiry, NTIA is implementing its responsibilities under the President's November 2004 Executive Memorandum. The FCC is also soliciting comment on many of these same issues through a public notice. Public Notice, *Federal Communications Commission Seeks Public Comment on Creation of a Spectrum Sharing Innovation Test-Bed,* ET Docket No. 06-89.

[4] As part of the President's Initiative to streamline U.S. spectrum policy, fiber-speed wireless communications links in the 71-76 GHz, 81-86 GHz, 92-94 GHz and 94.1-95 GHz bands may now be coordinated and approved for non-Federal use in a manner of minutes using a web-based capability developed by NTIA. The public may access the automated system at the following webpage: http://freqcoord.ntia.doc.gov.

increased, locations expanded, time-frame increased)?

Who should be responsible for providing the test personnel and equipment for the Test-Bed?

Should organizations with proprietary technology or information be permitted to participate in the Test-Bed? If so, how should release of data based on their technology be handled?

D. Activation/Termination of the Test-Bed

Should computer simulations be performed before the Test-Bed is activated?

Should a test plan be developed and agreed to by all parties before the Test-Bed is activated? If so, who should be responsible for developing the test plan? What process should be used to review the test plan?

Under what conditions should the Test-Bed be terminated (e.g., problems with equipment)?

E. Evaluation of the Test-Bed

What metrics should be used in evaluating the results of the Test-Bed?

Should status reports be prepared throughout the duration of the Test-Bed (e.g., 6 months)?

Who should be responsible for analyzing the data from the Test-Bed and preparing the final report?

III. Selection Criteria for Test-Bed

The following criteria are being proposed to evaluate and select the proposed technology or service to be implemented in the Test-Bed. Comments are requested on the proposed Test-Bed selection criteria.

How well does the proposed technology or service achieve the goal of the Test-Bed?

How readily available is the equipment proposed for the Test-Bed?

How well does the proposed technology or service explore creative and original concepts in spectrum sharing?

For the proposed technology or service can the results of the Test-Bed be disseminated broadly to enhance scientific and technologic understanding? If so, how broadly can the results be applied?

How well does the proposed technology or service address the potential impact on the incumbent spectrum user(s)?

How much and in what ways does the proposed technology or service benefit the public?

Are there any technical factors that limit the proposed technology or service to a specific frequency range?

Will the necessary technical support be provided to assure performance of the equipment during the Test-Bed? If so, how sufficient is the proposed support?

Dated: June 2, 2006.

Milton E. Brown,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. E6–8874 Filed 6–7–06; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 06–32]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/ADM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 06–32 with attached transmittal and policy justification.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 MAY 2006

In reply refer to:
I-06/004612

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 06-32 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Pakistan for defense articles and services estimated to cost $370 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of the unclassified portion of this proposed sale.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. **Transmittal**
2. **Policy Justification**

Same ltr to:

House	Senate
Committee on International Relations	Committee on Foreign Relations
Committee on Armed Services	Committee on Armed Services
Committee on Appropriations	Committee on Appropriations

Transmittal No. 06-32

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser: Pakistan**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$308 million
Other	$ 62 million
TOTAL	$370 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 50 UGM-84L (submarine-launched), 50 RGM-84L (surface-launched), and 30 AGM-84L (air-launched) Block II HARPOON missiles, 5 Encapsulated HARPOON Command Launch Systems, 115 containers; missile modifications; training devices; spare and repair parts; technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support.**

(iv) **Military Department: Navy (ADB)**

(v) **Prior Related Cases, if any:**

FMS case ACZ	- $161 million - 30Jun05
FMS case ACK	- $ 24 million - 24Apr90
FMS case ABO	- $ 38 million - 30Sep85
FMS case ABD	- $ 45 million - 18Oct83

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover.**

(viii) **Date Report Delivered to Congress:** 30 MAY 2006

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Pakistan – HARPOON Block II Anti-ship Missiles

The Government of Pakistan has requested a possible sale of 50 UGM-84L (submarine-launched), 50 RGM-84L (surface-launched), and 30 AGM-84L (air-launched) Block II HARPOON missiles; 5 Encapsulated HARPOON Command Launch Systems; 115 containers; missile modifications; training devices; spare and repair parts; technical support; support equipment; personnel training and training equipment; technical data and publications; U.S. Government and contractor engineering and logistics support services; and other related elements of logistics support. The estimated cost is $370 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that continues to be a key ally in the global war on terrorism.

Pakistan intends to use the HARPOON systems on its P-3 aircraft, surface ships, and submarines. The Pakistan Navy currently has AGM-84 Block I air/surface/subsurface launch capability and recently accepted the Block II air- and surface-launched HARPOON. The AGM-84, HARPOON Block II upgraded targeting capability significantly reduces the risk of hitting non-combatant targets thus improving Pakistan's naval operational flexibility. Pakistan will have no difficulty absorbing these additional missiles into its armed forces.

The HARPOON Block II system will provide a significant upgrade to Pakistan's existing systems and allow for improved target acquisition. The system has an increased number of waypoints associated with missile flight and incorporates a Global Positioning System that allows for precision use.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be The Boeing Company of St. Louis, Missouri. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require several U.S. Government and contractor representatives to travel to Pakistan on a temporary basis in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 06–5216 Filed 6–7–06; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense (DoD).

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on VTOL/STOL will meet in closed session on *June 21–22, 2006;* at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. This meeting continues the task force's work and will consist FOUO and proprietary briefings on current technologies and programs.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the features and capabilities VTOL/STOL aircraft should have in order to support the nation's defense needs through at least the first half of the 21st century.

In accordance with the Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5213 Filed 6–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Software Assurance will meet in closed session on *June 16, 2006;* at Science Applications International Corporation (SAIC), 4001 N. Fairfax Drive, Arlington, VA. This meeting is to continue charting the direction of the study and assessing the current capabilities and vulnerabilities of DoD software.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the risk that DoD runs as a result of foreign influence on its software and to suggest technology and other measures to mitigate the risk.

In accordance with Section 10(d) of the Federal advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5214 Filed 6–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Technology Vectors will meet in closed session on *June 7 and 8, 2006;* at Strategic Analysis, Inc. (SAI), 3601 Wilson Boulevard, Suite 500, Arlington, VA. This meeting will continue to map the study's direction and begin discussion on what will be the Technology Vectors DoD will need for the 21st century.

The mission of Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Review previous attempts by DoD to identify critical technologies in order to derive lessons that would help illuminate the current challenge. identify the National Security objectives for the 21st century and the operational missions that U.S. military will be called upon to support these objectives; identify new operational capabilities needed for the proposed missions; identify the critical science technology, and other related enablers of the desired capabilities; assess current S&T investment plans' relevance to the needed operational capabilities and enablers and recommend needed changes to the plans; identify mechanisms to accelerate and assure the transition of technology into U.S. military capabilities; and review and recommend changes as needed, the current processes by which national security objectives and needed operational capabilities are used to develop and prioritize science, technology, and other related enablers, and how those enablers are then developed.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil*, or via phone at (703) 571–0083.

Due to scheduling and work burden difficulties, there is insufficient time to provide timely notice required by section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR 102–3.150(b), which further requires publication at

least 15 calendar days prior to the meeting.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–5215 Filed 6–7–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the availability of exclusive or partially exclusive licenses to practice worldwide under the following pending patents. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

U.S. Patent application Serial Number 10/855,325 entitled, ''*A Method for the Rapid Diagnosis of Infectious Disease by Detection and Quantitation of Microorganism Induced Cytokines*'' filed on May 28, 2004. The invention relates to a method of diagnosing infectious disease, including tuberculosis, by quantitating interferon-gamma and other cytokine concentrations from stimulated immune cells collected from whole blood. The method contemplates the use of FLT, FRET or FP.

DATES: Applications for a nonexclusive, exclusive, or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Submit application to the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910–7500, telephone 301–319–7428, or E-Mail *schlagelc@nmrc.navy.mil.*

Dated: June 1, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–8903 Filed 6–7–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. Navy Case No. 96,744: Computer-Implemented Biological Sequence Identifier System and Method.//Navy Case No. 96,747: Methods and Apparatus for Simultaneous Rapid Detection and Agent-Specific Identification of Multiple, Diverse Pathogens Using Resequencing DNA Microarrays.//Navy Case No. 96,942: Diagnosis and Prognosis of Infectious Disease Clinical Phenotypes and Other Physiologic States Using Host Gene Expression Biomarkers in Blood.//Navy Case No. 97,417: Diagnosis and Prognosis of Infectious Disease Clinical Phenotypes and Other Physiologic States Using Host Gene Expression Biomarkers in Blood.//Navy Case No. 97,439: Broad-Spectrum Pathogen Diagnostic and Surveillance System.// Navy Case No. 97,747: Automated Sample-to-Microarray System.//Navy Case No. 97,748: Optimized Pathogen Resequencing Diagnostic and Surveillance System.//Navy Case No. 98,057: Rapid Detection For Over 20 Respiratory Pathogens Simultaneously in Clinical Samples Using Resequencing Arrays and any continuations, continuations-in-part divisionals or re-issues thereof.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Requests for copies of the inventions cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone 202–767–7230. Due to temporary U.S. Postal Service delays, please FAX to 202–404–7920, E-Mail *techtran@utopia.nrl.navy.mil*, or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: June 1, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–8904 Filed 6–7–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the U.S. Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 6,157,875: Image Guided Weapon System and Method.

DATES: Applications for an exclusive, partially exclusive, or nonexclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Requests for copies of the patent cited should be directed to: Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, and must include the patent number.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Head, Technology Transfer Office, Naval Air Warfare Center Weapons Division, Code 498400D, 1900 N. Knox Road Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074, or E-Mail at *michael.seltzer@navy.mil.*

(Authority: 35 U.S.C. 207, 37 CFR part 404.)

Dated: June 1, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E6–8909 Filed 6–7–06; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 10, 2006.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 2, 2006.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision of a currently approved collection.

Title: Application Package for the Jacob K. Javits Fellowship Program.

Frequency: Annually.

Affected Public: Individuals or household (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 800.

Burden Hours: 4000.

Abstract: These instructions and forms provide the U.S. Department of Education the information needed to select fellows for the Javits Program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 03013. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 06–5198 Filed 6–7–06; 8:45am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Fund for the Improvement of Postsecondary Education—Comprehensive Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.116B

Dates: Applications Available: June 8, 2006.

Deadline for Notice of Intent to Apply: June 20, 2006.

Deadline for Transmittal of Applications: July 10, 2006.

Deadline for Intergovernmental Review: September 6, 2006.

Eligible Applicants: Institutions of higher education (IHEs) or combinations of those institutions and other public and private nonprofit institutions and agencies.

Estimated Available Funds: $11,250,000.

Estimated Range of Awards: $50,000–$275,000 per year.

Estimated Average Size of Awards: $195,000 per year.

Estimated Number of Awards: 50–60.

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 Comprehensive Program supports grants and cooperative agreements to improve postsecondary education opportunities. It encourages reforms, innovations, and improvements of postsecondary education that respond to problems of national significance and provide access to quality education for all.

Under this competition we are particularly interested in applications that address the following priorities.

Invitational Priorities: For FY 2006 these priorities are invitational priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Invitational Priority 1: Projects developing innovative instructional and administrative efficiencies to broaden access to high quality and affordable higher education.

Invitational Priority 2: Projects aligning curriculum on a state or multi-state level between high schools and colleges, and between two-year and four-year postsecondary programs, to ensure continuing academic progress and transferability of credits.

Invitational Priority 3: Projects increasing the number and improving the pre-service preparation and professional development of science and mathematics teachers through career change programs and/or programs that combine a bachelor's degree in science or math with a bachelor's degree in education and/or teacher certification, especially collaborative projects involving K–12 educators, college departments of science and mathematics, private sector partnerships, and teacher education programs.

Program Authority: 20 U.S.C. 1138–1138d.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants or cooperative agreements.

Estimated Available Funds: $11,250,000.

Estimated Range of Awards: $50,000–$275,000 per year.

Estimated Average Size of Awards: $195,000 per year.

Estimated Number of Awards: 50–60.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* IHEs or combinations of those institutions and other public and private nonprofit institutions and agencies.

2. *Cost Sharing or Matching:* Although this program does not require cost sharing or matching for eligibility, it is expected that applicants will provide an institutional financial commitment to the project.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via the Internet by downloading the package from the program Web site at: *http://www.ed.gov/FIPSE.*

If you are unable to access the Internet, you may obtain a copy of the application package at the following address: Levenia Ishmell, Fund for the Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6147, Washington, DC 20006–8544. Telephone: (202) 502–7668.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Notice of Intent to Apply: In order to allow for the timely selection of appropriate external reviewers in this competition, applicants are asked to submit a brief statement of intent to apply by June 20, 2006. This statement should include (1) the name, mailing address, telephone number, and e-mail address of the proposed project director, (2) the name of the applicant institution, and (3) no more than one paragraph on the topic and/or invitational priority you intend to address. Please e-mail this statement to: *FIPSE@ed.gov.* There will be no penalty for applications submitted without this statement.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate the application. You must limit your narrative to the equivalent of no more than 20 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.
- Choose one of these four fonts only—Times New Roman, Courier, Courier New, or Arial—and use a font that is either 12 point or larger.

The page limit does not apply to the title page; the one-page abstract; the budget section, including the narrative budget justification; the assurances and certifications; or the appendix, which may include only a project evaluation chart, qualifications of key personnel, the response to section 427 of the Department of Education's General Education Provisions Act (GEPA), short descriptions of projects that will complement the proposed project, and letters of support.

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: June 8, 2006. Deadline for Notice of Intent to Apply: June 20, 2006. Deadline for Transmittal of Applications: July 10, 2006. Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) available through the Department of Education's e-Grants System. For information (including dates and times) about how to submit your application electronically or by mail or by hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6 *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements. Deadline for Intergovernmental Review: September 6, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Comprehensive Program—CFDA Number 84.116B must be submitted electronically using e-Application available through the Department's e-Grants system, accessible through the e-Grants portal page at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

- You must complete the electronic submission of your grant application by 4:30 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.
- The regular hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7 p.m. Wednesday; and 6 a.m. Thursday until midnight Saturday, Washington, DC time. Please note that the system is unavailable on Sundays, and between 7 p.m. on Wednesdays and 6 a.m. on Thursdays, Washington, DC time, for maintenance. Any modifications to these hours are posted on the e-Grants Web site.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for

an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

- You must submit all documents electronically, including the Application for the Comprehensive Program (ED 40–514), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. 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 above 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.
- Prior to submitting your electronic application, you may wish to print a copy of it for your records.
- After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Comprehensive Program Title Page (Form No. ED 40–514) to the Application Control Center after following these steps:

(1) Print the Comprehensive Program Title Page (ED 40–514) from e-Application.

(2) The applicant's Authorizing Representative must sign this form (ED 40–514).

(3) Place the PR/Award number in the upper right hand corner (Item 1) of the hard-copy signature page of the ED 40–514.

(4) Fax the signed ED 40–514 to the Application Control Center at (202) 245–6272.

- We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application System Unavailability: If you are prevented from electronically submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under For Further Information Contact (see section VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If the system is down and therefore the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of the Department's e-Application system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the e-Application system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Department's e-Application system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Cassandra Courtney, FIPSE Comprehensive Program Coordinator, U.S. Department of Education, 1990 K Street, NW., Room 6166, Washington, DC 20006–8544. FAX: (202) 502–7877.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116B), 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 84.116B), 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, or

(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, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.116B), 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—on the Comprehensive Program Title Page the CFDA number and suffix letter (84.116B) of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this program are from 34 CFR 75.210 and are as follows:

(a) *Need for project.* The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers each of the following factors:

(1) The magnitude or severity of the problem to be addressed by the proposed project.

(2) The magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(b) *Significance.* The Secretary considers the significance of the proposed project. In determining the significance of the proposed project, the Secretary considers each of the following factors:

(1) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) The extent to which the proposed project involves the development or demonstration of promising new strategies that build on, or are alternatives to, existing strategies.

(3) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(4) The potential replicability of the proposed project or strategies, including, as appropriate, the potential for implementation in a variety of settings.

(c) *Quality of the project design.* The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers each of the following factors:

(1) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(2) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(3) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project.

(4) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(d) *Quality of the project evaluation.* The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers each of the following factors:

(1) The extent to which the evaluation will provide guidance about effective strategies suitable for replication or testing in other settings.

(2) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(3) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(e) *Adequacy of resources.* The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers each of the following factors:

(1) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(2) The relevance and demonstrated commitment of each partner in the proposed project to the implementation and success of the project.

(3) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

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:* The success of FIPSE's Comprehensive Program depends upon (1) the percentage of projects that are adopted in full or in part, or whose materials are used by other institutions and (2) the percentage of projects with a high likelihood of sustainability beyond Federal funding, based on the project officer's determination. These two results constitute FIPSE's indicators of the success of the program.

If funded, you will be asked to collect and report data in your project's annual performance report (EDGAR, 34 CFR 75.590) on steps taken toward these goals. Consequently, applicants to FIPSE's Comprehensive Program are advised to include these two indicators in conceptualizing the design, implementation and evaluation of the proposed project. Consideration of FIPSE's two performance indicators is an important part of many of the review criteria. Thus, it is important to the success of your application that you include these indicators. Their measure should be a part of the project evaluation plan, along with measures of goals and objectives specific to your project.

VII. Agency Contact

For Further Information Contact: Cassandra Courtney, Fund for the

Improvement of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., room 6166, Washington, DC 20006–8544. Telephone: (202) 502–7506 or by e-mail: *Cassandra.Courtney@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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

VIII. Other Information

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

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

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

Dated: June 5, 2006.

James F. Manning,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. E6–8912 Filed 6–7–06; 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; Personnel Development To Improve Services and Results for Children With Disabilities; and Technology and Media Services for Individuals With Disabilities—Postsecondary Education Programs for Individuals Who Are Deaf; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.326D

Dates: Applications Available: June 8, 2006.

Deadline for Transmittal of Applications: July 24, 2006.

Deadline for Intergovernmental Review: September 21, 2006.

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: $4,000,000. Included in this amount is $1,300,000 to be provided from the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program; $1,700,000 from the Personnel Development to Improve Services and results for Children with Disabilities program; and $1,000,000 from the Technology and Media Services for Individuals with Disabilities program.

Maximum Award: We will reject any application that proposes a budget that does not equal $1,000,000 for a single budget period of 12 months.

Note: In each budget period of 12 months $325,000 must be budgeted for the technical assistance and dissemination activities described under Technical Assistance and Dissemination Activities (Consistent with section 663(c)(8)(C) of the Individuals with Disabilities Education Act, as amended (IDEA)); $425,000 must be budgeted for the personnel development activities described under Personnel Development Activities (Consistent with section 662(c)(2) of IDEA); and $250,000 must be budgeted for the technology use activities described under Technology Use Activities (Consistent with section 674(b) of IDEA). The Assistant Secretary for Special Education and Rehabilitative Services may change these amounts through a notice published in the **Federal Register**.

Estimated Number of Awards: 4.

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: The *Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities* 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. *The Personnel Development to Improve Services and Results for Children with Disabilities* program:

(1) Helps address State-identified needs for highly qualified personnel—in special education, related services, early intervention, and regular education—to work with children with disabilities and (2) ensures that those personnel have the skills and knowledge—derived from practices that have been determined through research and experience to be successful—that are needed to serve those children. *The Technology and Media Services for Individuals with Disabilities* program (1) improves results for children with disabilities by promoting the development, demonstration, and use of technology, (2) supports educational media services activities designed to be of educational value in the classroom setting to children with disabilities, and (3) provides support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(v), this priority is from allowable activities specified in the statute (see sections 662(c)(2), 663(c)(8)(C), 674(b), and 681(d) of IDEA).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Postsecondary Education Programs for Individuals who are Deaf

Background

Section 682(d)(1)(B) of IDEA requires the Secretary of Education to provide not less than $4,000,000 of the funds appropriated under Part D, subparts 2 and 3 of IDEA to address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness. The Secretary intends to meet this requirement through funding new awards under this competition in fiscal year 2007 and by providing continuation awards in fiscal years 2008 through 2011.

Priority

This priority provides support for four regional centers that will help secondary and postsecondary institutions more effectively address the postsecondary, vocational, technical, continuing, and adult education needs of individuals with deafness, including those who are deaf with co-occurring disabilities such as learning and emotional disabilities.

With the objective of improving results for students who are deaf, each

regional center must conduct: (1) Technical assistance and dissemination activities authorized under section 663(c)(8)(C) of IDEA, (2) personnel development activities authorized under section 662(c)(2) of IDEA, and (3) technology use activities authorized under section 674(b) of IDEA. In carrying out the objectives of this priority, each center must take into account the population and size of each State where services are provided to help ensure that services are provided equitably within the targeted region.

To ensure that all States benefit from these projects, the Secretary will support four projects. Projects will be required to serve each State within one of the following regions:

Northeast Region—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, and U.S. Virgin Islands.

Southern Region—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia, and West Virginia.

Midwest Region—Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin.

Western Region—Alaska, American Samoa, Arizona, California, Colorado, Commonwealth of the Northern Marianas Islands, Federated States of Micronesia, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Republic of the Marshall Islands, Republic of Palau, Utah, Washington, and Wyoming.

Technical Assistance and Dissemination Activities (Consistent with section 663(c)(8)(C) of IDEA)

Each regional center's technical assistance and dissemination activities must, at a minimum—

(a) Conduct an assessment to determine current technical assistance needs and priorities of postsecondary institutions related to recruiting, enrolling, retaining, and instructing students who are deaf, and addressing the varying communication needs of and methods used by individuals who are deaf, such as oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services.

(b) Provide consultation, in-service training, and planning and development assistance to appropriate staff at postsecondary education institutions to address the needs identified in the assessment conducted under paragraph (a). These activities must (1) be designed to enhance access to programs by and accommodation of individuals who are deaf and (2) as needed, provide information about continuing and adult education programs that are available to help students who are deaf further develop their basic skills to prepare them to enter job training programs or matriculate into postsecondary education programs.

(c) Provide technical assistance to secondary and postsecondary institutions, vocational rehabilitation agencies, community service agencies, centers for independent living, and One Stop Centers funded under the Workforce Investment Act within the region. These technical assistance activities must focus on (1) the responsibilities of postsecondary education institutions under Federal statutes, including section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, with respect to students who are deaf, and (2) the implementation of effective systems of postsecondary educational supports for students who are deaf.

(d) Disseminate information about resources (e.g., financial, support services) available to students who are deaf and to postsecondary institutions to help them accommodate these students.

(e) Encourage the use of consortia of postsecondary institutions and other cooperative arrangements to provide services and assistance to students who are deaf, including coordination of postsecondary education options with existing public and private community services that may address the educational, remedial, support service, transitional, independent living, and employment needs of individuals who are deaf.

(f) Provide, in collaboration with postsecondary education programs, vocational rehabilitation agencies, and public and private community service agencies, technical assistance to professionals, parents, and families to improve postsecondary educational services to individuals with deafness, including those who are deaf with co-occurring disabilities such as learning and emotional disabilities.

Personnel Development Activities (Consistent with section 662(c)(2) of IDEA)

Each regional center's personnel development activities must, at a minimum—

(a) Conduct an assessment of the personnel development training needs of secondary school professional and support staff (e.g., teachers, counselors, transition specialists, and other support personnel) who provide transitional services to students who are deaf.

(b) Conduct an assessment of the personnel development training needs of postsecondary, vocational, and adult education professional and support staffs who provide transitional and postsecondary educational services to students who are deaf.

(c) Provide interdisciplinary training to secondary and postsecondary teachers, guidance counselors, interpreters, speech pathologists, audiologists, social workers, rehabilitation counselors, and other staff, that addresses the needs identified in the assessments conducted under paragraphs (a) and (b) and that will contribute to improvements in transitional and postsecondary educational results for students who are deaf.

(d) Train personnel in the innovative uses and applications of technology, including universally designed technologies, assistive technology devices, and assistive technology services.

(e) Provide specialized in-service training on key topics, such as orientation to deafness, to personnel who provide postsecondary services to students who are deaf and have limited English proficiency or secondary disabilities.

Technology Use Activities (Consistent with section 674(b) of IDEA)

Each regional center's technology use activities must, at a minimum—

(a) Conduct an assessment to determine the technology needs and priorities of postsecondary institutions related to recruiting, enrolling, retaining, and instructing students who are deaf, and addressing the varying communication needs of and methods used by individuals who are deaf, such as oral transliteration services, cued language transliteration services, sign language transliteration and interpreting services, and transcription services.

(b) Provide technical assistance and consultation, in-service training, and planning and development assistance to administrators, faculty, and support staff at postsecondary education institutions to address the needs identified in the assessment conducted under paragraph (a). These activities must (1) be designed to enhance access to programs by and accommodation of individuals who are deaf; and (2) as needed, provide information and technological support and in-service training to personnel at postsecondary institutions who provide services to students who are deaf.

(c) Demonstrate how postsecondary institutions can use technology to meet their responsibilities under Federal statutes, including section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, to provide access and accommodations to individuals who are deaf.

In addition, the four regional centers must coordinate the development and implementation of all required activities (e.g., needs assessments, materials development, personnel development training, technical assistance, outreach, and information dissemination) for the purpose of avoiding overlap and duplication of efforts. Centers must ensure that secondary education programs, parents, and individuals who are deaf have information on postsecondary programs throughout the country, including information on services these institutions provide, and that information on proven models and other exemplary practices, including innovative technology, is available in each of the four regions. This coordination must include carrying out collaborative activities and cross-regional initiatives, where appropriate.

In addition, each center must—

(a) Coordinate with the National Dissemination Center for Children with Disabilities to ensure timely and accurate dissemination of information and report to the Office of Special Education Programs (OSEP) project officer on coordination efforts and proposed coordination outcomes.

(b) Prior to developing any new product, whether paper or electronic, submit for review and approval a proposal describing the content and purpose of the product to the Product Advisory Board of the National Dissemination Center for Children with Disabilities.

(c) Contribute to the maintenance of a single user-friendly Web site for the four centers, with individual links to grantee host institutions, that includes relevant information and documents in a form that meets a government or industry-recognized standard for accessibility.

(d) Develop a strategic plan for conducting needs assessments for personnel development, technical assistance and dissemination, and technology use activities within the first three months of the grant award. This plan must be submitted to the OSEP Project Officer for review and approval and updated annually.

(e) Ensure that the information and services provided respond to the needs assessments, are based on evidence-based research to the extent possible, and use criteria established by the What Works Clearinghouse or other rigorous standards for determining what is evidence-based.

(f) Retain the services of an independent external evaluator to provide consultation in developing a formative and summative evaluation plan to report inter/intra regional center activities in the annual grant performance reports. Such plan will be submitted to the Department for review and approval no later than 90 days before the first annual performance reports are due. The centers shall address how the effectiveness and outcomes of its activities shall be measured.

(g) Maintain communication with the OSEP Project Officer through monthly phone conversations and e-mail communication, as needed. Each center must submit annual performance reports and provide additional written materials as needed by the OSEP Project Officer to monitor the centers' work.

(h) Establish, maintain, and meet at least annually with an advisory committee consisting of individuals with deafness, parents, educators, researchers, and other appropriate individuals to review and advise on the center's activities and plans.

(i) Budget for annual attendance at the three-day Technical Assistance Project Directors' meeting and at least two two-day planning meetings in Washington, DC. The center must also budget to attend three two-day meetings such as Department briefings, Department-sponsored conferences, and other OSEP-requested activities.

Fourth and Fifth Years of Project

In deciding whether to continue each project for the fourth and fifth years, the Secretary will consider requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendations of a review team consisting of experts selected by the Secretary that will conduct its review in Washington, DC during the last half of each 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 contributed to changed practices and improved postsecondary education and training outcomes for youth with deafness.

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. 1462(c)(2), 1463(c)(8)(C), 1474(b), 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: $4,000,000. Included in this amount is $1,300,000 to be provided from the Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities program; $1,700,000 from the Personnel Development to Improve Services and results for Children with Disabilities program; and $1,000,000 from the Technology and Media Services for Individuals with Disabilities program.

Maximum Award: We will reject any application that proposes a budget that does not equal $1,000,000 for a single budget period of 12 months.

Note: In each budget period of 12 months $325,000 must be budgeted for the technical assistance and dissemination activities described under Technical Assistance and Dissemination Activities (Consistent with section 663(c)(8)(C) of IDEA); $425,000 must be budgeted for the personnel development activities described under Personnel Development Activities (Consistent with section 662(c)(2) of IDEA); and $250,000 must be budgeted for the technology use activities described under Technology Use Activities (Consistent with section 674(b) of IDEA). The Assistant Secretary for Special Education and Rehabilitative Services may change these maximum amounts through a notice published in the **Federal Register**.

Number of Awards: 4.

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 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 84.326D.

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: June 8, 2006.

Deadline for Transmittal of Applications: July 24, 2006.

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. Deadline for Intergovernmental Review: September 21, 2006.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference 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.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. The Postsecondary Education Programs for Individuals who are Deaf—CFDA Number 84.326D is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the 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 Postsecondary Education Programs for Individuals who are Deaf at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

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 time and date stamped. Your application must be fully uploaded and submitted, and must be date/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/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/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application 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 of the steps in the Grants.gov registration

process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (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/assets/GrantsgovCoBrandBrochure8X11.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 successfully submit an application via Grants.gov.

- 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.
- You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to 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 above 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 an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include 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 Unavailability

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 as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the 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 (if available). 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: Extensions referred to 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 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 84.326D), 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 84.326D), 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, or

(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, or

(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 84.326D), 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 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and

send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (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 the Postsecondary Education Programs for Individuals who are Deaf 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.

We will notify grantees if they will be required to provide any information related to these measures.

Grantees will also 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: Louise Tripoli, U.S. Department of Education, 400 Maryland Avenue, SW., room 4117, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7554.

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: June 2, 2006.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E6–8913 Filed 6–7–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education, Department of Education; Notice of Waivers for the Native American Vocational Technical Education Program (NAVTEP) and the Tribally Controlled Postsecondary Vocational and Technical Institutions Program (TCPVTIP) and Funding of Continuation Grants

SUMMARY: The Secretary waives the requirements in 34 CFR 75.250 of the Education Department General Administrative Regulations (EDGAR) that generally prohibit project periods exceeding five years and announces the funding of continuation grants for current NAVTEP and TCPVTIP grantees. These waivers enable the 30 current eligible grantees under NAVTEP and the two current eligible grantees under TCPVTIP to apply for and continue to receive Federal funding beyond the five-year limitation contained in 34 CFR 75.250.

DATES: *Effective Date:* These waivers are effective June 8, 2006.

FOR FURTHER INFORMATION CONTACT: Sharon A. Jones, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11108, Potomac Center Plaza, Washington, DC 20202–7242. Telephone: (202) 245–7803 or by e-mail: *sharon.jones@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION: On April 6, 2006, we published a notice in the **Federal Register** (71 FR 17460) proposing waivers of 34 CFR 75.250 of EDGAR in order to give early notice of the possibility that additional years of funding under NAVTEP and TCPVTIP may be available for current grantees through continuation awards.

NAVTEP and TCPVTIP support grants to operate vocational and technical education programs, as authorized by sections 116(a) through (g) and 117, respectively, of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins Act) (20 U.S.C. 2326(a) through (g) and 2327). The Congress is now in the process of reauthorizing the Perkins Act, and we do not believe that it would be in the public interest to hold new competitions under either NAVTEP or TCPVTIP until after Congress has concluded that process.

We stated in the April 6, 2006, **Federal Register** notice that in order to avoid a lapse in the availability of vocational and technical education and training provided by current NAVTEP and TCPVTIP grantees, we wanted to waive the requirements in 34 CFR 75.250, which generally prohibit project periods exceeding five years. We also noted that we wanted to review requests for continuation awards from current NAVTEP and TCPVTIP grantees, rather than hold new competitions in fiscal year (FY) 2006. With these waivers we will continue to fund current, eligible NAVTEP and TCPVTIP grantees for as long as Congress continues to appropriate funds for the existing program authorities and possibly during a transition to any new statutory program authorities.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of the proposed waivers, 515 parties submitted comments regarding the proposed waiver under NAVTEP. We received numerous letters making the same argument opposing the NAVTEP waiver, from commenters affiliated with two Indian tribes and one tribal organization, who are currently not funded under NAVTEP. We appreciate hearing their views. Numerous comments were also submitted in support of the NAVTEP waiver. No comments were submitted regarding TCPVTIP. An analysis of the comments follows.

Comments: Numerous commenters were opposed to the waiver that affects NAVTEP because the waiver would eliminate any opportunity for a new competition and possibly a chance for currently unfunded tribal entities to receive funding with which to provide vocational education for their tribal members.

Some of these commenters indicated that their tribe has been waiting many years for the Department to announce a new NAVTEP competition. These commenters stated that they believe the proposed waiver would be unreasonable and even harmful to their tribal members who cannot participate in the program because the Department has not held a new competition since 2001. One commenter indicated that for the past two years the Department's earlier waiver of 34 CFR 75.261(c)(2) for this program has made it impossible to submit new applications, and that the additional proposed waiver of 34 CFR 75.250 would have the effect of preventing the commenter's tribal organization from applying for NAVTEP funding for a third year. This commenter believed that NAVTEP is currently funding less than 10 percent of potentially eligible tribes and tribal organizations and that continuing to fund the current 30 grantees would be at the expense of other potential applicants.

Numerous commenters supported the proposed waiver of 34 CFR 75.250 for NAVTEP. Some supported the waiver because of the uncertainties associated with the pending Perkins Act reauthorization and were concerned that, without a waiver of 34 CFR 75.250, grantees would operate projects for only one year before having to retool their programs and write new applications to meet potentially different requirements under a reauthorized Perkins Act. These commenters stated that they did not believe it would be in the best interest of the program to have Indian tribes and tribal organizations expend valuable resources writing proposals for projects that may be approved for only one year. They stated that, under these circumstances, preparing an application for a new competition would be an unnecessary burden, would be disruptive, and would not be an efficient use of staff time and limited funding.

Some of the commenters who supported the proposed waiver also expressed concern that it would be too late in the year to expect eligible applicants to find the time and resources to prepare and submit new applications. These commenters thought it would be sensible for the Department to extend current NAVTEP projects while the legislation is still pending.

Many commenters supported the waiver because they believed it would enable current projects to build on their many accomplishments (*e.g.*, by strengthening current programs, increasing student participation, and significantly increasing the number of students graduating). Other commenters believed that the continuation of current grants would allow grantees to provide uninterrupted services to hundreds of students whose certificate or degree programs might otherwise be stopped.

Several commenters supported the continuation of projects because they felt that it takes three to five years to fully develop effective programs and that multi-year projects are vitally necessary for Native American students to complete vocational and technical education programs that lead to associate degrees or certificates. These commenters expressed their support for the waiver for NAVTEP because they believe it would give their projects the additional time they needed to be fully developed.

Discussion: In the April 6, 2006, notice of proposed waivers, the Secretary expressed particular interest in hearing from potential applicants regarding the possible impact of the proposed waivers. We received many letters regarding NAVTEP from commenters who are affiliated with two Indian tribes and one tribal organization and appreciate hearing their views. We understand the commenters' desire for the Department to hold a new competition so that their particular tribe or tribal organization may have an opportunity to receive funding and provide services to their tribal members under NAVTEP. Indeed, the possibility of providing a new opportunity for new eligible applicants to apply for NAVTEP funding was one important consideration in our deliberations over whether to propose a waiver of 34 CFR 75.250. In reaching our decision to propose the waiver, we considered the best interests of all potential applicants and students served by NAVTEP under current circumstances. With a waiver of 34 CFR 75.250, current NAVTEP projects would be funded for a sixth year. Many program managers, including several commenters, believe multi-year projects are desirable because they provide the time needed to develop and implement highly effective programs. While extending current multi-year projects has the advantage of providing current grantees the opportunity to more fully develop their vocational education programs and may be more cost-effective programmatically, we recognize that it also serves to delay opportunities for unfunded eligible applicants to compete for funds and develop new projects.

While examining the possible effects of a waiver on potential applicants, we looked at the history of competitions under NAVTEP. We found that, while over 500 federally recognized Indian tribes are eligible to apply for NAVTEP competitions, on the average, only 78 tribes actually apply during a competition. Further, we found that during the last two competitions several of the then-current applicants submitted very strong applications, and, as a result, many of the same tribes or tribal organizations received an award under each competition. Based on the history of NAVTEP, therefore, although NAVTEP competitions are open to all eligible tribal entities, it is likely that only a limited group of new applicants would be selected and funded in any event.

Further, because Congress appears close to reauthorizing the Perkins Act, awarding multi-year projects under the existing NAVTEP statutory authority would likely result in grantees operating projects that are not fully aligned with provisions of the reauthorized Perkins Act (absent the Department holding a new NAVTEP competition following reauthorization). The Department plans to carry out the intent of Congress and implement all applicable provisions of any reauthorized legislation as quickly as possible following reauthorization of the Perkins Act. Therefore, we concluded that holding a new NAVTEP competition in 2006 would mean holding a competition for only one-year NAVTEP projects, and we do not believe that one-year projects would be programmatically appropriate for NAVTEP. One year is not enough time for grantees to establish and operate effective NAVTEP programs. Moreover, one-year projects would not be a cost-

effective use of NAVTEP funds, and it would not be in the best interest of the program to require applicants to spend time and resources writing applications for one-year projects. Many of the commenters responding to the invitation to comment shared this view.

Having weighed these and other factors, we concluded that it would be contrary to the public interest to hold a 2006 NAVTEP competition, pending reauthorization of the Perkins Act. We believe that continuing to fund current grantees best serves the interests of NAVTEP and the population served under the program and is the best use of the available Federal resources.

Change: None.

Comments: A number of commenters reasoned that, because the current changes to NAVTEP in the House and Senate reauthorization bills are so minor, there was no reason for the Department to wait for reauthorization of the Perkins Act before holding a new competition under NAVTEP. One of these commenters stated that because changes in the two bills are minor, no changes could be expected in conference. This commenter added that committee staff have indicated that they are not aware of any proposal to suggest changes to NAVTEP in conference.

Discussion: In deciding whether to propose a waiver of 34 CFR 75.250 for NAVTEP, we considered the possible effects of the pending reauthorization and of the bills currently before the House and the Senate. At this time, the ultimate outcome of the legislative process is uncertain. In addition, to assess the impact of changes currently in the reauthorization bills, one has to look at the changes proposed throughout the entire bill, not just in the sections containing the NAVTEP authority. Other provisions of the House and Senate bills include substantive changes to vocational and technical education programs, including changes to provisions relating to allowable program activities, that may well affect the operation of projects under NAVTEP. Furthermore, because the Congress is still discussing the Perkins Act reauthorization, it is possible that additional changes could be made to the NAVTEP provision while the two bills are being reconciled in conference. Therefore, we continue to believe that it would not be prudent to hold a new competition prior to reauthorization of the Perkins Act and to fund new projects that, after a short period of time and considerable start-up costs, might have to be significantly changed in order to be brought into compliance with a newly reauthorized statute. We have concluded that such an action would be burdensome for tribes and tribal organizations, would not be the best use of available Federal resources, and, more importantly, would be unfair to student participants who may be prevented from participating in longer-term degree programs or completing multi-year programs of study.

Change: None.

Waiver of Delayed Effective Date

The Administrative Procedure Act requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We provided affected entities an opportunity for comment on the Secretary's intent to waive 34 CFR 75.250 in order to continue current grants under NAVTEP and TCPVTIP. In order to make timely continuation grants before the authorities to expend these funds expire, the Secretary has determined that a delayed effective date is not required.

Waiver of 34 CFR 75.250 of the Education Department General Administrative Regulations

In order to provide for continuation awards, we waive the requirements in 34 CFR 75.250 that generally prohibit project periods exceeding five years and announce the funding of continuation grants for current NAVTEP and TCPVTIP grantees.

These waivers mean that—

(1) Current NAVTEP and TCPVTIP grantees are authorized to apply for continuation awards for as long as Congress continues to appropriate funds for the existing program authorities and possibly during a transition to any new program authorities;

(2) Current NAVTEP and TCPVTIP grants will be continued at least through FY 2006 and possibly beyond, if Congress continues to appropriate funds for NAVTEP and TCPVTIP under their current statutory authorities; and

(3) We will neither announce new competitions nor make new awards under NAVTEP or TCPVTIP in FY 2006.

Continuation of the Current Grantee Awards

The instructions for requesting a continuation award and the requirements applicable to continuation awards for current NAVTEP and TCPVTIP grantees that were established in our July 16, 2004, **Federal Register** notice for NAVTEP (69 FR 42701) and July 29, 2002, **Federal Register** notice for TCPVTIP (67 FR 49015) and the requirements in 34 CFR 75.118 and 75.253 apply to any continuation awards sought by eligible current grantees under these programs.

The waivers of 34 CFR 75.250 and 75.261(c)(2) neither exempt current NAVTEP and TCPVTIP grantees from the account closing provisions of 31 U.S.C. 1552(a) nor do they extend the availability of funds previously awarded to current NAVTEP and TCPVTIP grantees. As a result of 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds is canceled and returned to the U.S. Treasury Department and is unavailable for restoration for any purpose.

Regulatory Flexibility Act Certification

The Secretary certifies that the waivers will not have a significant economic impact on a substantial number of small entities.

The small entities that will be affected by these waivers are—

(a) The FY 2000 grantees currently receiving Federal funds and the following entities that are eligible for an award under NAVTEP:

(1) Federally recognized Indian tribes.

(2) Tribal organizations.

(3) Alaska Native entities.

(4) Bureau-funded schools (as defined in the notice inviting applications published in the **Federal Register** on January 3, 2001 (66 FR 560)), except for Bureau-funded schools proposing to use their award to support secondary school vocational and technical education programs; and

(b) The FY 2001 grantees currently receiving Federal funds and other tribally controlled postsecondary vocational and technical institutions that do not receive Federal support under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a *et seq.*) and that are eligible for an award under TCPVTIP.

However, the Secretary certifies that these waivers are not likely to have a significant economic impact on these entities because the waivers and the activities required to support the additional years of funding will not impose excessive regulatory burdens or require unnecessary Federal supervision. The waivers will impose minimal requirements to ensure the proper expenditure of program funds, including requirements that are standard for continuation awards.

Paperwork Reduction Act of 1995

This notice of waivers does not contain any information collection requirements.

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*.

(Catalog of Federal Domestic Assistance Number 84.101 Native American Vocational and Technical Education Program and 84.245 Tribally Controlled Postsecondary Vocational and Technical Institutions Program.)

Program Authority: 20 U.S.C. 2326(a) through (g) and 20 U.S.C. 2327.

Dated: June 5, 2006.

Richard T. La Pointe,

Acting Assistant Secretary for Vocational and Adult Education.

[FR Doc. E6–8980 Filed 6–7–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–311–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

June 1, 2006.

Take notice that on May 26, 2006, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 19, 2006:

Third Revised Sheet No. 539
First Revised Sheet No. 540

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8869 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–370–000]

Dauphin Island Gathering Partners; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2006.

Take notice that on May 25, 2006 Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to become effective June 24, 2006:

Second Revised Sheet No. 253
First Revised Sheet No. 286
First Revised Sheet No. 301
First Revised Sheet No. 315

Dauphin Island states that these tariff sheets were filed to delete the CIG/Granite State discount policy language and to correct several section references in the Transportation Service Agreements.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8871 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–369–000]

El Paso Natural Gas Company; Notice of Tariff Filing

June 1, 2006.

Take notice that on May 26, 2006, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 2A, and a Rate Schedule OPAS agreement (OPASA) with Salt River Project Agricultural Improvement and Power District to become effective June 26, 2006. EPNG states that the OPASA is being submitted for the Commission's information and review and has been listed on the tendered tariff sheet as a non-conforming agreement.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8870 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–84–002]

Florida Gas Transmission Company; Notice of Compliance Filing

June 1, 2006.

Take notice that, on May 24, 2006, Florida Gas Transmission Company (FGT) submitted a compliance filing pursuant to the Commission's Order Approving Abandonment dated May 9, 2006 in Docket No. CP06–84–000, 115 FERC ¶ 62,150 (2006).

FGT states that copies of the filing were served on parties on the official service list in the above captioned proceeding.

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 on or before the date as indicated below. 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.

Comment Date: 5 p.m. Eastern Time on June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8866 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–29–003]

Freebird Gas Storage, L.L.C.; Notice of Tariff Filing

June 1, 2006.

Take notice that on May 26, 2006, Freebird Gas Storage, L.L.C. (Freebird) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet Nos. 45–99, with an effective date of June 1, 2006.

Freebird states that the purpose of this filing is to place in effect Freebird's tariff in anticipation of its lateral pipeline facility being placed in-service for the purpose of injection activity.

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 on or before the date as indicated below. 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.

Comment Date: 5 p.m. Eastern Time on June 16, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8872 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–371–000]

Gas Transmission Northwest Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2006.

Take notice that on May 26, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, the following tariff sheets, to become effective July 1, 2006:

Seventh Revised Sheet No. 6.
First Revised Sheet No. 228.

GTN states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8865 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12447–001]

Fort Dodge Hydroelectric Development Company; Notice Soliciting Scoping Comments

June 1, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original License.

b. *Project No.:* P–12447–001.

c. *Date filed:* March 21, 2006.

d. *Applicant:* Fort Dodge Hydroelectric Development Company.

e. *Name of Project:* Fort Dodge Mill Dam Hydroelectric Project.

f. *Location:* On the Des Moines River in Webster County, Iowa.

The project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas J. Wilkinson, Jr., Fort Dodge Hydroelectric Development Company, 1800 1st Ave., NE., Ste. 200, Cedar Rapids, IA 52402; (319) 364–0171.

i. *FERC Contact:* Stefanie Harris, (202) 502–6653 or *stefanie.harris@ferc.gov.*

j. *Deadline for filing scoping comments:* July 31, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application is not ready for environmental analysis at this time.

l. *The Fort Dodge Mill Dam Project would consist of:* (1) The existing 342-foot-long by 18-foot-high concrete dam with a 230-foot-long spillway and 5 Tainter gates; (2) a 90-acre reservoir with a normal full pond elevation of 990 feet above mean sea level; (3) an existing 40-foot-wide concrete intake structure with trash rack and stop log guides; (4) an existing powerhouse to contain two proposed turbine generating units with a total installed capacity of 1,400 kW; (5) a proposed 2,400-foot-long, 13.8-kV transmission line; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be about 7,506 MWh.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. You may also register online at *http://www.ferc.gov.esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:*

The Commission staff intends to prepare a single Environmental Assessment (EA) for the Fort Dodge Mill Dam Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff do not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document (SD) issued on May 31, 2006.

Copies of the SD outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's service list. Copies of the SD may 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, call 1–866–208–3676 or for TTY, (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8868 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings; Additional Types of Filings To Be Included in Combined Notice of Filings

June 1, 2006.

The purpose of this notice is to announce that effective June 1, 2006, the Commission will issue notices for the following types of filings using the combined notice of filings method instituted on May 17, 2005.

EC—Applications of Electric Public Utilities For Authority to Sell, Lease, Purchase, Acquire, or Merge and Applications for Determination of Jurisdiction

EG—Applications for Exempt Wholesale Generation Determination

ES—Issuance of Securities and Assumption of Liabilities of Electric Utilities

FC—Foreign Utility Company Request

PH—Exemption from or Waiver of Regulation as Holding Company

In addition, the Secretary is making the following changes to the filing procedures for the types of filings listed above:

1. Filers are no longer required to include draft notices in floppy disk format with the filing.

2. Filers requesting a short comment period for the filing must clearly state such request in the ''Re:'' section of the filing, for example:

Re: Signal Hill Wichita Falls Power, L.P. Docket No. EG06–___ Request for shortened comment period

The notices issued under the combined notice of filings method will be added to eLibrary and will be published in the **Federal Register** under the name ''Combined Notice of Filings.'' Each filing will be listed with its identifying details as follows:

Docket Number—This item contains a hyperlink to the eLibrary docket sheet for the docket number.

Name of Applicant(s)—This item shows the applicant name as it appears on the filing.

Description—This item contains a basic description of the filing and a hyperlink that opens the filed document in eLibrary, as stored in eLibrary.

Filing Date—This item shows the date on which the document was filed with the Commission.

Accession Number—This item contains a hyperlink that will open the ''Info'' area of eLibrary for the filed document. There may be instances in which the accession number for the particular filing changes after issuance of the combined notice. In this case, the user will have to search eLibrary to access the document.

Comment Date—This item indicates the comment date for the particular filing.

The ''Combined Notice of Filings'' is indexed in eLibrary as follows, for example: ''Combined Notice of Filings, June 1, 2006: This notice contains information concerning multiple filings received by FERC.'' The Commission may issue more than one ''Combined Notice of Filings'' on any given day. In this case, the eLibrary index will read as follows, for example: ''Combined Notice of Filings; June 1, 2006 #2: This notice contains information concerning multiple filings received by FERC.''

In time, the Commission expects to issue the majority of notices of filings using the combined notice of filings method. By this initiative, the Commission seeks to simplify the manner in which the Commission's staff prepares notices and thereby expedite the public issuance of notices.

Magalie R. Salas,

Secretary.

[FR Doc. E6–8867 Filed 6–7–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–R02–OAR–2006–0342; FRL–8181–7]

Adequacy Status of the Submitted 2009 Early Progress Direct $PM_{2.5}$ and NO_X Motor Vehicle Emission Budgets for Transportation Conformity Purposes for Northern New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets (''budgets'') for direct $PM_{2.5}$ and NO_X in the submitted $PM_{2.5}$ early progress state implementation plan (SIP) for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY–NJ–CT $PM_{2.5}$ nonattainment area to be adequate for transportation conformity purposes. The transportation conformity rule requires that the EPA conduct a public process and make an affirmative decision on the adequacy of budgets before they can be used by metropolitan planning organizations (MPOs) in conformity determinations. As a result of our finding, the MPOs in northern New Jersey, the North Jersey Transportation Planning Authority (NJTPA) and the Delaware Valley Regional Planning Commission (DVRPC), must use the new 2009 direct $PM_{2.5}$ and NO_X budgets from the early progress $PM_{2.5}$ SIP for future conformity determinations.

DATES: This finding is effective June 23, 2006.

FOR FURTHER INFORMATION CONTACT: Matt Laurita, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3895, *laurita.matthew@epa.gov*.

The finding and the response to comments will be available at EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*.

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on May 31, 2006 stating that the 2009 direct $PM_{2.5}$ and NO_X budgets in the submitted early progress SIP for Northern New Jersey (dated May 18, 2006) are adequate for conformity purposes. The purpose of New Jersey's May 18, 2006 submittal was to establish budgets for the metropolitan planning organizations in northern New Jersey to use in making conformity determinations. EPA's adequacy finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*.

Transportation conformity (40 CFR part 93) is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they conform. Conformity to a SIP means that transportation activities will

not produce new air quality violations, worsen existing violations, or delay timely attainment of the National Ambient Air Quality Standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in 40 CFR 93.118(f). We have followed this rule in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 26, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. E6–8936 Filed 6–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8181–4]

Air Quality Management Subcommittee to the Clean Air Act Advisory Committee (CAAAC); Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) established the CAAAC on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical, scientific, and enforcement policy issues.

Open Meeting Notice: Open Meeting Notice: Pursuant to 5 U.S.C. App.2 10(a)(2), notice is hereby given that the Air Quality Management subcommittee to the Clean Air Act Advisory Committee will hold its next open meeting on Tuesday, June 27 and Wednesday, June 28, 2006 from approximately 9 a.m. to 5 p.m. at the Ritz-Carlton Atlanta Hotel, 181 Peachtree Street, Atlanta, Georgia. Any member of the public who wishes to submit written or brief oral comments; or who wants further information concerning this meeting should follow the procedures outlined in the section below titled ''Providing Oral or Written Comments at this Meeting''. Seating will be limited and available on a first come, first served basis. In order to insure copies of printed materials are available, members of the public wishing to attend this meeting are encouraged to contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, Fax (919) 685–3307 or by mail at U.S. EPA, Office of Quality Planning and Standards (Mail code C 301–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711 or by e-mail at: *whitlow.jeff@epa.gov* by noon eastern time on June 20 , 2006. For information on access or services for individuals with disabilities or to request accommodation of a disability, please contact Mr. Whitlow, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Inspection of Committee Documents: The subcommittee agenda and any documents prepared for the meeting will be sent to participants via e-mail prior to the start of the meeting. Thereafter, these documents, together with the meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket OAR–2004–0075 and can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac*. The Docket office can be reached by telephoning (202) 260–7548; FAX (202) 260–4400.

FOR FURTHER INFORMATION CONTACT: Concerning the Air Quality Management subcommittee to the CAAAC , please contact Mr. Jeffrey Whitlow, Office of Air and Radiation, U.S. EPA (919) 541–5523, FAX (919) 685–3307 or by mail at U.S. EPA, Office of Air Quality Planning and Standards (Mail Code C 301–04), 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, or e-mail at: *whitlow.jeff@epa.gov*. Additional Information about the CAAAC and its subcommittees can be found on the CAAAC Web site: *http://www.epa.gov/air/caaac*.

Providing Oral or Written Comments At This Meeting: It is the policy of the subcommittee to accept written public comments of any length and to accommodate oral public comments whenever possible. The subcommittee expects that public statements presented at this meeting will not be repetitive of previously-submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at this meeting is limited to a total time of five minutes (unless otherwise indicated). However, no more than 30 minutes total will be allotted for oral public comments at this meeting; therefore, the time allowed for each speaker's comments will be adjusted accordingly. In addition, for scheduling purposes, requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Mr. Whitlow no later than noon eastern time five business days prior to the meeting in order to reserve time on the meeting agenda. Written Comments: Although the subcommittee accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received by Mr. Whitlow no later than noon eastern time five business days prior to the meeting so that the comments may be made available to the subcommittee members for their consideration. Comments should be supplied to Mr. Whitlow (preferably via e-mail) at the address/contact information noted above, as follows: one hard copy with original signature or one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files).

Dated: May 31, 12006.

Gregory A. Green,

Director, Outreach and Information Division, Office of Air Quality Planning and Standards.

[FR Doc. E6–8938 Filed 6–7–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8181–6; Docket ID No. EPA–HQ–ORD–2006–0491]

External Review Draft, Estimation of Biota Sediment Accumulation Factor (BSAF) From Paired Observations of Chemical Concentrations in Biota and Sediment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: EPA is announcing a 30-day public comment period for the draft document titled, ''Estimation of Biota Sediment Accumulation Factor (BSAF) from Paired Observations of Chemical Concentrations in Biota and Sediment'' (EPA/600/R–06/047). The document was prepared by the Ecological Risk Assessment Support Center managed by the National Center for Environmental Assessment within EPA's Office of Research and Development.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does

not represent and should not be construed to represent any Agency policy or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The 30-day public comment period begins June 8, 2006, and ends July 10, 2006. Technical comments should be in writing and must be received by EPA by July 10, 2006.

ADDRESSES: The draft document, ''Estimation of Biota Sediment Accumulation Factor (BSAF) from Paired Observations of Chemical Concentrations in Biota and Sediment,'' is available primarily via the Internet on the National Center for Environmental Assessment(s home page under the Recent Additions and Data and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Technical Information Staff, NCEA-Cin; telephone: 513–569–7257; facsimile: 513–569–7916. If you are requesting a paper copy, please provide your name, your mailing address, and the document title, ''Estimation of Biota Sediment Accumulation Factor (BSAF) from Paired Observations of Chemical Concentrations in Biota and Sediment.''

Comments may be submitted electronically via *http://www.regulations.gov,* by mail, by facsimile, or by hand delivery/courier. Please follow the detailed instructions provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact the Office of Environmental Information Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.*

For technical information, contact Michael Kravitz, NCEA; telephone: 513–569–7740; facsimile: 513–487–2540; or e-mail: *kravitz.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project/ Document

U.S. EPA's Ecological Risk Assessment Support Center (ERASC) is a knowledge center that provides technical information and addresses scientific questions on topics relevant to ecological risk assessment at hazardous waste sites for EPA's Office of Solid Waste and Emergency Response (OSWER) and Regional Superfund/ Resource Conservation and Recovery Act (RCRA) staff. Topics are submitted to ERASC by users in EPA program offices and regions. The ERASC is managed by the Office of Research and Development's (ORD's) National Center for Environmental Assessment and is located in Cincinnati, Ohio.

The ERASC recently completed an external review draft of the document titled, ''Estimation of Biota Sediment Accumulation Factor (BSAF) from Paired Observations of Chemical Concentrations in Biota and Sediment.'' BSAF is a parameter describing bioaccumulation of sediment-associated organic compounds or metals into tissues of ecological receptors. The draft provides information on methodologies to estimate BSAF. It is focused solely on the determination of BSAFs for nonionic organic chemicals and is primarily applicable to fish and high level shellfish, *e.g.*, crabs. The determination of BSAFs for metals is not discussed.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2006–0491 by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail:* ORD.Docket@epa.gov.
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room B102 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments in writing, please submit one unbound original with pages numbered consecutively, and three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2006–0491. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: 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 materials, such as copyrighted material, are 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 OEI Docket in the EPA Headquarters Docket Center.

Dated: May 26, 2006.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E6–8937 Filed 6–7–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

PREVIOUSLY SCHEDULED OPEN MEETINGS: Tuesday, June 6, 2006, and Monday, June 12, 2006. These meetings were cancelled.

DATE AND TIME: Tuesday, June 13, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer. Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–5274 Filed 6–6–06; 2:30 pm]

BILLING CODE 6715–01–M

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2006–B4]

Federal Management Regulation; Federal Real Property Profile Summary Report

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: In furtherance of FMR Bulletin 2005–B4, this notice announces the FY 2005 release of the new version of the Federal Real Property Profile (FRPP) Summary Report, which provides an overview of the U.S. Government's owned and leased real property as of September 30, 2005. The FY 2005 FRPP Summary Report is now available.

EFFECTIVE DATE: June 8, 2006.

FOR FURTHER INFORMATION CONTACT For clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; stanley.langfeld@gsa.gov, (202) 501–1737. Please cite FMR Bulletin 2006–B4.

SUPPLEMENTARY INFORMATION: The FY 2005 FRPP Summary Report is a summary of the Government's real property assets as generated by the FRPP inventory system which was recently enhanced and modified in response to the Federal Real Property Council's (FRPC) requirements. GSA partnered with numerous Federal agencies and the FRPC to develop and manage a centralized, comprehensive, and descriptive database of the Government's real property portfolio. GSA, in collaboration with the FRPC, determined that enhancing the existing FRPP with numerous modifications and upgrades was the most cost-effective, efficient solution. The goals of the centralized database are to 1) improve decision-making with more accurate and reliable data; 2) provide the ability to benchmark Federal real property assets; and 3) consolidate government real property data collection into one inventory system.

Dated: June 1, 2006.

John G. Sindelar,

Acting Associate Administrator, Office of Governmentwide Policy.

General Services Administration

[FMR Bulletin 2006–B4]

Real Property

To: Heads of Federal Agencies

Subject: Federal Real Property Profile Summary Report

1. *What is the purpose of this Bulletin?* This Bulletin announces the FY 2005 release of the new version of the Federal Real Property Profile (FRPP) Summary Report, which provides an overview of the U.S. Government's owned and leased real property as of September 30, 2005.

2. *What is the background?*

a. On February 4, 2004, the President issued Executive Order (EO) 13327, ''Federal Real Property Asset Management,'' and established the Federal Real Property Council (FRPC) to oversee the Government's asset management planning process and to improve governmentwide real property performance. The EO requires the Administrator of General Services, in consultation with the FRPC, to develop and maintain a centralized inventory database, incorporating all key elements identified by the FRPC.

b. GSA and the FRPC determined that enhancing the existing FRPP with numerous modifications and upgrades was the most cost-effective, efficient solution to meeting the FRPC requirements. The goals of the centralized database are to (1) improve decision-making with more accurate and reliable data; (2) provide the ability to benchmark Federal real property asset performance; and (3) consolidate government real property data collection into one inventory system.

c. This is the first issuance of what will be an annual FRPP Summary Report generated by the newly-enhanced FRPP inventory system. The detailed information for this Summary Report is held in a password-protected Web-based database. This database allows Federal asset managers to update real property data on-line and in real time, produce ad hoc reports, measure performance of real property assets, and identify unneeded and underutilized assets for disposal. The FRPP Summary Report provides information regarding Federal real property holdings to stakeholders, including the Office of Management and Budget, Congress, the Federal community, and the public. Agencies confirmed their FY 2005 data summary figures prior to the FRPP Summary Report's publication.

3. *How can we obtain a copy of the FRPP summary report?* You will find the FY 2005 version of the FRPP Summary Report on the GSA website at *http://www.gsa.gov/realpropertyprofile*. At this site, you will be able to read, print, or download this report. You can also obtain a copy from the Asset Management Division (MPA), Office of Governmentwide Policy, General Services Administration, 1800 F Street, N.W., Washington, DC 20405.

4. *Who should we contact for further information regarding the FRPP?* For further information, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), Office of Governmentwide Policy, General Services Administration, by phone (202) 501–1737, or by e-mail at *stanley.langfeld@gsa.gov*.

[FR Doc. E6–8920 Filed 6–7–06; 8:45 am]

BILLING CODE 6820–RH–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORJ) and the Assistant Secretary for Health have taken final action in the following case:

Steven Anthony Leadon, Ph.D., University of North Carolina: Based on the report of an investigation conducted by the University of North Carolina (UNC) at Chapel Hill and additional analysis conducted by ORI in its oversight review, the U.S. Public Health Service (PHS) found that Steven Anthony Leadon, Ph.D., former Professor of Radiation Oncology, Department of Radiology, School of Medicine, UNC, engaged in scientific misconduct while supported by National Cancer Institute (NCI),

National Institutes of Health (NIH), grant R01 CA40453–09 to 15.

Specifically, PHS found that Dr. Landon engaged in scientific misconduct by falsifying DNA samples and constructing falsified figures for experiments done in his laboratory to support claimed findings of defects in a DNA repair process that involved rapid repair of DNA damage in the transcribed strand of active genes, included in four grant applications and in eight publications and one published manuscript, which were included as an Appendix to the Voluntary Exclusion Agreement entered into by Dr. Leadon and are as follows:

Figures 1, 2, and 3 in the article by Gowen, L.C., Avrutskaya, A.V., Latour, A.M., Koller, B.H., & Leadon, S.A. ''BRCAI Required for Transcription-Coupled Repair of Oxidation DNA Damage.'' *Science* 281:109–1012, 1988. In grant application 2 R01 CA40453–14 (p. 9), this article was used as justification for proposed research on BRCA1 and related proteins that may be required for transcription-coupled DNA repair of oxidative DNA damage. Data from the research reported in this paper was also used as preliminary data (Figure 2, p. 16) to support proposed experiments on BRCA1.

- Figures 1A, 2A, and 3 in the article by Leadon, S.A. & Avrutskaya, A. ''Differential Involvement of the Human Mismatch Repair Proteins, hMLH1 and hMSH2 in Transcription-coupled Repair.'' *Cancer Research* 57:3784–3791, 1997.
- Figures 1 and 3 in the article by Leadon, S.A. & Avrutskaya, A.V. ''Requirement for DNA Mismatch Repair Proteins in the Transcription Coupled Repair of Thymine Glycols in Saccharomyces cerevisiae.'' *Mutation Research* 407:177–187, 1998.
- Figures 7B and 7C in the article by Cressman, V.L., Backlund, D.C., Avrutskaya, A.V., Leadon, S.A., & Koller, B.H. ''Growth retardation, DNA repair defects, and lack of spermatogenesis in BRCA1-deficient mice.'' *Molecular and Cellular Biology* 19:7061–7075, 1999.
- Figures 1 A–D, 3A, 3C, ajd 3D and graphs in the unpublished manuscript by Rauscher, F. J. III, Jensen, D.E., Patel, G., Fredericks, W.J., Schultz, D.C., Proctor, M., Sekido, Y., Minna, J., Chernova, T.A., Wilkinson, K.D., Avrutskaya, A.V., & Leadon, S.A. ''BRCA1-associated ubiquitin hydrolase required for transcription-coupled repair of oxidative DNA damage.'' Submitted to *Science* on May 16, 2001. In figure 4 in grant application 2 R01 CA40453–14 (pp. 17–18), data from this unpublished manuscript was used regarding BAP1 defects in TCR.
- Figure 1A and 3A in the article by Cooper, P.K., Nouspikel, T., Clarkson, S.g., and Leadon, S.A., ''Defective transcription-coupled repair of oxidative base damage in Cockayne syndrome patients from XP group G,'' *Science* 275: 9907ndash993, 1997. In NIH grant application R01 CA40453–10A1, some of the same data for XPG or XP–G/CS cells from this *Science* article were included by Dr. Leadon as graphs (Figures 4 and 5, pp. 25–27) before the *Science* paper was published.
- Figure 1C, 2A and 2B in the article by LePage, F., Kwoh, E.E., Avrutskaya, A., Gentil, A., Leadon, S.A., Sarasin, A., & Cooper, P.K. ''Transcription-coupled repair of 8-oxoguanine: requirement for XPG, TFIIH, and CSB and implications for Cockayne Syndrome.'' Cell 101:159–171, 2000. Figure 7 in grant application 1 R01 CA092390–01.
- Figures 1 and 2 and Table 1 in the article by Leadon, S.A., Barbee, S.L., & Dunn, A.B. ''The yeast RAD2, but not RAD1, gene is involved in the transcription-coupled repair of thymine glycols.'' *Mutation Research* 337:169–178, 1995.
- Figure 6 in the article Nouspikel, T., Lalle, P., Leadon, S.A., Cooper, P.K., & Clarkson, S.g. ''A common mutational pattern in Cockayne syndrome patients from xeroderma pigmentosum group G: Implications for a second XPG function,'' *Proc. Nat. Acad. Sci.* USA 94, 3116–3121, 1997.

Dr. Leadon's position is that he did not engage in scientific misconduct. His position is that a systematic error was introduced into the experiments in question and he recognizes that it could have influenced or accounted for the results. Dr. Leadon states that he has entered into a Voluntary Exclusion Agreement (Agreement) because he cannot sustain the significant financial burden of a legal proceeding to resolve the disagreements between his position and that of HHS. By entering into this Agreement, Dr. Leadon has voluntarily agreed:

(1) To exclude himself from knowingly contracting or subcontracting with any agency of the United States Government and from eligibility or knowing involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' as defined in the debarment regulations at 45 CFR Part 76 for a period of five (5) years, beginning on May 10, 2006;

(2) To exclude himself from serving in any advisory capacity to PHS including, but not limited, to service on any PHS advisory committee, board, and/or peer review committee, or as consultant for a period of five (5) years, beginning on May 10, 2006; and

(3) To submit letters of retraction to the editors of the journals listed below within ten (10) business days from the effective date of this Agreement, stating as follows:

(A) ''I have recently had the opportunity to review some of the raw data used for this paper in the above-referenced publication, and it is clear that the data as reported in this paper cannot be relied upon. Therefore, I request that you retract this paper.'' A letter using only the aforementioned language in this subsection will be sent to *Mutation Research* to retract the following paper: Leadon, S.A., Barbee, S.L., & Dunn, A.B. ''The yeast RAD2, but not RAD1, gene is involved in the transcription-coupled repair of thymine glycols.'' *Mutation Research* 337:169–178, 1995.

(B) ''I have recently had the opportunity to review some of the raw data used for Figure 6 in this paper in the above-referenced publication, and it is clear that the data as reported in this figure cannot be relied upon. Therefore, I request that you retract Figure 6 of this paper.'' A letter using only the aforementioned language in this subsection will be sent to *Proceedings of National Academy of Sciences* concerning the following article: Nouspikel, T., Lalle, P., Leadon, S.A., Cooper, P.K., & Clarkson, S.G. ''A common mutational pattern in Cockayne syndrome patients from xeroderma pigmentosum group G: Implications for a second XPG function.'' *Proceedings of the National Academy of Sciences* 94:3116–3121, 1997.

(C) ''I have recently had the opportunity to review some of the raw data used for Figures 7B and 7C in this paper in the above-referenced publication, and it is clear that the data as reported in these figures cannot be relied upon. Therefore, I request that you retract Figure 7B and 7C of this paper.'' A letter using only the aforementioned language in this subsection will be sent to *Molecular and Cellular Biology* concerning the following article: Cressman, V.L., Backlund, D.C., Avrutskaya, A.V., Leadon, S.A., & Koller, B.H. ''Growth retardation, DNA repair defects, and lack of spermatogensis in BRCA1-deficient mice.'' *Molecular and Cellular Biology* 19:7061–7075, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Division of Investigative Oversight, Office of Research Integrity, 1101 Wootton Parkway, Suite 750, Rockville, MD 20852, (240) 453–8800.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 06–5204 Filed 6–7–06; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Environmental Health/ Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through May 22, 2008.

For information, contact Dr. Tom Sinks, Executive Secretary, Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop E28, Atlanta, Georgia 30333, telephone 404/498–0004 or fax 404/498–0083.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 31, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–8918 Filed 6–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee (BCCEDCAC).

Times and Dates: 8:30 a.m.–5 p.m., June 22, 2006. 8:30 a.m.–1 p.m., June 23, 2006.

Place: The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337, telephone 404–762–7676.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary, Department of Health and Human Services, and the Director, CDC, regarding the early detection and control of breast and cervical cancer. The committee makes recommendations regarding national program goals and objectives; implementation strategies; and program priorities including surveillance, epidemiologic investigations, education and training, information dissemination, professional interactions and collaborations, and policy.

Matters to be Discussed: The agenda will include an overview, discussion, and review of the 60/40 provision; using 60/40 to calculate a request for award and the budget; impact of 60/40 award recommendations; waiving the 60/40 requirements; distributing fewer dollars for the first time, and an update/overview of breast cancer in 2006.

Agenda items are subject to change as priorities dictate.

For Further Information Contact: Debra Younginer, Designated Federal Officer, BCCEDCAC, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, Mailstop K–57, Chamblee, Georgia 30316, Telephone: 770–488–1074.

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: June 2, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control.

[FR Doc. E6–8911 Filed 6–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements, Request for Applications (RFA) DP06–003

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control, Special Emphasis Panel (SEP): Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements, RFA DP06–003.

Times and Dates:

8 a.m.–8:15 a.m., June 26, 2006 (Open). 8:15 a.m.–12:30 p.m., June 26, 2006 (Closed).
1 p.m.–1:15 p.m., June 26, 2006 (Open).
1:15 p.m.–6 p.m., June 26, 2006 (Closed).
8 a.m.–8:15 a.m., June 30, 2006 (Open).
8:15 a.m.–2 p.m., June 30, 2006 (Closed).
2:30 p.m.–2:45 p.m., June 30, 2006 (Open).
2:45 a.m.–6 p.m., June 30, 2006 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: To conduct expert review of scientific and technical merit of research applications in response to ''Health Promotion and Disease Prevention Research Centers: Special Interest Project Competitive Supplements,'' RFA DP06–003.

For Further Information Contact: Gwen Cattledge, Ph.D., Scientific Review Administrator, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop K02, Atlanta, GA 30341, Telephone 404.639.4640.

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: May 30, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E6–8902 Filed 6–7–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Industry Exchange Workshop on Food and Drug Administration Clinical Trial Requirements; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA) Minneapolis District, in cooperation with the Association of Clinical Research Professionals (ACRP), is announcing a workshop on FDA clinical trial statutory and regulatory requirements. This 2-day workshop for the clinical research community targets sponsors, monitors, clinical investigators, institutional review boards, and those who interact with them for the purpose of conducting FDA regulated clinical research. The workshop will include both industry and FDA perspectives on proper conduct of clinical trials regulated by FDA.

Date and Time: The public workshop is scheduled for Wednesday, August 23, 2006, from 8 a.m. to 5 p.m. and Thursday, August 24, 2006, from 8:30 a.m. to 12 noon.

Location: The public workshop will be held at The Northland Inn, 7025 Northland Dr., Brooklyn Park, MN 55428, 800–441–6422 or 763–536–8300, FAX: 763–536–8790.

Contact: Amy C. Johnson, Public Affairs Specialist, Food and Drug Administration, 212 3rd Ave. South Minneapolis, MN 55401, 612–758–7131, FAX: 612–334–4134, e-mail: *amy.johnson@fda.hhs.gov*.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) and the registration fee of $220 (ACRP Minnesota chapter member), $280 (nonmember), or $220 (Government employee). Make registration fee payable to ACRP, and mail to the attention of Paul Below, 441 Timberland Dr., Burnsville, MN 55337. To register via the Internet please go to *http://mnacrp.org/* or contact the ACRP webmaster at *webmaster@mnacrp.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**). The registrar will also accept payment by major credit cards.

For more information on the meeting, or for questions on registration, contact Paul Below for ACRP at 441 Timberland Dr., Burnsville, MN 55337, 952–882–4083, FAX: 952–223–1665, e-mail: *webmaster@mnacrp.org*.

Attendees are responsible for their own accommodations. To make reservations at the Northland Inn at a rate of $119.00 plus tax, please contact the Northland Inn (see *Location*).

The registration fee will be used to offset the expenses of hosting the conference, including meals, refreshments, meeting rooms, and materials. Space is limited, therefore interested parties are encouraged to register early. Limited onsite registration may be available. Please arrive early to ensure prompt registration.

If you need special accommodations due to a disability, please contact Amy Johnson (see *Contact*) at least 7 days in advance of the workshop.

SUPPLEMENTARY INFORMATION: The workshop on FDA clinical trials statutory and regulatory requirements helps fulfill the Department of Health and Human Services' and FDA's important mission to protect the public health by educating researchers on proper conduct of clinical trials. Topics for discussion at the workshop include the following:

1. Medical device and drug aspects of clinical research requirements,
2. Pre-investigational device and pre-investigational drug meetings with FDA,
3. Investigator initiated research,
4. Electronic documentation and data capture,
5. Ethical issues in subject enrollment,
6. Informed consent requirements,
7. Adverse event reporting,
8. FDA regulation of institutional review boards,
9. How FDA conducts bioresearch inspections,
10. FDA Enforcement actions associated with clinical research, and
11. How FDA promotes confidence in clinical research.

FDA has made education of the research community a high priority to ensure the quality of clinical data and protect research subjects. The workshop will also help to implement the objectives of section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393) and the FDA Plan for Statutory Compliance, which includes working more closely with stakeholders and ensuring access to needed scientific and technical expertise. The workshop also furthers the goals of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) by providing outreach activities by Government agencies directed to small businesses.

Dated: May 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–8896 Filed 6–7–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: 2007 National Survey on Drug Use and Health—(OMB No. 0930–0110)—Revision

The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, non-institutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal Government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

With the exception of the addition of several follow-up questions on methamphetamine use, no changes to the questionnaire are proposed for the 2007 NSDUH. The proposed additional questions (age at first use and frequency of use in the past 12 months) will be asked of respondents who denied use of methamphetamine in the ''core'' NSDUH because they didn't think of it as a prescription drug, but in a later series of questions admit to use (Respondents who report use of methamphetamine in the ''core'' already receive questions on age at first use and frequency of use). The additional burden associated with the new questions will be negligible because only a small subset of the sample will receive them.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2007 will be sufficient to permit prevalence estimates for each

of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

Activity	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Total burden hours
Household Screening	182,250	1	.083	15,127
Interview	67,500	1	1.0	67,500
Screening Verification	5,494	1	.067	368
Interview Verification	10,125	1	.067	678
Total	182,250			83,673

Written comments and recommendations concerning the proposed information collection should be sent by July 10, 2006 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: May 26, 2006.

Anna Marsh,

Director, Office of Program Services.

[FR Doc. E6–8910 Filed 6–7–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

[USCG–2004–19621]

RIN 1625–AA89

Dry Cargo Residue Discharges in the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Coast Guard announces a public scoping meeting in support of the National Environmental Policy Act (NEPA) analysis for this rulemaking, which concerns the regulation of dry cargo residues or sweepings in the Great Lakes. We also announce the availability of a sampling plan proposal that the Coast Guard may implement, in part or in whole, as part of this NEPA analysis, and we request public comments on that proposal.

DATES: The public scoping meeting will be held on July 6, 2006, from 1 p.m. to 5 p.m. Comments and related material must reach the Docket Management Facility on or before July 31, 2006.

ADDRESSES: The public scoping meeting will be held at the Anthony J. Celebreeze Federal Building, 31st floor auditorium, 1240 E 9th Street, Cleveland, OH 44199, telephone (216) 902–6020; photo identification required for entrance.

In addition to submitting written statements or making verbal comments at the public scoping meeting, you may submit comments identified by Coast Guard docket number USCG–2004–19621 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For further information about this rulemaking, contact Lieutenant Commander Mary Sohlberg, U.S. Coast Guard, Environmental Standards Division, telephone: 202–372–1429, e-mail: *msohlberg@comdt.uscg.mil.* Information about the public scoping meeting will be available at *http://www.uscg.mil/hq/g-m/mso/drycargo.htm.* If you need special arrangements to attend the public scoping meeting, contact LTJG Regan Blomshield, U.S. Coast Guard District Nine, telephone: 216–902–6050, e-mail: *rblomshield@d9.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Scoping Meeting

The public scoping meeting will be held in a handicapped accessible facility. Please note that you will be required to provide photo identification to enter the facility. If you need special arrangements, please use the contact information in **FOR FURTHER INFORMATION CONTACT.** The meeting will start with an overview presentation, followed by a formal public comment period. Following the formal public comment period, we will hold an informal open house. At the open house, Coast Guard personnel will be available to provide more information about the NEPA and rulemaking processes, dry cargo residue discharges, and the Coast Guard's proposed regulatory action, which we described in an earlier notice (71 FR 12210, March 9, 2006). A court reporter will be present during both the formal public comment period and the informal open house, to record verbal comments from the public. The public will also be able to submit written comments at any time during the meeting. Verbal comments to the court reporter will be transcribed, and the transcription will be placed in the public docket along with any written statements that may be submitted during the meeting. These comments and statements will be addressed by the Coast Guard as part of the Environmental Impact Statement.

Request for Comments

We published a notice on March 9, 2006 (71 FR 12210), requesting public comments on any significant environmental issues related to the Coast Guard's proposed regulatory action. The public comment period for that notice remains open until July 31, 2006. In addition, we request public comments on, or information relevant to, the proposed sampling plan discussed below. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2004–19621) and give the reason for each comment. You may submit your comments by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Viewing comments and documents: To view comments and documents, go to *http://dms.dot.gov* at any time, click on ''Simple Search,'' enter the last five digits of the docket number for this rulemaking, and click on ''Search.'' You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can 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 Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

On March 9, 2006, the Coast Guard published a notice of intent, notice of availability, and request for comments (71 FR 12210), announcing the start of the public scoping process that determines the scope of issues to be addressed in the EIS and for identifying the significant issues related to the proposed action. As promised in that notice, today we are announcing where and when the public scoping meeting will be held. We are also announcing the availability of a sampling plan that environmental experts retained by the Coast Guard have proposed. We are considering adopting this sampling plan in order to analyze the impact of dry cargo residue discharges in the Great Lakes. The proposed sampling plan is available for public review either electronically or at the Docket Management Facility (see **ADDRESSES** and *Request for Comments*).

Dated: June 2, 2006.

Howard L. Hime,

Acting Director of Standards, Assistant Commandant for Prevention.

[FR Doc. E6–8882 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14872–B]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Gana-A'Yoo, Limited, Successor in Interest to Takathlee-Tondin, Incorporated, for lands in the vicinity of Kaltag, Alaska, and located in:

Kateel River Meridian, Alaska

T. 15 S., R. 1 E.
Secs. 6 and 7.
Containing 1,239.52 acres.

T. 12 S., R. 1 W.,
Sec. 3;
Secs. 6 and 7;
Sec. 10;
Sec. 26;
Sec. 33;
Sec. 35.
Containing 4,459.84 acres.

T. 14 S., R. 1 W.,
Sec. 4;
Sec. 8;
Secs. 30, 31, and 32.
Containing 2,974.38 acres.
Aggregating 8,673.74 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication in the **Federal Register** to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Patricia K. Underwood,

Deputy Chief, Branch of Adjudication II.

[FR Doc. E6–8905 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–964–1410–HY–P; F–14913–B]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Gana-A'Yoo, Limited, Successor in Interest to Nik'Aghun, Limited, for lands in the vicinity of Nulato, Alaska, and located in:

Kateel River Meridian

T. 10 S., R. 3 E.,
Sec. 1;
Secs. 5 to 8, inclusive;
Secs. 12, 13, and 14;
Secs. 20 to 24, inclusive;
Secs. 26 to 33, inclusive.
Containing 7,816.44 acres.

T. 10 S., R. 4 E.,
Secs. 6 and 7.
Containing 781.06 acres.
Aggregating 8,597.50 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until 30 days after publication in the **Federal Register** to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43

CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen M. Ford,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E6–8906 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–1310–06; TXNM 103305]

Proposed Reinstatement of Terminated Oil and Gas Lease TXNM 103305

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Lease.

SUMMARY: Pursuant to the provisions of 43 CFR 3108.2–3(b)(2), Texas Land & Petroleum Company LLC, timely filed a petition for reinstatement of oil and gas lease TXNM 103305 for lands in Shelby County, Texas, and was accompanied by all required rentals and royalties accruing from September 1, 2005, the date of termination.

FOR FURTHER INFORMATION CONTACT: Gloria S. Baca, BLM, New Mexico State Office, (505) 438–7566.

SUPPLEMENTARY INFORMATION: No valid lease has been issued affecting the lands.

The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective September 1, 2005, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: June 1, 2006.

Gloria S. Baca,

Land Law Examiner, Fluids Adjudication Team 1.

[FR Doc. E6–8907 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–920–1310–06); (TXNM 107338; TXNM 107329)]

Proposed Reinstatement of Terminated Oil and Gas Leases TXNM 107338; TXNM 107329

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Reinstatement of Terminated Oil and Gas Leases.

SUMMARY: Pursuant to the provisions of 43 CFR 3108.2–3(b)(2), Phillip R Rice, timely filed a petition for reinstatement of oil and gas leases TXNM 107338 and TXNM 107329 for lands in Wise County, Texas, and was accompanied by all required rentals and royalties accruing from December 1, 2005, the date of termination.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

SUPPLEMENTARY INFORMATION: No valid lease has been issued that affect the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $20.00 per acre or fraction thereof and 18⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2005, subject to the original terms and conditions of the leases and the increased rental and royalty rate cited above.

Dated: June 1, 2006.

Lourdes B. Ortiz,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. E6–8908 Filed 6–7–06; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–038]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: International Trade Commission.

TIME AND DATE: June 19, 2006 at 2 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1092 and 1093 (Final) (Diamond Sawblades and Parts Thereof from China and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 30, 2006.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: June 5, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–5248 Filed 6–6–06; 12:49 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933—Mobile Enterprise Alliance, Inc.

Notice is hereby given that, on May 16, 2006, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Enterprise Alliance, 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, PortNexus Corporation, Miami, FL; and Secgo Software Oy, Tampere, FINLAND have been added as

parties to this venture. Also, Everypath Corporation, San Jose, CA; and Adesso Systems, Boston, MA 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 Mobile Enterprise Alliance, Inc. intends to file additional written notification disclosing all changes in membership.

On June 24, 2004, Mobile Enterprise Alliance, 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 July 23, 2004 (69 FR 44062).

The last notification was filed with the Department on February 22, 2006. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 2006 (71 FR 13866).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 06–5200 Filed 6–7–06; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under 21 U.S.C. 952(a)(2)(B) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with 21 CFR 1301.34(a), this is notice that on November 28, 2005, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The company plans to procure Phenylacetone through importation to be used as a precursor in the manufacture of amphetamines only.

Any manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than July 10, 2006.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e) and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import a basic class of any controlled substance listed in Schedule I or II are, and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 301.34(b), (c), (d), (e) and (f) are satisfied.

Dated: June 1, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–8919 Filed 6–7–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 12, 2005, Mallinckrodt Inc., 3600 North Second Street, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in Schedules I and II:

Drug	Schedule
Codeine-N-oxide (9053)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Norlevorphanol (9634)	I
Normorphine (9313)	I
Tetrahydrocannabinols (7370)	I
Alfentanil (9737)	II
Amphetamine (1100)	II
Ecgonine (9180)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (9273)	II
Dihydrocodeine (9120)	II
Diphenoxylate (9170)	II
Diprenorphine (9058)	II
Etorphine HCL (9059)	II
Fentanyl (9801)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Levo-alphacetylmethadol (9648)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium, granulated (9640)	II
Opium, powdered (9639)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Phenazocine (9715)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Thebaine (9333)	II

The firm plans to manufacture the listed controlled substances for internal use and for sale to other companies.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 7, 2006.

Dated: June 1, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–8917 Filed 6–7–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 5, 2005, Organix Inc., 240 Salem Street, Woburn, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Cocaine (9041), a basic class of controlled substance listed in Schedule II.

The company plans to manufacture a chemical that is a derivative of cocaine that will be sold to another company for research purposes.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections being sent via regular mail may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Attention: DEA Federal Register Representative, Liaison and Policy Section (ODL); or any being sent via express mail should be sent to DEA Headquarters, Attention: DEA Federal Register Representative/ODL, 2401 Jefferson-Davis Highway, Alexandria, Virginia 22301; and must be filed no later than August 7, 2006.

Dated: June 1, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–8915 Filed 6–7–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated August 11, 2005 and published in the **Federal Register** on August 19, 2005, (70 FR 48779–48780), Research Triangle Institute, Kenneth H. Davis Jr., Hermann Building East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic class of controlled substance listed in Schedule II:

Drug	Schedule
Cocaine (9041)	II

The company plans to import small quantities of the listed controlled substance for the National Institute of Drug Abuse and other clients.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic class of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substances listed.

Dated: June 1, 2006.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E6–8914 Filed 6–7–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,893; TA–W–58,893Z]

Agilent Technologies, Inc.; Automated Test Group; Semiconductor Test Solutions Including On-Site Leased Workers of Voit; Santa Rosa, CA; Including an Employee of Agilent Technologies, Inc.; Automated Test Group, Semiconductor Test Solutions, Santa Rosa, CA; Located in Portland, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 29, 2006, applicable to workers of Agilent Technologies, Inc., Automated Test Group, Semiconductor Test Solutions, including on-site leased workers of Voit, Santa Rosa, California. The notice was published in the **Federal Register** on April 17, 2006 (71 FR 19753).

At the request of a company official, the Department reviewed the certification for workers of the subject firm.

New information shows that a worker separation has occurred involving an employee of the Santa Rosa, California facility of Agilent Technologies, Inc., Automated Test Group, Semiconductor Test Solutions located in Portland, Oregon. Ms. Jane Parker provided sales support services for the production of Radio Frequency (RF) Content for the Agilent 93000 Tester at the Santa Rosa, California location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Santa Rosa, California facility of the subject firm located in Portland, Oregon.

The intent of the Department's certification is to include all workers of the Santa Rosa, California location of the subject firm who were adversely affected by increased company imports.

The amended notice applicable to TA–W–58,893 is hereby issued as follows:

''All workers of Agilent Technologies, Inc., Automated Test Group, Semiconductor Test Solutions, including on-site leased workers of Voit, Santa Rosa, California (TA–W–58,893) including an employee of Agilent Technologies, Inc., Automated Test Group, Semiconductor Test Solutions, Santa Rosa, California located in Portland, Oregon (TA–W–58,893Z, who became totally or partially separated from employment on or after February 22, 2005 through March 29, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 19th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8943 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,288]

Gold Star Coatings, West Branch, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2006, in response to a petition filed by a company official on behalf of workers of Gold Star Coatings, West Branch, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 22nd day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8946 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 19, 2006.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 19, 2006.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 31st day of May 2006.

Erica R. Cantor,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[TAA petitions instituted between 5/15/06 and 5/26/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59391	Monster (Wkrs)	Brisbane, CA	5/15/06	05/12/06
59392	Sherwood Harasco (UAW)	Lockport, NY	5/15/06	05/12/06
59393	SMM USA Inc. (Comp)	Oceanside, CA	5/15/06	05/12/06
59394	Torque Traction Manufacturing Technologies, Inc. (Comp)	Bristol, VA	5/15/06	05/03/06
59395	Rowe Furniture Corporation (Wkrs)	Poplar Bluff, MO	5/15/06	04/27/06
59396	GE Silicones (Comp)	Willoughby, OH	5/15/06	05/15/06
59397	Tyden Seal Company (The) (Comp)	Hastings, MI	5/15/06	05/15/06
59398	Progress Casting (State)	Albert Lea, MN	5/15/06	05/15/06
59399	Skyline Plastic Systems (Comp)	Fletcher, NC	5/15/06	05/10/06
59400	Factory Fabrics (State)	Cumberland, RI	5/15/06	04/27/06
59401	Worth, a K2 Company (Comp)	Tullahoma, TN	5/16/06	05/12/06
59402	Professional Towel Mills (Comp)	Abbeville, SC	5/16/06	05/15/06
59403	Picolight, Inc. (State)	Louisville, CO	5/16/06	05/16/06
59404	Phoenix Gold In'l Inc. (Comp)	Portland, OR	5/16/06	05/15/06
59405	Alice Manufacturing Company Inc. (Comp)	Easley, SC	5/16/06	05/15/06
59406	Jakel Inc.	Highland, IL	5/16/06	05/15/06
59407	Amcast Automotive (Comp)	Gas City, IN	5/16/06	05/15/06
59408	WestPoint Stevens, Inc. (Wkrs)	Drakes Branch, VA	5/16/06	05/09/06
59409	Components Manufacturing Co. (Comp)	Augusta, GA	5/16/06	05/08/06
59410	Ameritex Yarn LLC (WKRS)	Burlington, NC	5/17/06	05/07/06
59411	Quadriga Art Inc. (STATE)	Pennsauken, NJ	5/17/06	05/16/06
59412	Archway and Mother's Cake & Cookie Co. (union)	Oakland, CA	5/17/06	05/16/06
59413	Eaton Corporation (Comp)	Cleveland, OH	5/17/06	05/17/06
59414	Bemis Company, Inc. (Union)	Peoria, IL	5/17/06	04/25/06
59415	WestPoint Home (Comp)	Columbia, AL	5/18/06	05/16/06
59416	Saint Gobain Ceramics (Comp)	Sanborn, NY	5/18/06	04/21/06
59417	Laser Technologies and Services, Inc. (Comp)	Exton, PA	5/18/06	05/17/06
59418	Glomar Steel Co. (State)	Ecorse, MI	5/18/06	05/17/06
59419	Panel Processing Inc. (Wkrs)	Alpena, MI	5/18/06	05/17/06
59420	Modern Plastic Technology (Wkrs)	Port Huron Twp., MI	5/18/06	05/07/06
59421	St. Johns Companies (Wkrs)	Logan, OH	5/18/06	05/10/06
59422	Unifi (Comp)	Reidsville, NC	5/18/06	05/15/06
59423	Paxar Americas, Inc. (Comp)	Lenoir, NC	5/18/06	05/01/06
59424	Annalee Mobiltee Dolls Inc. (Comp)	Meredith, NH	5/18/06	05/18/06
59425	RBC Nice Bearings Inc. (Comp)	Kulpsville, PA	05/18/06	05/05/06
59426	Continental Tire North America (Comp)	Charlotte, NC	05/19/06	05/18/06
59427	Brockway Mould, Inc. (Union)	Brockport, PA	05/19/06	05/18/06

APPENDIX—Continued

[TAA petitions instituted between 5/15/06 and 5/26/06]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
59428	A.W. Bohanan Co., Inc. (Wkrs)	Dallas, NC	05/19/06	05/17/06
59429	Badger Sportswear, Inc. (Comp)	Statesville, NC	05/19/06	05/18/06
59430	Modine Manufacturing (Comp)	Logansport, IN	05/19/06	05/15/06
59431	Mag, Inc. (WkPlrs)	Martinsville, IN	05/19/06	05/18/06
59432	Microtronic (State)	Orlando, FL	05/19/06	05/18/06
59433	BBA Nonwovens Simpsonville Inc. (Comp)	Simpsonville, SC	05/19/06	05/17/06
59434	Royal Cord Inc. (Wkrs)	Thomaston, GA	05/22/06	05/22/06
59435	Propex Fabrics Inc. (Comp)	Seneca, SC	05/22/06	05/19/06
59436	Jacquard LLC (Comp)	Cliffside, NC	05/22/06	05/19/06
59437	ASC Inc. (Comp)	Gibraltar, MI	05/22/06	05/22/06
59438	Stimson Lumber Co. (State)	St. Helens, OR	05/22/06	05/19/06
59439	Dekko Technologies Inc. (Comp)	Mt. Ayr, IA	05/22/06	05/18/06
59440	Freightliner LLC (State)	Portland, OR	05/22/06	05/19/06
59441	Four Seasons (Comp)	Grapevine, TX	05/23/06	05/22/06
59442	TCI Ceramics Inc. (Wkrs)	Hagerstown, MD	05/23/06	05/22/06
59443	Summit Knitting Mills Inc. (Comp)	Asheboro, NC	05/23/06	05/23/06
59444	Ericsson Inc. (Comp)	Brea, CA	05/23/06	05/19/06
59445	Ford Motor Corporation (Wkrs)	St. Paul, MN	05/23/06	05/22/06
59446	Maremont Co. (Union)	Loudon, TN	05/23/06	05/23/06
59447	Amcast Automotive (Comp)	Fremont, IN	05/23/06	05/17/06
59448	Collins and Aikman (Wkrs)	Farmville, NC	05/24/06	05/24/06
59449	Technical Assoicates (Union)	Macon, GA	05/24/06	05/23/06
59450	ThereaMatrix Physical Therapy & Services Inc. (Wkrs)	Pontiac, MI	05/24/06	05/05/06
59451	Columbia Chemicals Co. (Comp)	Proctor, WV	05/24/06	05/08/06
59452	Insight Direct USA ()	Tempe, AZ	05/24/06	05/15/06
59453	A.W. Bohanan Co. Inc. (Wkrs)	Dallas, NC	05/24/06	05/17/06
59454	West Point Stevens Inc. (Wkrs)	Drakes Branch, VA	05/24/06	05/15/06
59455	Universal leaf Tobacco Co. (Wkrs)	Danville, VA	05/24/06	05/24/06
59456	Tubular Textile (Comp)	Greenville, SC	05/24/06	05/15/06
59457	James and Sons Neckwear Inc. (Comp)	Sewell, NJ	05/24/06	05/16/06
59458	Salon Manufacturing Co. (Union)	Skowhegan, ME	05/24/06	05/19/06
59459	Michelle Jane (Wkrs)	New York, NY	05/24/06	05/19/06
59460	Hoffman LaRoche (Wkrs)	Nutley, NJ	05/24/06	05/19/06
59461	American Knitting Corp. (Comp)	Allentown, PA	05/24/06	05/22/06
59462	Hugo Bosca Co. Inc. (Comp)	Springfield, OH	05/24/06	05/23/06
59463	Ash Grove Cement Co. (Comp)	Portland, OR	05/24/06	05/22/06
59464	MTD Southwest Inc. (Comp)	Tucson, AZ	05/24/06	05/23/06
59465	Saint Gobain Crystals (Union)	Solon, OH	05/24/06	05/24/06
59466	J–Star Bodco Inc. (Wkrs)	Fort Atkinson, WI	05/25/06	05/12/06
59467	Dynacast (Union)	Spartanburg, SC	05/25/06	05/24/06
59468	Intier Automotive Seating (Comp)	Warren, OH	05/25/06	05/12/06
59469	Simclar (Wkrs)	Round Rock, TX	05/25/06	05/24/06
59470	ABN AMRO Mortgage Group (Wkrs)	Ann Arbor, MI	05/25/06	05/23/06
59471	Tigra USA (Comp)	West Jefferson, NC	05/25/06	05/23/06
59472	Graftech Ucar Carbon Co. Inc. (Union)	Columbia, TN	05/25/06	05/19/06
59473	Briggs Plumbing Products Inc. (Union)	Flora, IN	05/26/06	05/24/06
59474	Curt G. Joa (Comp)	Sheboygan Falls, WI	05/26/06	05/25/06
59475	TRW Automotive Steering Plant (Comp)	Sterling Heights, MI	05/26/06	05/25/06
59476	Paxar Americas Inc. (Comp)	Rock Hill, SC	05/26/06	05/26/06
59477	PMC Specialties Group Inc. (Comp)	Cincinnati, OH	05/26/06	05/24/06
59478	Maytag International (Wkrs)	Schaumburg, IL	05/26/06	05/25/06
59479	Brand Science LLC (Comp)	Stearns, KY	05/26/06	05/25/06
59480	Lasting Impressions Inc. (Wkrs)	New York, NY	05/26/06	05/19/06
59481	Electrolux Home Products (Wkrs)	Jefferson, IA	05/26/06	05/22/06
59482	Country House Plastics and Finishing LLC (Wkrs)	Gilmanton, NH	05/26/06	05/26/06

[FR Doc. E6–8949 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,423]

Paxar Americas, Inc., Printed Division, Lenoir, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 18, 2006, in response to a worker petition filed by a company official on behalf of workers at Paxar Americas, Inc., Printed Division, Lenoir, North Carolina.

The petitioning group of workers is covered by an active certification (TA–W–59,311) which expires on May 18, 2008. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of May 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8952 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,278]

Rexnord Industries, Inc., Coupling Group, Warren, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 25, 2006 in response to a worker petition filed the International Association of Machinists and Aerospace Workers on behalf of workers at Rexnord Industries, Inc., Coupling Group, Warren, Pennsylvania. Workers at the site produced flexible couplings; production shut down in late 2005.

The Department issued a negative determination (TA–W–58,943) applicable to the petitioning group of workers on April 11, 2006. No new information or change in circumstances is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of May 2006.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8945 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,214]

Roxford Fordell, Also Known as Nettexx,; Greenville, SC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 14, 2006 in response to a petition filed by an authorized representative on behalf of workers at Roxford Fordell, also known as Nettexx, Greenville, South Carolina.

The petition has been deemed invalid. The Department has determined that the petitioner is not an authorized representative, nor is the petitioner a company official. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of May, 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8944 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,416]

Saint-Gobain Ceramics Microelectronics Division, Sanborn, NY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 18, 2006 in response to a worker petition filed by a company official on behalf of workers of Saint-Gobain Ceramics, Microelectronics Division, Sanborn, New York.

The petitioning group of workers is covered by an earlier petition (TA–W–59,247) filed on April 20, 2006 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 23rd day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8951 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,316]

Sargent Art, Hazleton, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2006 in response to a worker petition filed by a company official on behalf of workers of Sargent Art, Hazleton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8947 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,399]

Skyline Plastic Systems, Inc., Fletcher, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 15, 2006 in response to a petition filed by a company official on behalf of workers of Skyline Plastic Systems, Inc., Fletcher, North Carolina.

The petition has been deemed invalid. The petitioner was not a company official but a worker of the firm. A petition for trade adjustment assistance and alternative trade adjustment assistance must be filed by three workers. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 22nd day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8950 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,384]

Wistron Infocomm, Grapevine, TX; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2006 in response to a worker petition filed on behalf of workers at Wistron Infocomm, Grapevine, Texas.

The petitioners did not work in the United States. Although the petitioners wages were paid out of Grapevine, Texas, they physically worked at another company owned facility located in Juarez, Mexico. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 23rd day of May 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–8948 Filed 6–7–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

Public Interest Declassification Board (PIDB); Notice of Meeting

Pursuant to section 1102 of the Intelligence Reform and Terrorism Prevention Act of 2004 which extended and modified the Public Interest Declassification Board (PIDB) as established by the Public Interest Declassification Act of 2000 (Pub.L. 106–567, title VII, December 27, 2000, 114 Stat. 2856), announcement is made for the following committee meeting:

Name of Committee: Public Interest Declassification Board (PIDB).

Date of Meeting: Friday, June 23, 2006.

Time of Meeting: 9 a.m. to 12 p.m.

Place of Meeting: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Archivist's Reception Room (Room 105), Washington, DC 20408.

Purpose: To discuss declassification program issues.

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 Information Security Oversight Office (ISOO) no later than Monday, June 19, 2006. ISOO will provide additional instructions for gaining access to the location of the meeting.

For Further Information Contact: J. William Leonard, Director Information Security Oversight Office, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5250.

Dated: May 31, 2006.

J. William Leonard,

Director, Information Security Oversight Office.

[FR Doc. E6–8916 Filed 6–7–06; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. *Type of submission, new, revision, or extension:* 10 CFR parts 20 and 32—Revision; NRC Form 748—New.

2. *The title of the information collection:* 10 CFR parts 20 and 32, ''National Source Tracking of Sealed Sources'' and NRC Form 748, ''National Source Tracking Transaction Report.''

3. *The form number if applicable:* NRC Form 748, ''National Source Tracking Transaction Report.''

4. *How often the collection is required:* Initially, at completion of a transaction, and at inventory reconciliation.

5. *Who will be required or asked to report:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.

6. *An estimate of the number of annual responses:* 5,041.

NRC Form 748—2,781 responses (705 NRC Licensees reporting + 17 NRC recordkeepers + 2,009 Agreement State Licensees reporting + 50 Agreement State recordkeepers);

10 CFR Part 20—2,250 responses (467 NRC Licensees + 117 NRC recordkeepers + 1,333 Agreement State Licensees + 333 Agreement State recordkeepers);

10 CFR Part 32—10 recordkeepers (3 NRC recordkeepers + 7 Agreement State recordkeepers).

7. *The estimated number of annual respondents:* 1,350 (350 NRC Licensees + 1,000 Agreement State Licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 11,604 hours.

NRC Form 748—421 recurring annual reporting burden hours [10 minutes per response (109 hours NRC Licensees) + (312 hours Agreement State Licensees).] 5,333 annualized one-time recordkeeping burden hours [80 hours for 67 recordkeepers (17 NRC recordkeepers) +(50 Agreement State recordkeepers)].

10 CFR Part 20—1,800 recurring reporting burden hours [1 hour per response (467 NRC Licensees) + (1,333 Agreement State Licensees)]. 3,600 annualized one-time recordkeeping burden hours [8 hours each for 450 recordkeepers (936 hours NRC Licensees) + (2,664 hours Agreement State Licensees)].

10 CFR Part 32—450 recordkeeping hours [45 hours per recordkeeper (135 hours NRC Licensees) + (315 hours Agreement State Licensees)].

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Applicable.

10. *Abstract:* The NRC is proposing to amend its regulations to implement a National Source Tracking System for certain sealed sources. The amendments would require licensees to report certain transactions involving nationally tracked sources to the National Source Tracking System. These transactions would include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. The amendment would require each licensee to provide its initial inventory of nationally tracked sources to the National Source Tracking System and annually reconcile the information in the system with the licensee's actual inventory. The rule would also require manufacturers of nationally tracked sources to assign a unique serial number to each source. This information collection is mandatory and will be used to populate the National Source Tracking System.

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance packages are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 7, 2006: John A. Asalone, Office of Information and Regulatory Affairs (3150–0014, 3150–0001, and 3150–xxxx), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 1st day of June 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–8921 Filed 6–7–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company; San Diego Gas and Electric Company; the Cities of Riverside and Anaheim, CA; San Onofre Nuclear Generating Station, Units 2 and 3; Notice of Consideration of Approval of Transfer Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of the Facility Operating Licenses, which are numbered NPF–10 and NPF–15, for the San Onofre Nuclear Generating Station, Units 2 and 3 (SONGS 2 and 3), currently held by Southern California Edison Company (SCE), San Diego Gas and Electric Company, the City of Riverside, California, and the City of Anaheim, California (Anaheim), as owners; and Southern California Edison Company as licensed operator of SONGS 2 and 3. The request is to transfer Anaheim's 3.16 percent undivided ownership interest in SONGS 2 and 3 to SCE, excluding Anaheim's interest in its spent fuel and in the SONGS 2 and 3 independent spent fuel storage installation (ISFSI). The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to the application for approval filed by SCE, acting on behalf of itself and Anaheim, SCE would acquire Anaheim's 3.16 percent ownership interest in the facility, excluding Anaheim's interest in its spent fuel and in the SONGS 2 and 3 ISFSI located on the SONGS site, following approval of the proposed license transfer. SCE would retain exclusive responsibility for the operation and maintenance of SONGS 2 and 3.

No physical changes to the SONGS 2 and 3 facility or operational changes are being proposed in the application.

The proposed amendments would state that the City of Anaheim has transferred its ownership interests in the facility, and entitlement to generating output, to Southern California Edison Company, except that it retains its ownership interests in its spent nuclear fuel and the facility's ISFSI located on the facility's site. In addition, the proposed amendments would state that the City of Anaheim retains financial responsibility for its spent fuel and for a portion of the facility's decommissioning costs, and it remains a licensee for the purposes of its retained interests and liabilities.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the licenses, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of the licenses, if the Commission determines that the proposed transferee is qualified to hold the licenses, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration and no genuine issue as to whether the health and safety of the public will be significantly affected. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Douglas K. Porter, 2244 Walnut Grove Avenue, Rosemead, CA 91770, telephone number: 626–302–3964; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a

hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 10, 2006, as supplemented by the electronic mail from the licensee dated May 16, 2006, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 30th day of May 2006.

For the Nuclear Regulatory Commission.

N. Kalyanam,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–8922 Filed 6–7–06; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53930; File No. SR–CBOE–2006–56]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of the Pilot Period Applicable to CBOE's Listing and Trading of Options on the iShares MSCI Emerging Markets Index Fund

June 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 31, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') proposes to extend the pilot period applicable to CBOE's listing and trading of options on the iShares MSCI Emerging Markets Index Fund (''Fund Options''). CBOE is not proposing any textual changes to the rules of CBOE. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com*), the Office of the Secretary, CBOE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 10, 2006, the Securities and Exchange Commission (''Commission'') approved a CBOE proposal (SR–CBOE–2006–32) to list and trade Fund Options.[6] SR–CBOE–2006–32 was approved for a sixty-day pilot period that is due to expire on June 9, 2006 (''Pilot''). The Fund Options will continue to meet substantially all of the listing and maintenance standards in CBOE Rules 5.3.06 and 5.4.08, respectively. For the requirements that are not met, the Exchange continues to represent that sufficient mechanisms exist that would provide the Exchange with adequate surveillance and regulatory information with respect to the Fund. Continuation of the Pilot would permit the Exchange to continue to work with the Bolsa Mexicana de Valores (''Bolsa'') to develop a surveillance sharing agreement.[7]

Accordingly, the Exchange proposes to extend the Pilot for an additional ninety-days, until September 7, 2006.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) Act [9] requirements that the rules of an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange requested the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 53621 (April 10, 2006), 71 FR 19568 (April 14, 2006) (SR–CBOE–2006–32).

[7] Telephone conference between Patrick Sexton, Associate General Counsel, Exchange, Bill Speth, Director of Research, Exchange, and Geoffrey Pemble, Special Counsel, Division, Commission, on June 1, 2006.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received 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) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day operative delay.[14] The Commission is exercising its authority to waive the five-day pre-filing notice requirement and believes that the waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Waiver of the five-day pre-filing and 30-day operative periods will extend the Pilot, which would otherwise expire on June 9, 2006, and allow the Exchange to continue in its efforts to obtain a surveillance agreement with the Bolsa. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[15]

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2006–56 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–56. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–56 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8880 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53923; File No. SR–CBOE–2006–47]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to its Marketing Fee Program

June 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CBOE under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its Fees Schedule and its marketing fee program.Below is the text of the proposed rule change. Proposed new language is in *italics;* deleted language is in [brackets].

Chicago Board Options Exchange, Inc.

Fees Schedule

[MAY 1]*May 11*, 2006

1.	No Change.	
2.	Marketing Fee (6)(16)	$.65

[16] 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).

3.–4. No Change.

FOOTNOTES:

(1)–(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13 at the rate of $.65 per contract on all classes of equity options, options on HOLDRs, options on SPDRs, options on DIA, options on NDX, and options on RUT. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from *inbound* P/A orders *or a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account;* transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule. This fee shall not apply to index options and options on ETFs (other than options on SPDRs, options on DIA, options on NDX, and options on RUT). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed. If less than 80% of the marketing fee funds are paid out by the DPM/LMM or Preferred Market-Maker in a given month, then the Exchange would refund such surplus at the end of the month on a pro rata basis based upon contributions made by the Market-Makers, RMMs, e-DPMs, DPMs and LMMs. However, if 80% or more of the accumulated funds in a given month are paid out by the DPM/LMM or Preferred Market-Maker, there will not be a rebate for that month and the funds will carry over and will be included in the pool of funds to be used by the DPM/LMM or Preferred Market-Maker the following month. At the end of each quarter, the Exchange would then refund any surplus, if any, on a pro rata basis based upon contributions made by the Market-Makers, RMMs, DPMs, e-DPMs and LMMs. CBOE's marketing fee program as described above will be in effect until June 2, 2006.

Remainder of Fees Schedule—No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE states that, currently, its marketing fee is assessed upon DPMs, LMMs, e-DPMs, RMMs, and Market-Makers at the rate of $.65 per contract on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a ''Preferred Market-Maker'' under CBOE Rule 8.13. The Exchanges notes that this fee does not apply to: Market-Maker-to-Market-Maker transactions (which includes all transactions between any combination of DPMs, e-DPMs, RMMs, LMMs, and Market-Makers, and transactions resulting from orders from non-member market-makers); transactions resulting from inbound P/A orders; transactions resulting from accommodation liquidation (cabinet trades); or transactions resulting from dividend strategies, merger strategies, and short stock interest strategies. CBOE states that the marketing fee is assessed on all equity option classes and options on HOLDRs®, options on SPDRs®, options on DIA, options on the Nasdaq-100® (NDX™) Index and options on the Russell 2000® (RUT) Index.

CBOE proposes to amend its marketing fee program to provide that the marketing fee would not apply to a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account. CBOE notes that previously, the marketing fee program stated that the fee does not apply to transactions resulting from P/A orders, which meant inbound P/A orders.[5] As revised, the fee would not apply to inbound P/A orders, as well as to a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account. This is similar to a provision in the ISE Fee Schedule relating to its payment for order flow program.

CBOE states that it is not amending its marketing fee program in any other respect.

[5] *See* Securities Exchange Act Release No. 53767 (May 8, 2006), 71 FR 27756 (May 12, 2006) (SR–CBOE–2006–43).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder, 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 such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–47 on the subject line.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–47 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8881 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53931; File No. SR–NASD–2006–061]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Establish Pricing for the Nasdaq IPO/Halt Cross

June 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 12, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On May 15, 2006, Nasdaq filed Amendment No. 1 to the proposed rule change.[3] Nasdaq has designated this proposal as establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish the execution fees for quotes and orders executed in the Nasdaq IPO/Halt Cross set forth in NASD Rule 4703. At the time Nasdaq filed the proposed rule change, it stated that the proposed rule change would be implemented on May 16, 2006. Nasdaq subsequently indicated that it intends to implement the change on July 1, 2006.[6] The text of the proposed rule change is available on NASD's Web site, *http://www.nasd.com*, at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has determined to set the pricing for the Nasdaq IPO/Halt Cross described in NASD Rule 4703 at $0.0005 per share executed during the Nasdaq IPO/Halt Cross. This fee is consistent with the fees assessed for executions in the Nasdaq Opening and Closing Crosses. Nasdaq intends to implement the fee on July 1, 2006.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[7] in general, and Section 15A(b)(5)[8] of the Act, in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed fees for the execution of quotes and orders in the IPO/Halt Cross is consistent with the statute in that it is designed to result in an execution charge approximating the execution charge for quotes and orders entered and executed in the Nasdaq Market Center Opening and Closing Crosses.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq 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 rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and subparagraph (f)(2) of Rule 19b–4 thereunder[10] in that it establishes or changes a due, fee, or other charge imposed by Nasdaq for the Nasdaq IPO/Halt Cross. Nasdaq intends

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Nasdaq made non-substantive changes to the text of the proposed rule change and made clarifying changes to the statutory basis section.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] CFR 240.19b–4(f)(2).

[6] *See* e-mail message from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2006.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

to make this rule change effective on July 1, 2006. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

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–2006–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–061. 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 offices of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–061 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8877 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

[11] The effective date of the original proposed rule change is May 12, 2006, and the effective date of Amendment No. 1 is May 15, 2006. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on May 15, 2006, the date on which Nasdaq submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53934; File No. SR–NYSE–2006–39]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Increasing the Maximum Weighting of Certain Component Stocks in Indexes or Portfolios Underlying Investment Company Units

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 17, 2006, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 703.16(B)(2)(c)[3] of the NYSE Listed Company Manual (''Manual'') to increase from 25 percent to 30 percent the maximum weight of the most heavily weighted component stock of an index or portfolio underlying a series of Investment Company Units.

The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE'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 NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE 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

Section 703.16 of the Manual provides listing standards for Investment Company Units (''ICUs'') to permit listing and trading of these securities pursuant to Rule 19b–4(e) under the Exchange Act.[4] Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization (''SRO'') shall not be deemed a proposed rule change, pursuant to Rule 19b–4(c)(1) under the Exchange Act,[5] if the Commission has approved, pursuant to section 19(b) of the Exchange Act,[6] the SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product, and the SRO has a surveillance program for the product class.[7] These standards are frequently referred to as ''generic'' listing standards.

In 1996, the Commission approved Section 703.16 of the Manual, which sets forth the rules related to the listing of ICUs.[8] In 2000, the Commission also approved the Exchange's generic listing standards for listing and trading, or the trading pursuant to unlisted trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission corrected the reference to the relevant NYSE's Manual citation provided in the Form 19b–4 filed with the Commission in connection with the instant proposed rule change. Telephone conversation between Michael Cavalier, Assistant General Counsel, NYSE and Tim Fox, Special Counsel, Commission on May 23, 2006.

[4] 17 CFR 240.19b–4(e).

[5] 17 CFR 240.19b–4(c)(1).

[6] 15 U.S.C. 78s(b).

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[8] *See* Securities Exchange Act Release No. 36923 (March 5, 1996), 61 FR 10410 (March 13, 1996) (SR–NYSE–95–23).

privileges, of ICUs under Section 703.16 of the Manual and Exchange Rule 1100.[9]

Section 703.16(B)(2) of the Manual provides that, upon the initial listing of a series of ICUs under Rule 19b–4(e), component stocks that in the aggregate account for at least 90 percent of the weight of the index or portfolio underlying such series must have a minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90 percent of the weight of the index or portfolio. These standards assure that the underlying index component stocks are generally actively traded and with substantial market capitalization.

Currently, Section 703.16(B)(2)(c) of the Manual provides that the most heavily weighted component stock in an underlying index cannot exceed 25 percent of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65 percent of the weight of the index or portfolio. The Exchange proposes to increase from 25 percent to 30 percent the permissible weight of the most heavily weighted component stock in an underlying index. The five most heavily weighted stocks would continue to be required to represent no more than 65 percent of the weight of the index or portfolio. This change will provide additional flexibility to issuers of ICUs to be listed pursuant to Rule 19b–4(e) in developing ICUs based on indexes or portfolios.

The Exchange notes that unit investment trusts and mutual funds are subject to Internal Revenue Code Subchapter M requirements applicable to regulated investment companies. In order to maintain regulated investment company status, these entities would be required to rebalance their portfolios quarterly to avoid any one stock exceeding a 25 percent weighting in the trust's or fund's portfolio.[10]

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Exchange Act,[11] in general, and furthers the objectives of section 6(b)(5) of the Exchange Act,[12] in particular, in that the proposal is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–39 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–NYSE–2006–39. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–39 and should be submitted on or before June 29, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[13] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Exchange Act,[14] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change is reasonably designed to provide additional flexibility in listing ICUs under the Exchange's generic listing standards. The Commission further believes that the proposed rule change will serve to protect investors and the public interest by maintaining the size and liquidity requirements applicable to the securities underlying the relevant index or portfolio.

Under section 19(b)(2) of the Exchange Act,[15] the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The

[9] *See* Securities Exchange Act Release No. 43679 (December 5, 2000), 65 FR 77949 (December 13, 2000) (SR–NYSE–00–46).

[10] According to the NYSE, under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company, the securities of a single issuer can account for no more than 25 percent of a fund's total assets, and at least 50 percent of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5 percent of such fund's total assets.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. The Commission notes that it has previously approved similar proposals by the American Stock Exchange (''Amex'') and Chicago Board Options Exchange (''CBOE'') to increase to thirty percent the permissible weight of the most heavily weighted component stock in an underlying index.[16]

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to section 19(b)(2) of the Exchange Act.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NYSE–2006–39) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8875 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53932; File No. SR–NYSE–2006–01]

Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Notice of Filing of Proposed Rule Change Relating to Exchange Rule 1000 (NYSE Direct+)

June 1, 2006.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 17, 2006, the New York Stock Exchange, Inc.[3] (n/k/a New York Stock Exchange LLC) (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 amend Exchange Rule 1000 (NYSE Direct+®) to eliminate subsection (v), an exception to Exchange Rule 1000 which suspends the Exchange's Direct+ facility if the specialist publishes a bid and/or offer that is more than five cents away from the last reported transaction price when an Exchange Rule 127 block cross transaction is being executed.[4] The Exchange proposes to replace this procedure with a rule that requires the specialist to quote a 100 × 100 share market price when all Exchange Rule 127 block cross transactions are being executed, regardless of the amount the cross price is away from the last reported transaction price in the subject security on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to simplify and improve the protective measures afforded to Direct+ customers when automatic executions are delayed due to the completion of an Exchange Rule 127 block cross transaction.

Exchange Rule 1000 provides that auto ex orders receive an immediate, automatic execution against orders reflected in the Exchange's published quotation and are immediately reported as Exchange transactions. NYSE Direct+ currently provides for the automatic execution of straight limit orders (''auto ex orders'') of 1,099 shares or less (10,000 shares or less for Investment Company Units, as defined in paragraph 703.16 of the Listed Company Manual, and any securities governed by the same rules as Investment Company Units, such as streetTRACKS® Gold Shares,[5] and Trust Issued Receipts, such as HOLDRs, as defined in Exchange Rule 1200) against trading interest reflected in the Exchange's published quotation. Exchange Rule 1000 subsections (i) through (vi) allow for exceptions to Exchange Rule 1000, making Direct+ unavailable when any exception is in place. Exchange Rule 1000(ii) provides that Direct+ is unavailable when the execution price of an automatic execution ''would be more than five cents away from the last reported transaction price in the subject security on the Exchange.'' Exchange Rule 1000(v) specifically provides that when a transaction outside the NYSE's published bid or offer pursuant to Rule 127 is in the process of being completed, the specialist should ''publish a bid and/or offer that is more than five cents away from the last reported transaction price in the subject security on the Exchange.'' The proposed amendment seeks to amend the current Rule 1000(v) procedure.

Exchange Rule 127 (Block Positioning) describes the process required for proper execution of a block cross transaction. Exchange Rule 127 requires a member seeking to cross block orders outside the prevailing quotation to inform the specialist of his or her intention to execute the transaction at a pre-determined, specified price that is either a premium

[16] *See* Securities Exchange Act Release Nos.44532 (July 10, 2001), 66 FR 37078 (July 16, 2001) (SR–Amex–2001–25) (Approving an increase for indexes underlying Portfolio Depositary Receipts and Index Fund shares listed on the Amex) and 44908 (October 4, 2001), 66 FR 52161 (October 12, 2001) (SR–CBOE–2001–38) (Approving an increase for indexes underlying Index Portfolio Receipts and Index Portfolio Shares listed on the CBOE).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange is now known as the New York Stock Exchange LLC. *See* Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006).

[4] On March 22, 2006, the Commission approved the Exchange's proposal to establish a ''Hybrid Market.'' *See* Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006) (''Hybrid Market Approval Order''). In the Hybrid Market Approval Order, the Commission approved the Exchange's plan to implement the Hybrid Market in multiple phases. To date, the Exchange has not implemented the approved changes to Exchange Rule 1000. The Commission notes that in this proposal, the Exchange proposes to amend existing Exchange Rule 1000, rather than the text of Rule 1000 as approved in the Hybrid Market Approval Order. Once the Exchange implements the approved text to Exchange Rule 1000, the Commission notes that Rule 1000, as approved in the Hybrid Market Approval Order, would supersede the changes proposed herein.

[5] *See* Exchange Rule 1300.

or discount from the prevailing bid/offer. In this situation, the executing broker will be bidding and offering on behalf of the cross away from the prevailing quotation to reflect the discount or premium from the current market. Any limit order that is received while the Rule 127 trade is being effected that would better the market represented by the broker's bid/offer on behalf of the Rule 127 cross trade would be included in such trade, thereby receiving the better price.

When a Rule 127 trade is being executed, Exchange Rule 1000(v) is triggered. The Exchange seeks to amend and simplify the current Rule 1000(v) procedure for several reasons. First, the procedure outlined in Rule 1000(v), which requires the specialist to publish a bid or offer that is more than five cents away from the last reported transaction price when a Rule 127 transaction is being executed, and the proposed procedure, which requires the specialist to publish a 100 × 100 market quote during a Rule 127 transaction, have the same effect; both procedures would delay Direct+ for a period of time allowing the specialist to execute the block cross trade and disseminate a more accurate market price. By applying the proposed procedure for all Rule 127 trades, regardless of the amount the cross price is away from the last reported transaction price in the subject security on the Exchange, the Exchange is simplifying its process. Second, the Exchange believes that quoting a price that is more than five cents away from the last transaction price in order to suspend automatic executions may not accurately reflect the price of the block cross transaction, particularly where the cross transaction is at a price five cents or less than the last reported transaction price on the Exchange.

The Exchange also believes that the 100 × 100 market quote procedure set forth in the proposed amendment would lessen the appearance of volatility, as would happen from the ''ping-pong'' effect of an automatic execution at the initial bid/offer of a Rule 127 print outside the quote and then back to a (seemingly worse) subsequent bid/offer. Further, the Exchange believes that this proposed rule change will add uniformity of process and is consistent with the Commission's Limit Order Display Rule [6] and Exchange Rule 79A.15, the Commission's Firm Quote Rule,[7] and Exchange Rule 104.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [8] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change is designed to support the principles of section 11A(a)(1) of the Act [9] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2006–01 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8879 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 242.604.

[7] 17 CFR 242.601.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78k–1(a)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53933; File No. SR–Phlx–2006–29]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the PHLX/KBW Bank Index

June 1, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 4, 2006, the Philadelphia Stock Exchange, Inc. (''Exchange'' or ''Phlx'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a ''non-controversial'' rule change under Rule 19b–4(f)(6) under the Act,[3] which rendered the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to change the method of calculation and dissemination of the PHLX/KBW Bank Index (''Index''). In particular, the Exchange proposes to calculate and disseminate current index values itself, in the event that the official calculation agent, Bridge Data, is temporarily unable to calculate and disseminate the values due to technical difficulties.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit the Exchange itself, in certain circumstances, to calculate and disseminate current index values of the Index, an index developed by Keefe, Bruyette & Woods, Inc. (''KBW''), a registered broker-dealer that specializes in U.S. bank stocks. Under the proposal, the Exchange would calculate and disseminate the index values itself in the event that Bridge Data, the official calculation agent, is temporarily unable to calculate and disseminate the values due to technical difficulties. No other changes are being made to the Index. The Exchange seeks continued approval to list and trade options on the Index in view of this change.

The Index was originally listed in 1992 as a narrow-based (industry) index. The Commission's approval order (''Approval Order'')[5] contains the following language regarding the calculation of the underlying current index value:

> Even though the Index will be maintained by KBW, the Phlx represents that the Exchange will be solely responsible for the calculation of the Index and that the Index value will be calculated and disseminated in such a way that neither KBW nor any other party will be in receipt of the Index value prior to the public dissemination of the value. In this connection, the Phlx has made arrangements for the Index to be calculated by an independent third party, Bridge Data, a vendor of financial information. Bridge Data will calculate and disseminate the Index value to the Options Price Reporting Authority (''OPRA'') four times per minute during the trading day, using the last sale prices of the component stocks in the Index. * * * OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.[6]

The Exchange is now capable of calculating and disseminating the Index value at least every 15 seconds per trading day,[7] using the last sale prices of the component stocks in the Index, without utilizing the services of Bridge Data. The Exchange seeks approval to continue listing and trading options on the Index from time to time without the participation or intervention of Bridge Data in the process of calculating or disseminating the Index value.[8] In connection with this filing, Phlx has reconfirmed that KBW has appropriate information barriers around the personnel who have access to information concerning changes and adjustments to the Index and confirmed that the Exchange, as calculation agent for the Index, is independent from KBW, a broker-dealer.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by permitting the calculation and dissemination of current index values to be accomplished by Exchange personnel, in addition to by Bridge Data, which should assure continuity in the availability of the Index's current value in the event that Bridge Data is unavailable to calculate and disseminate the values as described in the Approval Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Telephone conference between Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, and Florence E. Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on June 1, 2006.

[5] *See* Securities Exchange Act Release No. 31145 (September 3, 1992), 57 FR 41531 (September 10, 1992) (SR–Phlx–91–27).

[6] *Id.*

[7] Telephone conference between Carla Behnfeldt, Director, Legal Department, New Product Development Group, Phlx, and David L. Orlic, Special Counsel, Division of Market Regulation, Commission, on May 26, 2006.

[8] The Exchange notes that Index values are disseminated not to OPRA, but rather to the Consolidated Tape Association for further dissemination to major market data vendors.

[9] *See supra* note 6.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

operative for 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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and subparagraph (f)(6) of Rule 19b–4 thereunder.[13] The Exchange has requested that the Commission waive the five-day pre-filing notice and the 30-day operative delay for ''non-controversial'' proposals and make the proposed rule change effective and operative upon filing. The Commission believes that waiver of the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. By waiving the five-day pre-filing notice and the 30-day operative delay, the continued availability of current Index values may be assured, notwithstanding any unavailability of Bridge Data to calculate and disseminate those values. For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

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 the furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2006–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–29 and should be submitted on or before June 29, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6–8883 Filed 6–7–06; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974.

(SSA) Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Request for Review by a Federal Reviewing Official—20 CFR 405.1, 405.120, 405.210, 405.215, 405.220, 405.225, 405.230—0960–NEW. In cases where an applicant for Disability Insurance Benefits (DIB) or Supplemental Security Income (SSI) payments is not satisfied with SSA's initial disability determination, he or she may request a review by a Federal reviewing official to determine entitlement to DIB (Title II), and SSI (Title XVI). The SSA–61 will be used to document and initiate this request. The respondents are applicants for DIB and/or SSI who received a notice and are requesting a review by a Federal reviewing official.

Type of Request: Request for a new information collection.

Number of Respondents: 29,043.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 3,872 hours.

Dated: June 1, 2006.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. E6–8798 Filed 6–7–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5403]

Notice of Intent To Amend the Charter of the Secretary of State's Advisory Committee on Transformational Diplomacy

Summary: Pursuant to section 9(a) of the Federal Advisory Committee Act (Pub. L. 92–463) and under the general authority of the Secretary and the Department of State, as derived from the President's constitutional authority and as set forth in sections 2656 and 2651a of Title 22 of the United States Code and other relevant statutes, this is a notice of intent to amend the charter established for the Secretary of State's Advisory Committee on Transformational Diplomacy.

The Advisory Committee is to provide private sector expertise related to transformational diplomacy and other institutional challenges facing the Department of State, in particular as they concern the effective structuring, leadership and management of a global diplomacy enterprise. Members of the Advisory Committee may include private sector individuals, including former U.S. Government officials. All meetings of this Committee will be published ahead of time in the **Federal Register**.

Additionally, the Secretary of State's Advisory Committee on Transformational Diplomacy is essential to the conduct of Department of State business, and is in the public interest. Further information regarding this committee may be obtained from Madelyn S. Marchessault, Office of Management Policy, U.S. Department of State, Washington, DC 20520, phone (202) 647–1068.

Dated: May 16, 2006.

Marguerite Coffey,

Acting Director, Office of Management Policy, Department of State.

[FR Doc. E6–8957 Filed 6–7–06; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Stark, Mahoning, Columbiana Counties, OH

AGENCY: Federal Highway Administration (FHWA), DOT, 200 North High Street, 3rd Floor, Columbus, Ohio, 43215.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Stark, Mahoning, and Columbiana Counties, Ohio.

FOR FURTHER INFORMATION CONTACT: Andy Blalock, Senior Transportation Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6823.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Impact Statement (EIS) for a proposal to improve transportation in the United States Route 62/State Route 14 corridor that begins at the existing SR173/US62 interchange on the west side of the City of Alliance (western terminus) in Stark County to State Route 11 (eastern terminus) in Columbiana County. The purpose of the project is to support local economic development activities, address traffic congestion, and fix existing deficiencies in the US62/SR14 transportation corridor. Alternatives under consideration will include, at a minimum: taking no action; building a 4-lane controlled access facility on new alignment; building a 2-lane facility within 4-lane right-of-way on new location; building a 2-lane facility within 2-lane right-of-way on new location; and improving/widening the existing roadway.

The limits of the study are from the SR173/US62 interchange west of Alliance to SR11 between the cities of Salem and Columbiana, a distance of approximately 22 miles. The US62/SR14 corridor passes through portions of Stark, Mahoning, and Columbiana counties. Through Alliance, the existing roadway consists of a five-lane section between the US62/SR173 interchange and Western Avenue, and a four-lane section from Western Avenue to a point near the eastern corporation limits. At this point, the existing roadway tapers to a two-lane section that continues out of Alliance and Stark County to follow the border between Mahoning and Columbiana counties and continuing toward Salem. The roadway then enters Columbiana County and continues through Salem, mostly as a two-lane roadway with auxiliary turn lanes at major intersections. A short section of the roadway on the eastern side of Salem is three lanes with two lanes running eastbound and one lane westbound.

The proposed improvement of US62/SR14 would meet the goals of ACCESS OHIO which is to improve the mobility along the macro-corridor in order to encourage economic development. Completion of Ohio's Macro Highway Corridor System was recommended in the 1993 ACCESS OHIO Macro Phase as an important goal for Ohio. Completion for these corridors was also recommended in Governor Taft's 2003 Jobs and Progress Plan and again recommended by ACCESS OHIO 2004–2030.

The existing US62/SR14 corridor has many deficiencies that contribute to a variety of transportation problems. These problems include poor levels of service at signals in both Alliance and Salem, high number of access points on US62 in both Alliance and Salem, high crash rates at existing intersections, and steep grades and tight curves, particularly between Salem and SR11. These inadequacies lead to safety problems, reduced levels of service, and transportation inefficiencies.

FHWA, ODOT, and other local agencies invite participation in defining the alternatives to be evaluated in the EIS, and any significant social, economic, or environmental issues related to the alternatives. Information describing the purpose of the project, the project area to be studied, the existing and future conditions of the project area, the public involvement plan, and the preliminary project schedule may be obtained from the FHWA at the address provided above.

Coordination with concerned federal, state, and local agencies will be conducted at five established concurrence points in ODOT's Project Development Process. Coordination will be continued throughout the study with Federal, State, and local agencies, and with private organizations and citizens who express or are known to have interest in this proposal. The draft EIS (DEIS) will be available for public and agency review and comment prior to the public hearing. The final EIS (FEIS) will be available for public and agency review and comment prior to the approval of the Record of Decision (ROD).

To ensure that the full range of issues relating to this proposed action are 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 sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program).

Victoria Peters,

Director, Office of Engineering Operations, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 06–5217 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other Federal agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(l)(1). These actions relate to a proposed highway project, State Route 46 Corridor Improvement Project between Kilo Posts 51.8 to 90.6 (Post Miles 32.2 to 56.3) in San Luis Obispo County, State of California. These actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 5, 2006. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Dominic Hoang, Project Development Engineer, Federal Highway Administration, 650 Capitol Mall, #4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5002, *dominic.hoang@fhwa.dot.gov*. John Luchetta, Senior Environmental Planner, California Department of Transportation, 50 Higuera Street, San Luis Obispo, CA 93402, weekdays between 8 a.m. and 4:30 p.m., (805) 549–3493, *john__Luchetta@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions by issuing approvals for the following highway project in the State of California. This project would improve safety and provide congestion relief on State Route 46, San Luis Obispo County, California. This would be accomplished by creating an additional travel lane in each direction (east and west), separating the east and west bound lanes by a median, improving inside and outside widths, and providing left-turn channelization at all public road intersections within the project limits. Safety would also be improved at the State Route 46/41 junction by replacing the at grade intersection with a new interchange for the connection. The FHWA project reference number is H240 00PE (006). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on May 19th, 2006, and in other documents in the FHWA administrative record. The EA/FONSI, and other documents in the FHWA administrative record file are available by contacting the FHWA or the California Department of Transportation at the addresses provided above. The FHWA EA/FONSI can be reviewed and downloaded from the project Web site at *http://safer46.dot.ca.gov/*.

The notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q).

3. Land: Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319.

4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and section 1536], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 2001–3013].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

7. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liabiilty Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 19086 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Fedeal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Fedeal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

(**Authority:** 23 U.S.C. 139(l)(1)).

Issued on: June 1, 2006.

Maiser Khaled,

Director, Project Development & Environment, Sacramento, California.

[FR Doc. 06–5202 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2006–24322; Notice 2]

Yokohama Tire Corporation, Grant of Petition for Decision of Inconsequential Noncompliance

Yokohama Tire Corporation (Yokohama) has determined that certain tires that it produced in 2005 and 2006 do not comply with S4.3.2 of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Yokohama has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on April 7, 2006, in the **Federal Register** (71 FR 17954). NHTSA received no comments.

Affected are a total of approximately 1,918 Yokohama brand T155/70D17 110M Y870B temporary-use-only tires produced from August 2005 to February

2006. S4.3.2 of FMVSS No. 109 refers to 49 CFR 574.5, which requires ¾ inch maximum width spacing between the manufacturer's identification mark/tire size code grouping and the subsequent tire type code and date of manufacture. The subject tires have a spacing that exceeds ¾ inch. Yokohama has corrected the problem that caused these errors so that they will not be repeated in future production.

Yokohama believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Yokohama states that the noncompliant spacing ''does not impair the purpose or the use of the identification number and does not pose a threat to motor vehicle safety.'' Yokohama says that all other aspects of the tire identification number comply with the standard.

NHTSA agrees with Yokohama that the noncompliance is inconsequential to motor vehicle safety. Although the spacing is incorrect, all the correct information required by FMVSS No. 109 is provided and therefore is likely to achieve the safety purposes of the requirement. All other informational markings are present, and the tires meet or exceed all of the performance requirements of FMVSS No. 109.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Yokohama's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: (49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8)

Issued on: June 2, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–8878 Filed 6–7–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 266X)]

Norfolk Southern Railway Company—Abandonment Exemption—in McDowell County, NC

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 3.5 miles of railroad between milepost SB 205.0 and milepost SB 208.5, near Marion, in McDowell County, NC. The line traverses United States Postal Service Zip Code 28752.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(l) (notice to governmental agencies) have been met.

As a condition to this exemption, any employees adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on July 8, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by June 19, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 28, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by June 13, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by June 8, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–8851 Filed 6–7–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee which as of April 19, 2006, is set at $1,300. *See Regulations Governing Fees for Service Performed in Connection With Licensing and Related Services-2006 Update*, STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006). *See* 49 CFR 1002.2(f)(25).

[3] On May 22, 2006, the City of Marion, NC filed a request for issuance of a notice of interim trail use and for imposition of a public use condition. The requests will be addressed in a separate decision.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and

respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before August 7, 2006.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed and continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collections:

Title: Drawback on Wines Exported.

OMB Number: 1513–0016.

TTB Form Number: 5120.24.

Abstract: When proprietors export wines that have been produced, packaged, manufactured, or bottled in the U.S., they file a claim for drawback of the taxes that have already been paid or determined on the wine. This form notifies TTB that the wine was in fact been exported and helps to protect the revenue and prevent fraudulent claims.

Current Actions: There are minor corrections to this information collection, and it is being submitted for reinstatement purposes. We are correcting such things as changing ATF to TTB, correcting titles for Customs, and correcting typos.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: Individuals or households, Business and other for-profit.

Estimated Number of Respondents: 21.

Estimated Total Annual Burden Hours: 94.

Title: Application, Permit and Report—Wine and Beer (Puerto Rico) and Application, Permit and Report—Distilled Spirits (Puerto Rico).

OMB Number: Requesting new numbers (formerly 1512–0149 and 1512–0210, respectively).

TTB Form Number: 5100.21 and 5110.51, respectively.

Abstract: TTB Form 5100.21 (Application, Permit and Report—Wine and Beer) is a permit to compute the tax on and to withdraw shipments of wine or beer from Puerto Rico to the United States, as substantively required by 27 CFR 26.93. TTB Form 5110.51 (Application, Permit and Report—Distilled Spirits) is a permit to compute the tax on and to withdraw shipments of distilled spirits products from Puerto Rico to the United States, as substantively required by 27 CFR 26.78.

Current Actions: There are minor corrections to these information collections, and we are submitting the collections for reinstatement purposes. We are correcting such things as changing ATF to TTB, correcting typos, and updating references to old form numbers.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 30.

Estimated Total Annual Burden Hours: 42.

Dated: June 2, 2006.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E6–8855 Filed 6–7–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before August 7, 2006.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–927–8525 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 x 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade

Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–927–8210.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed and continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden 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 the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following information collections:

Title: Formula and/or Process for Articles Made with Specially Denatured Spirits.

OMB Number: 1513–0011.

TTB Form Number: 5150.19.

Abstract: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to insure that a manufacturer's formulas and processes conform to the requirements of 26 U.S.C. 5273.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,683.

Estimated Total Annual Burden Hours: 2,415.

Title: User's Report of Denatured Spirits.

OMB Number: 1513–0012.

TTB Form Number: 5150.18.

Abstract: Submitted annual by holders of permits to use specially denatured spirits, TTB F 5150.18 summarizes the permitee's manufacturing activities during the preceding year. The information is used by TTB to pinpoint unusual activities that could indicate a threat to the Federal revenue or possible dangers to the public.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,765.

Estimated Total Annual Burden Hours: 830.

Title: Certification of Tax Determination—Wine.

OMB Number: 1513–0029.

TTB Form Number: 5120.20.

Abstract: Wine that has been manufactured, produced, bottled, or packaged in bulk containers in the U.S. and then exported is eligible for a drawback (refund) of the excise tax paid on that wine. TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 500.

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

OMB Number: 1513–0038.

TTB Form Number: 5100.16.

Abstract: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Total Annual Burden Hours: 300.

Title: Distilled Spirits Plants Warehousing Record and Reports.

OMB Number: 1513–0039.

TTB Form Number: 5110.11.

TTB Record Number: 5110/02.

Abstract: TTB uses this information collection to account for a proprietor's tax liability, adequacy of bond coverage, and to protect the revenue. The information also provides data to analyze trends, audit operations, monitor industry activities and compliance in order to provide for efficient allocation of field personnel, and to provide for economic analysis.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 230.

Estimated Total Annual Burden Hours: 5,520.

Title: Distilled Spirits Plants—Excise Taxes.

OMB Number: 1513–0045.

TTB Record Number: 5110/06.

Abstract: The collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 133.

Estimated Total Annual Burden Hours: 3,458.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

OMB Number: 1513–0046.

TTB Form Number: 5110.38.

Abstract: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection purposes. The form describes the person filing, type of product to be made, and restrictions to the label and/

or manufacturing process. The form is used by TTB to ensure that a product is made and labeled properly, and to audit distilled spirits operations. Records are kept indefinitely for this information collection.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden Hours: 4,000.

Title: Distilled Spirits Plant (DSP) Denaturation Records and Reports.

OMB Number: 1513–0049.

TTB Form Number: 5110.43.

TTB Record Number: 5110/04.

Abstract: This information collection is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 98.

Estimated Total Annual Burden Hours: 1,176.

Title: Alcohol Fuel Plant (AFP) Records, Reports and Notices.

OMB Number: 1513–0052.

TTB Recordkeeping Requirement Number: 5110/10.

TTB Form Number: 5110.75.

Abstract: The data in this information collection is necessary to determine which persons are qualified to produce alcohol for fuel purposes and to identify such persons. The information collection accounts for distilled spirits produced, verifies the spirits proper disposition, keeps registrations current, and helps evaluate permissible variations from prescribed procedures.

Current Actions: There are changes to this information collection, and it is being submitted as a revision of a currently approved collection. Specifically, we are adding a line in each part of the collection to provide for imported spirits/fuel alcohol received from Customs custody.

Type of Review: Revision of a currently approve collection.

Affected Public: Farms, business or other for-profit.

Estimated Number of Respondents: 871.

Estimated Total Annual Burden Hours: 944.

Title: Distilled Spirits Plant (DSP) Transaction and Supporting Records.

OMB Number: 1513–0056.

TTB Record Number: 5110/5.

Abstract: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by TTB to verify those accounts and consequent tax liabilities.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 278.

Estimated Total Annual Burden Hours: 6,060.

Title: Importer's Records and Reports.

OMB Number: 1513–0064.

TTB Recordkeeping Requirement Number: 5170/1.

Abstract: This recordkeeping requirement concerns the records that must be maintained by the importer. The records are used by TTB to verify that operations are being conducted in compliance with the law and to ensure that all taxes and duties have been paid on imported spirits, thus protecting the revenue. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Federal Government.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 251.

Title: Tobacco Export Warehouse—Record of Operations.

OMB Number: 1513–0070.

TTB Recordkeeping Requirement Number: 5220/1.

Abstract: Tobacco Export Warehouses store untaxpaid tobacco products until the products are exported. The records are maintained at the premises of the regulated individual and are used by TTB personnel to verify that untaxpaid tobacco products are not being diverted to domestic consumption, thus ensuring that tax revenues are protected. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 221.

Estimated Total Annual Burden Hours: 221.

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

OMB Number: 1513–0072.

TTB Recordkeeping Requirement Number: 5530/1.

Abstract: These reports (Letterhead Applications and Notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. These reports are used by TTB's National Revenue Center personnel to ensure that the regulated individuals will conduct operations in compliance with the law and regulations. The applications and notices serve to protect the revenue by helping TTB personnel determine if spirits on which drawback has been claimed have been diverted to beverage use.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 640.

Estimated Total Annual Burden Hours: 640.

Title: Records of Things of Value to Retailers and Occasional Letter Reports from Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

OMB Number: 1513–0077.

TTB Recordkeeping Requirement Number: 5190/1.

Abstract: These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act, which prohibits wholesalers, producers, or importers from giving things of value to retail liquor dealers, and which also prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business and other for-profit, individuals, or households.

Estimated Number of Respondents: 12,665.

Estimated Total Annual Burden Hours: 51.

Title: Equipment and Structures.

OMB Number: 1513–0080.

TTB Record Number: 5110/12.

Abstract: Marks, signs, and calibrations are necessary on equipment and structures at a distilled spirits plant in order to identify the plant's major equipment and to accurately determine the plant's contents.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 281.

Estimated Total Annual Burden Hours: 1.

Title: Registration and Records of Vinegar Vaporizing Plants.

OMB Number: 1513–0081.

TTB Record Number: 5110/9.

Abstract: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, and State, local, or tribal governments.

Estimated Number of Respondents: 1.

Estimated Total Annual Burden Hours: 1.

Title: Methods or Procedures and Emergency Variations from Requirements for Exports of Liquors.

OMB Number: 1513–0082.

TTB Record Number: 5170/7.

Abstract: When an exporter seeks to use an alternate method or procedure or seeks an emergency variation from the regulatory requirements of 27 CFR part 28, such exporter requests a variance by letter, following the procedure in 27 CFR 28.20. TTB uses the provided information to determine if the requested variance is allowed by statute and does not jeopardize the revenue. The applicant is informed of the approval or disapproval of the request. TTB also uses the information to analyze what changes should be made to existing regulations. Records must be maintained only while the applicant is using the authorization.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 200.

Title: Labeling of Sulfites in Alcoholic Beverages.

OMB Number: 1513–0084.

Abstract: As mandated by law, and in accordance with our consumer protection responsibilities, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites. Sulfiting agents have been shown to produce allergic-type responses in humans, particularly asthmatics, and the presence of these ingredients in alcohol beverages may have serious health implications for those who are intolerant of sulfites. Disclosure of sulfites on labels of alcohol beverages will minimize their exposure to these ingredients.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 4,787.

Estimated Total Annual Burden Hours: 3,159.

Title: Application for Extension of Time for Payment of Tax.

OMB Number: 1513–0093.

TTB Form Number: 5600.38.

Abstract: TTB uses this information to determine if a taxpayer is qualified to extend payment of tax based on circumstances beyond the taxpayer's control. The record retention requirement for this information collection is 3 years.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden Hours: 3.

Title: Supporting Data for Nonbeverage Drawback Claims.

OMB Number: 1513–0098.

TTB Form Number: 5154.2.

Abstract: The form substantiates nonbeverage drawback claims by documenting the use of taxpaid distilled spirits in the manufacture nonbeverage products. The form is used in TTB's National Revenue Center to verify that all distilled spirits can be accounted for and that drawback is paid only in the amount and for the purposes authorized by law.

Current Actions: There are changes to this information collection, and it is being submitted as a revision of a currently approved collection. Specifically, we are deleting Item 3 (Control Number on Special Tax Stamp) and Item 4 (Tax Year Covered by Special Tax Stamp) since manufacturers of nonbeverage products are no longer required to pay Special Occupational Tax and, as a result, will not receive a tax stamp.

Type of Review: Revision of a currently approved collection.

Affected Public: Business and other for-profit.

Estimated Number of Respondents: 590.

Estimated Total Annual Burden Hours: 3,422.

Title: Recordkeeping Requirements for Importers of Tobacco Products.

OMB Number: 1513–0106.

Abstract: Importers of tobacco products are required to maintain records of physical receipt and disposition of tobacco products in order to prepare TTB F 5220.6, Importers Monthly Report. These receipt and disposition records allow TTB officers to trace tobacco product transactions and to determine that tax liabilities have been accurately determined and discharged by the importer. Federal law, at 26 U.S.C. 5555, authorizes the Secretary of Treasury to prescribe regulations requiring every person liable for tax to prepare any records, statements, or returns as necessary to protect the revenue.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,500.

Estimated Total Annual Burden Hours: 18,000.

Dated: June 2, 2006.

Francis W. Foote,

Director, Regulations and Rulings Division.

[FR Doc. E6–8856 Filed 6–7–06; 8:45 am]

BILLING CODE 8856–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1120–POL

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 1120–POL, U.S. Income Tax Return for Certain Political Organizations.

DATES: Written comments should be received on or before August 7, 2006 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 R. Joseph Durbala at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: U.S. Income Tax Return for Certain Political Organizations.

OMB Number: 1545–0129.

Form Number: 1120–POL.

Abstract: Certain political organizations file Form 1120–POL to report the tax imposed by Internal Revenue Code section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under Code section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 6,527.

Estimated Time per Respondent: 36 hours., 38 min.

Estimated Total Annual Burden Hours: 239,150.

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: June 2, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–8886 Filed 6–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4626

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 4626, Alternative Minimum Tax—Corporations.

DATES: Written comments should be received on or before August 7, 2006 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 R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Alternative Minimum Tax—Corporations.

OMB Number: 1545–0175.

Form Number: Form 4626.

Abstract: Form 4626 is used by corporations to calculate their alternative minimum tax.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 60,000.

Estimated Time per Respondent: 43 hours 17 minutes.

Estimated Total Annual Burden Hours: 2,596,800.

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: June 5, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–8888 Filed 6–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is reviewing public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service brought forward by the Area and Issue Committees.

DATES: The meeting will be held Thursday, June 29, 2006, 1:30 to 5:30 p.m., Friday, June 30, 2006, 8:30 a.m. to 5 p.m., and Saturday, July 1, 2006, 8 to 11:30 a.m., mountain time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Thursday, June 29, 2006, 1:30 to 5:30 p.m., Friday, June 30, 2006, 8:30 a.m. to 5 p.m., and Saturday, July 1, 2006, 8 to 11:30 a.m., mountain time, at the Warwick Hotel in Denver, Colorado, 1776 Grant Street, Denver, CO 80203. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–231–2360, or write Barbara Toy, TAP Office, MS–1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–231–2360, or you can contact us at *http://www.improveirs.org.*

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office reports, and discussion of next meeting.

Dated: June 1, 2006.

Venita H. Gardner,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–8884 Filed 6–7–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0671]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21) this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 10, 2006.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374, FAX (202) 565–6950 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0671.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0671'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Traumatic Injury Protection (TSGLI).

OMB Control Number: 2900–0671.

Type of Review: Extension of currently approved collection.

Abstract: Service members who experienced a traumatic injury such as loss of limbs on or after October 7, 2001 through November 30, 2005 are eligible to receive Traumatic Injury Protection benefits if the loss was incurred during Operation Enduring Freedom or Operation Iraqi Freedom. TSGLI provides severely injured service members and the member's family with monetary assistance through an often long and difficult rehabilitation period. The service members must be insured under the Servicemembers' Group Life Insurance to be eligible for TSGLI. The service member, the attending physician, the branch of service must complete Prudential Form GL.2005.261, Certification of Traumatic Injury Protection in order for the service member to receive such benefits. VA uses the data collected to determine the member's eligibility for TSGLI benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 8, 2006 at pages 6539–6540.

Affected Public: Individuals or households.

Estimated Annual Burden: 475 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 950.

Dated: May 25, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–8889 Filed 6–7–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to

publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether a claimant received his or her accelerated payment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 7, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification Required from Individuals Electing Accelerated Payments and Agreement with Educational Institutions.

OMB Control Number: 2900–0636.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants electing to receive an accelerate payment for educational assistance allowance must certify they received such payment and how the payment was used. VA uses the data collected to determine the claimant's entitlement to accelerated payment.

Affected Public: Individuals or household.

Estimated Annual Burden: 97 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 743.

Estimated Annual Responses: 1,167.

Dated: May 30, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–8892 Filed 6–7–06; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (FSC)]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Office of Management (OM), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 10, 2006.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005G2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–8374 or FAX (202) 565–6950 or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–New (FSC)''.

Send comments and recommendations concerning any aspect of the information collection to VA's Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–New (FSC)'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: FSC Product Line Surveys.

OMB Control Number: 2900–New (FSC).

Type of Review: Existing collection in use without an OMB control number.

Abstract: Financial Services Center conducts annual surveys to evaluate customer satisfaction on various products and services provided by FCS. The data will use to improve FSC business practices and customer services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 3, 2006 at pages 26178–26179.

Affected Public: Federal Government.

Estimated Annual Burden: 42 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 500.

Dated: May 30, 2006.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E6–8893 Filed 6–7–06; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 71, No. 110

Thursday, June 8, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

Correction

In rule document 06–4494 beginning on page 28924 in the issue of Thursday, May 18, 2006, make the following corrections:

1. On page 28976, in the third column, in the last paragraph, in the 10th line, ''m^3 we expect that'' should read ''m^3, we expect that''.

2. On page 29011, in the first column, in the 15th paragraph, in the fourth line, ''Assessment, 34:220–228, 1998'' should read ''Assessment, *American Journal of Industrial Medicine*, 34:220–228, 1998''.

[FR Doc. C6–4494 Filed 6–7–06; 8:45 am]

BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 06-01p]

Titles II and XVI: Evaluating Cases Involving Tremolite Asbestos-Related Impairments

Correction

In notice document 06–4855 beginning on page 30467 in the issue of Friday, May 26, 2006, make the following corrections:

1. On page 30467, in the second column, in the **DATES** section ''May 25, 2006'' should read ''May 26, 2006''.

2. On page 30468, in the first column, under the heading **POLICY INTERPRETATION RULING**, in the paragraph labeled *Citations (Authority)*, in the seventh line, ''404.1560-404/1569a'' should read ''404.1560-404.1569a''.

3. On the same page, in the second column, in the first paragraph, in the eighth line, ''exposure'' should read ''Exposure''.

[FR Doc. C6–4855 Filed 6–7–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
June 8, 2006

Part II

Department of Agriculture

Food and Nutrition Services

7 CFR Part 250

Management of Donated Foods in Child Nutrition Programs, the Nutrition Services Incentive Programs, and Charitable Institutions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

RIN 0584–AD45

Management of Donated Foods in Child Nutrition Programs, the Nutrition Services Incentive Program, and Charitable Institutions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise and clarify requirements with respect to the distribution, management, and use of donated foods in the National School Lunch Program and other child nutrition programs, the Nutrition Services Incentive Program, and by charitable institutions. Most significantly, it would establish specific requirements to ensure that school food authorities and other recipient agencies in child nutrition programs receive the value of all donated foods provided to food service management companies for use in providing school lunches and other meals. The latter requirements are proposed in response to an audit of the USDA Office of the Inspector General; the proposals relating to the Nutrition Services Incentive Program result from amendments to the Older Americans Act of 1965. This proposed rule would also include amended regulatory provisions using a plain language format, including the addition of new subparts, and several new sections under those subparts, in order to make them easier to understand.

DATES: To be assured of consideration, comments must be received on or before August 7, 2006.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this proposed rule. You may submit comments, identified by RIN number 0584–AD45, by any of the following methods:

E-mail: Send comments to *Robert.Delorenzo@fns.usda.gov*. Include RIN number 0584–AD45 in the subject line of the message.

Fax: Submit comments by facsimile transmission to (703) 305–2420.

Disk or CD–ROM: Submit comments on disk or CD–ROM to Lillie F. Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594.

Mail: Send comments to Lillie F. Ragan at the above address.

Hand Delivery or Courier: Deliver comments to the above address.

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

Further information on the submission of comments, or the review of comments submitted, may be found under Part III, Procedural Matters, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan at the above address or telephone (703) 305–2662. A regulatory impact analysis has been prepared for this rule. You may request a copy of the analysis by contacting us at the above address or by e-mail to *Robert.Delorenzo@fns.usda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) provides donated foods to State distributing agencies for distribution to recipient agencies such as schools participating in the National School Lunch Program (NSLP) and other child nutrition programs, elderly nutrition projects that receive donated foods under the Nutrition Services Incentive Program (NSIP), and charitable institutions and other local nonprofit organizations providing nutritional assistance to recipients. This rule proposes to amend provisions contained in 7 CFR part 250 to accomplish several objectives, including:

- Incorporation of provisions designed to ensure that recipient agencies receive the value of donated foods provided to food service management companies in contracts with those recipient agencies to conduct a meal service;
- Reduction of the paperwork burden associated with the distribution of donated foods to charitable institutions and summer camps;
- Streamlining of provisions associated with the distribution of donated foods to elderly feeding sites in NSIP to reflect the transfer of responsibility for the allocation of resources in the program from USDA to the Department of Health and Human Services (DHHS).

To meet the objectives, we are proposing minor changes to current §§ 250.3, 250.12, 250.19, and 250.24, as well as a major restructuring of other sections. We propose to remove the current subpart E, which includes only § 250.60, which contains addresses of FNS Regional Offices from which to obtain further information. This information is readily available on the FNS Web site at *http://www.fns.usda.gov/fdd*, and from other sources. We propose to restructure the current subpart D into three distinct subparts E, F, and G. We propose to include under a revised subpart D new sections describing the requirements for the use of donated foods under contracts between recipient agencies and food service management companies. The new sections would replace the current § 250.12(d). We propose to include under a new subpart E new sections describing the distribution of donated foods in the National School Lunch Program and other child nutrition programs—i.e., the Child and Adult Care Food Program (CACFP) and the Summer Food Service Program (SFSP). The new sections would replace the current §§ 250.48, 250.49, and 250.50.

We propose to add a new subpart F to include the current §§ 250.45, 250.46, 250.47, and 250.51, which describe the distribution of donated foods in household programs—i.e., the Commodity Supplemental Food Program (CSFP), the Food Distribution Program in the Trust Territory of the Pacific Islands, the Food Distribution Program on Indian Reservations (FDPIR), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). While the content of these sections would not change, we would redesignate them as §§ 250.63, 250.64, 250.65, and 250.66, respectively. We propose to add a new subpart G to include the distribution of donated foods to other outlets—i.e., charitable institutions, the Nutrition Services Incentive Program, and to organizations assisting in situations of disasters and distress. Under this new subpart, we would:

- Include current §§ 250.40 and 250.41, revised and redesignated as § 250.67, to describe the distribution of donated foods to charitable institutions and summer camps.
- Include current § 250.42, revised and redesignated as § 250.68, to describe the distribution of donated foods in NSIP.
- Include the current §§ 250.43 and 250.44 unchanged, but redesignated as §§ 250.69 and 250.70, respectively.

The following table provides a summary of the proposed locations in the restructured 7 CFR part 250 for each of the current sections in this part.

Current CFR structure	Proposed rule structure
Subpart A, §§ 250.1–250.3	Same.
Subpart B, §§ 250.10–250.24	Same.
Subpart B, § 250.12(d)	Subpart D, §§ 250.50 through 250.55.
Subpart C, § 250.30	Same.
Subpart D, §§ 250.40 and 250.41	Subpart G, § 250.67.
Subpart D, § 250.42	Subpart G, § 250.68.
Subpart D, § 250.43	Subpart G, § 250.69.
Subpart D, § 250.44	Subpart G, § 250.70.
Subpart D, §§ 250.45, 250.46, 250.47	Subpart F, §§ 250.63, 250.64, 250.65.
Subpart D, § 250.48	Subpart E, §§ 250.56 through 250.60.
Subpart D, § 250.49	Subpart E, § 250.61.
Subpart D, § 250.50	Subpart E, § 250.62.
Subpart D, § 250.51	Subpart F, § 250.66.
Subpart E, § 250.60	No longer exists.

In new subparts D and E, and in new §§ 250.67 and 250.68 in new subpart G, we propose to rewrite the regulations using a plain language format, including an increase in the number of subparts and sections, to make them easier to read and understand for the general public. The proposed changes in content and format to 7 CFR part 250 are discussed in detail below.

II. Discussion of the Rule's Provisions

Definitions, § 250.3

Due to recent changes in food distribution programs, and use of the plain language initiative, we propose to remove, revise, and add definitions in § 250.3 to provide program operators and recipients with a better understanding of the requirements contained in 7 CFR part 250.

We propose to remove the following definitions:

Nonprofit summer camps for children. This would be replaced by a new definition of ''summer camps'', which may be private nonprofit organizations or public institutions.

Nonresidential child or adult care institution. This would be replaced by new definitions of ''child care institution'' and ''adult care institution'', which, by definition, must be nonresidential. We would clarify that such institutions may participate independently in CACFP, or under the auspices of a sponsoring organization, in accordance with an agreement with the distributing agency.

Nutrition program for the elderly. This would be replaced by a new definition of ''elderly nutrition project'', to more clearly designate the organizations eligible to receive donated foods under NSIP, and to avoid confusion with the former Nutrition Program for the Elderly.

Offer-and-acceptance system. We propose to remove this term and to more clearly explain the ordering of donated foods and their provision to school food authorities in the proposed § 250.58. There is no longer a need for State distributing agencies to maintain an offer-and-acceptance system since, as discussed in detail later in the preamble, they are required by the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.) to permit school food authorities to order from the complete list of donated foods available.

Program. This would be replaced by reference to recipient agencies.

Students in home economics. This is self-explanatory, and is applicable only with respect to the use of donated foods by such students participating in general home economics instruction, as described in the proposed § 250.60.

We propose to revise the following definitions:

Charitable institutions. We propose to revise the definition of ''charitable institutions'' to mean public institutions or nonprofit organizations, as defined in this section, that provide a meal service on a regular basis to predominantly needy persons in the same place without marked changes. The revised definition would reflect changing circumstances and provide greater clarity. The volume and variety of donated foods purchased under agriculture support programs and made available to charitable institutions has decreased significantly in recent years, as the capacity of organizations participating in the Emergency Food Assistance Program (TEFAP) to utilize such foods has increased, and schools participating in NSLP and other child nutrition programs have absorbed more of such foods. Therefore, we are proposing to narrow the definition from entities that serve at least some needy persons to those that serve predominantly needy persons, so that limited resources will be better targeted. The vast majority of organizations that currently receive donated foods as charitable institutions already serve mostly needy persons. We would retain the current requirement that charitable institutions be public institutions or nonprofit organizations that provide a meal service on a regular basis, and operate in the same place without marked changes. Under the revised definition, we would include examples of charitable institutions, such as emergency shelters, soup kitchens, hospitals, retirement homes, elderly nutrition projects; schools, summer camps, service institutions, and child and adult care institutions that do not participate in a child nutrition program, or as a commodity school, as they are defined in this section; and adult correctional institutions that conduct rehabilitation programs for a majority of inmates.

As with charitable institutions, the volume and variety of donated foods available to summer camps has decreased significantly in recent years. The proposed definition of ''charitable institution'' explicitly includes summer camps that do not participate in child nutrition programs. A result of this inclusion is that summer camps wanting to receive donated foods as charitable institutions must demonstrate that they serve predominantly needy children. Thus, the proposed definition would narrow eligibility for summer camps as charitable institutions. Their eligibility to participate in child nutrition programs would not be altered by this proposal.

The proposed definition would also remove the current requirement that charitable institutions be ''non-penal'' and ''non-educational'', in order to make the definition consistent with current regulations. In accordance with current § 250.41(a)(2), adult correctional facilities that conduct rehabilitation programs for a majority of inmates are eligible to receive donated foods as charitable institutions. Educational institutions such as schools, service institutions, and child care institutions

that do not participate in child nutrition programs are included in the current definition of ''charitable institution.''

Child nutrition program. We would revise this definition to include the acronyms of the respective programs.

Commodity school. We propose to clarify and define ''commodity school'' as a school operating a nonprofit food service, in accordance with 7 CFR part 210, but that receives additional donated food assistance rather than the general cash assistance available to it under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). We propose to include further detail on the provision of assistance to such schools in the proposed § 250.57.

End product. We propose to clarify that an ''end product'' is a food product that contains processed donated foods.

Food service management company. We propose to clarify the current definition of ''food service management company'' by stating that a food service management company is a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency, to manage any aspect of a recipient agency's food service, in accordance with 7 CFR parts 210, 225, 226, or, with respect to charitable institutions, in accordance with this part. To the extent that such management includes the use of donated foods, the food service management company would be subject to the requirements proposed in the new subpart D of this rule. We propose to clarify, however, that a school food authority participating in NSLP that performs such functions is not considered a food service management company. Additionally, we propose to clarify that, in accordance with the definition in § 250.3, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in this section, is considered a processor, and is subject to the requirements for processors in subpart C of 7 CFR part 250. We also make this distinction in the proposed § 250.50(a).

Processing. We propose to revise the current definition of ''processing'' by restricting it to the currently described activities at a commercial facility, by a commercial enterprise, and not at a recipient agency facility; and, to specifically include the use of donated foods in the preparation of meals at a commercial facility as processing. Under the current definition, the use of donated foods to prepare meals at a recipient agency facility may be considered processing, as explained in the following paragraph.

Processor. We propose to revise the current definition of ''processor'' by clarifying that it is a commercial enterprise that processes donated foods at a commercial facility. We propose to retain the current statement that commercial enterprises that process donated foods on-site (i.e., at a recipient agency facility) are not included as processors. Under the current definition of ''processor'', recipient agencies that prepare meals for one or more other recipient agencies are categorized as processors unless they maintain separate records accounting for the donated foods that they handle on behalf of other recipient agencies. Their categorization as processors, which was implemented in a final rule published in the **Federal Register** on December 7, 1994 at 59 FR 62973, was intended to ensure that such recipient agencies properly accounted for donated foods, in accordance with Federal requirements in place at the time. However, as discussed later in the preamble, in a final rule published in the **Federal Register** on October 23, 2002 at 67 FR 65011, such recipient agencies were permitted, with the approval of the distributing agency, to maintain a single inventory management system, thus making it impossible for the recipient agencies to account for the donated foods separately from commercially purchased foods. Hence, it would no longer be logical or reasonable for regulations to impose the inventory and recordkeeping requirements required of processors on such recipient agencies. We propose to describe the situation in which a school food authority provides donated foods to another school food authority to conduct food service activities using donated foods in the proposed § 250.60.

Recipient agencies. We propose to clarify that the definition of ''recipient agencies'' means agencies or organizations that receive donated foods, in accordance with an agreement signed with the distributing agency or with another recipient agency.

Recipients. We propose to revise the definition of ''recipients'' to include persons receiving donated foods, or meals containing donated foods, provided by recipient agencies. The current definition includes only persons receiving donated foods for household consumption.

Section 311. We propose to revise the definition to reflect amendments to the Older Americans Act of 1965 (42 U.S.C. 3030a), which now permits State Agencies on Aging to receive all, or part, of their NSIP grant as donated foods.

Service institutions. We propose to clarify by defining ''service institutions'' as recipient agencies that participate in SFSP.

State Agency on Aging. We propose to revise this definition to refer to the State agencies and Indian tribal organizations administering NSIP.

We propose to add definitions of *Adult care institution*, *AoA*, *Bonus foods*, *CACFP*, *Child care institution*, *Commodity offer value*, *DHHS*, *Elderly nutrition project*, *Entitlement*, *Entitlement foods*, *National per-meal value*, *Nonprofit organization*, *Nonprofit school food service account*, *NSIP*, *NSLP*, *Reimbursable meals*, *SBP*, *7 CFR part 3016*, *7 CFR part 3019*, *SFSP*, *Single inventory management,* and *Summer camp*. Inclusion of the acronyms would alert the reader to the programs or agencies referred to in the regulations. *Definitions of Adult care institution*, *Child care institution*, and *Summer camp* would replace similar definitions currently included in this section without substantial change, as previously indicated.

Definitions of *Bonus foods* and *Entitlement foods* would clearly distinguish between those donated foods purchased and provided to distributing agencies in addition to legislatively authorized levels of assistance, and those donated foods purchased and provided in accordance with levels of assistance mandated by program legislation. Similarly, *Entitlement* is the value of donated foods a distributing agency is authorized to receive in a specific food distribution or child nutrition program, in accordance with program legislation. A definition of *National per-meal value* would help the reader to understand the determination of the value of donated foods provided to distributing agencies in NSLP and CACFP each year, while *Commodity offer value* describes the minimum value of donated foods that the distributing agency must offer to a school food authority in NSLP each school year. A definition of *Reimbursable meals* would further explain the per-meal value of donated food assistance in NSLP and other child nutrition programs. A definition of *Nonprofit school food service account* would help the reader to understand the role of donated foods in the nonprofit school food service.

Elderly nutrition project categorizes a recipient agency eligible to receive donated foods in NSIP, while *Nonprofit organization* clarifies that such an organization must have tax-exempt status under the Internal Revenue Code to meet the definition. Additionally, it clarifies that a nonprofit organization

operated exclusively for religious purposes is automatically tax-exempt under the Internal Revenue Code.

A definition of *7 CFR part 3016* would alert the reader to the departmental regulations relevant to administrative requirements for grants and cooperative agreements with State, local, and Indian tribal governments, while a definition of *7 CFR part 3019* would reference those regulations with applicability to private non-profit organizations, institutions of higher education, and hospitals. A definition of *Single inventory management* would help to describe the current option for school food authorities and other recipient agencies in the storage and inventory management of donated foods.

Agreements and Contracts, § 250.12

Section 217 of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) amended section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a) by transferring the responsibility for the allocation of resources in NSIP from USDA to DHHS. Under the amended Older Americans Act, State Agencies on Aging may still choose to receive all, or part, of their NSIP grants in the form of donated foods (rather than funds), on behalf of their participating elderly nutrition projects. However, USDA is responsible only for the purchase of the foods and their delivery to the appropriate State agency. Therefore, we propose to amend § 250.12(a) by removing reference to agreements between the Department and State Agencies on Aging that elect to receive cash in lieu of commodities.

As mentioned earlier in the preamble, we are proposing to revise current requirements associated with food service management company contracts to ensure that schools and other recipient agencies that participate in child nutrition programs receive the value of donated foods used by those commercial enterprises in conducting the food service. We propose to include these revised requirements in the new subpart D. Therefore, we propose to remove § 250.12(d). We propose to remove, without replacement, the current requirements in § 250.12(d) that, for nonprofit summer camps for children, charitable institutions, and nutrition programs for the elderly, a contract with a food service management company: (1) May not exceed one year, with an option for four additional one-year periods; and, (2) must include the provision that it may be terminated for cause by either party upon 30 days notice. Summer camps and charitable institutions do not receive Federal funds for distribution of donated foods or other administrative activities. Hence, Federal regulations in 7 CFR part 3019 relating to contracts do not apply to them. Additionally, donated foods are only a very small part of the food service provided by such recipient agencies. Thus, it is unreasonable to require specific provisions in their contracts with food service management companies. As indicated above, USDA would not oversee the use of donated foods in NSIP, as it is now responsible only for procurement and delivery of donated foods in the program. Therefore, current contract requirements with food service management companies, as well as those proposed in this rule, do not apply to donated foods provided in NSIP.

We also propose to remove § 250.12(e) and (f), as requirements relative to storage facility and processor contracts are currently addressed in §§ 250.14 and 250.30, respectively. As the changes proposed above would remove all reference to contract requirements in this section, we propose to revise the section heading to *Agreements.*

Reviews, § 250.19

We propose to amend the current review requirements for distributing agencies in § 250.19(b), primarily as they relate to management reviews of elderly nutrition projects, and of food service management companies under contract with several types of recipient agencies that receive donated foods for use in their food service.

We propose to amend the introductory text of § 250.19(b)(1) to state that the distributing agency must establish review procedures encompassing the listed activities as they apply to specific programs. For example, the distributing agency would not be expected to establish procedures to review donated food inventories for school food authorities utilizing a single inventory management system.

As previously mentioned, under the amended Older Americans Act the responsibility for the allocation of resources in NSIP now rests with DHHS, and not USDA; hence, program funds are appropriated to DHHS for allocation to State Agencies on Aging. USDA is now responsible only for the purchase of donated foods for those State Agencies on Aging that choose to receive donated foods as part of their NSIP grant, and for delivering those foods to State or local agencies. USDA may also provide bonus foods to such outlets, although their availability for donation has increasingly diminished. Therefore, we propose to remove § 250.19(b)(1)(i), which requires on-site reviews of nutrition programs for the elderly (i.e., elderly nutrition projects, as proposed in this rule) participating in NSIP. Consequently, current § 250.19(b)(1)(ii), (b)(1)(iii), (b)(1)(iv), and (b)(1)(v), which address reviews of charitable institutions, processors, distributing agency storage facilities, and food service management companies, would be redesignated as § 250.19(b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv) respectively, but otherwise without change, except as noted below.

We propose to revise the redesignated § 250.19(b)(1)(i) to retain the current review requirement for charitable institutions and summer camps, and the food service management companies under contract with them, in a more streamlined form. The revised language would require on-site reviews of charitable institutions (which include summer camps), or the food service management companies under contract with them, whenever the distributing agency identifies actual or probable deficiencies in the use of donated foods by such institutions, or by their contractors, through audits, investigations, complaints, or any other information.

We propose to revise the redesignated § 250.19(b)(1)(iv) to require the distributing agency to conduct an on-site review of recipient agencies in NSLP, CACFP, and SFSP, to ensure compliance with the requirements for the use of donated foods in contracts with food service management companies. We propose to require such a review at a frequency established in 7 CFR parts 210, 225, or 226, as applicable, for the State administering agency, in the conduct of its reviews. Lastly, we propose to permit the distributing agency to enter into an agreement with the appropriate State administering agency to include its review as part of the State administering agency's review. An integrated review of all aspects of the food service operation has the potential to be more effective and efficient than piecemeal reviews by two separate agencies.

We propose to remove § 250.19(d), which requires the monitoring of cash disbursements to nutrition programs for the elderly by State Agencies on Aging to ensure purchase of only U.S. agricultural products. Under the amended Older Americans Act, this responsibility now rests with DHHS.

Distributing Agency Performance Standards, § 250.24

As discussed in detail later in the preamble, we propose to revise current regulatory provisions associated with

the ordering of donated foods and their distribution to school food authorities in the proposed § 250.58. In conjunction with these proposals, we are also proposing here to revise current distributing agency performance standards in § 250.24(d) relating to these areas. We propose to consolidate the content of § 250.24(d)(8) and (d)(10) in a revised § 250.24(d)(8) to state that distributing agencies are responsible for providing recipient agencies with ordering options and commodity values, and considering the specific needs and capabilities of such agencies in ordering donated foods. We propose to revise § 250.24(d)(9) to state that distributing agencies are responsible for offering school food authorities participating in NSLP, at a minimum, the commodity offer value of donated food assistance, and for determining an adjusted assistance level in consultation with school food authorities, as appropriate, in accordance with the proposed § 250.58. We propose to include a new § 250.24(d)(10) to state that distributing agencies are responsible for providing each school food authority in NSLP with the opportunity to order, or select, donated foods from the full list of available foods, and to distribute the selected donated foods to each school food authority, to the extent that distribution of such foods to, and within, the State would be cost-effective, in accordance with the proposed § 250.58.

Subpart D—Donated Foods in Contracts With Food Service Management Companies

Over the last 10–15 years, school food authorities have increasingly entered into contracts with food service management companies to provide the school meals and to conduct other food service activities. As cited in the Department's Office of Inspector General (OIG) audit referenced below, 905 school food authorities participating in NSLP contracted with a food service management company in school year 1991, while in school year 2000, 1,648 school food authorities had such contracts. In providing the school meals, food service management companies may use the donated foods provided to school food authorities.

Currently, in § 250.12(d), a contract between a recipient agency and a food service management company must ensure that donated foods provided to the food service management company are used solely for the benefit of the recipient agency's food service. Additionally, the recipient agency must demonstrate that the full value of the donated foods is utilized for its benefit. However, the regulations do not require that the contract indicate what actions must be taken to ensure that donated foods benefit the recipient agency, or how the recipient agency is to demonstrate that the full donated food value has been received.

In April 2002, OIG conducted an audit (#27601–0027–CH) of several school food authorities under contract with food service management companies. The OIG found that, for contracts in which the food service management company charges a fixed price per meal, school food authorities did not always receive the full value of the donated foods provided for use in the school food service. The OIG found this to result, in part, from the lack of specific instructions in Federal regulations regarding the means by which the contract with the food service management company must incorporate requirements that ensure school food authorities receive the full value of the donated foods. To correct this, the OIG recommended that, for fixed-price contracts, the donated food value be deducted on monthly invoices. The OIG also recommended that bid documents to procure food service management company services reflect that this type of crediting is required.

In the absence of specific regulatory requirements, school food authorities have developed different means to ensure that they receive the benefit of the donated foods provided by the Department. Some school food authorities require the food service management company to credit them for the value of donated foods used in the food service through reductions on monthly invoices or other means. However, food service management companies have not always used and credited donated foods in an expeditious or accurate manner. Some school food authorities may ensure the receipt of the donated food benefit through a review of production or inventory records, or a review of menu plans or the meals served. Other school food authorities allow the food service management company to ''pre-credit'' for donated foods in the contracted fixed price per meal. Under a pre-credit method, the value of donated foods is deducted from the cost of the food service upfront, at the per-meal value of donated food assistance established for that school year. However, the full amount of donated foods received by the school food authority is often not established until later in the year, for several reasons. For example, initial donated food entitlements are based on preliminary meal counts that are adjusted when final meal counts become available later in the year. Additionally, the bonus foods that are to be provided are generally not known at the beginning of the school year. Furthermore, donated food assistance in NSLP is sometimes augmented to ensure, in accordance with section 6(e) of the National School Lunch Act (42 U.S.C. 1755), that the total amount of such assistance equals at least 12 per cent of the total assistance provided under sections 4, 6, and 11 of that Act. Hence, unless end-of-year adjustments are made, a pre-crediting system would not include crediting for all donated foods received in a school year.

In its response to the OIG recommendation, FNS agreed that Federal regulations must be revised to include specific requirements to ensure that school food authorities receive the full benefit of the donated foods provided in NSLP. However, before developing specific regulatory proposals, FNS indicated that it would seek input from State distributing agencies, school food authorities, food service management companies, and industry consultants. On October 24, 2002, FNS conducted a public meeting at its headquarters office in Alexandria, Virginia to allow interested parties the opportunity for dialogue. In advance of the meeting, FNS presented the OIG recommendations for regulatory revision in a notice published in the **Federal Register** on October 8, 2002 at 67 FR 62683. The meeting was attended by several food service management companies and a number of industry consultants, as well as a few State distributing agency directors or staff members. Some of the issues or concerns expressed at this meeting include the following:

- Food service management companies do not always receive donated foods that are easily utilized in the food service.
- Food service management companies are sometimes able to purchase foods on the commercial market for a lower price than the price the Department paid for the same, or similar, food.
- In the absence of standard contract language, school food authorities are not sure what provisions relating to donated foods must be included in a contract with a food service management company.
- The uncertainty of donated food availability or deliveries presents difficulties in utilization of donated foods, and may result in an increase in the price charged by food service management companies for the food service.

We propose to address the concerns raised in the OIG audit by proposing specific requirements to ensure that recipient agencies in child nutrition programs receive the value of all donated foods provided to food service management companies with which they have contracts, in a new subpart D, which is discussed below. As mentioned previously, this new subpart would replace the current § 250.12(d). Subpart D would contain the following 6 new sections:

§ 250.50, Food service management companies.
§ 250.51, Contracts and procurement.
§ 250.52, Crediting for, and use of, donated foods.
§ 250.53, Storage and inventory management of donated foods.
§ 250.54, Contract provisions.
§ 250.55, Recordkeeping and reviews.

Food Service Management Companies, § 250.50

In the new § 250.50(a), we propose to clarify that, in accordance with the definition in § 250.3, as we are proposing to revise it in this rule, a food service management company is a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance 7 CFR parts 210, 225, or 226, or, with respect to charitable institutions, in accordance with 7 CFR part 250. We propose to require that, to the extent that such management includes the use of donated foods, the food service management company is subject to the applicable requirements proposed in this subpart. We propose to clarify, however, that a school food authority participating in NSLP that performs such functions is not considered a food service management company. We also propose to indicate, for the sake of clarity, that a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in § 250.3, is considered a processor in this part, and is subject to the requirements in subpart C of 7 CFR part 250, rather than the requirements of this proposed subpart.

In § 250.50(b), we propose to indicate the food service activities using donated foods that a food service management company is permitted to perform, in accordance with its contract. We propose to permit a food service management company to perform the following activities:

(1) Preparing and serving meals;

(2) Ordering or selection of donated foods, in coordination with the recipient agency, and in accordance with § 250.58(c);

(3) Storage and inventory management of donated foods, in accordance with the proposed § 250.53;

(4) Payment of processing fees or costs on behalf of the recipient agency, in accordance with the requirements in the proposed § 250.52(e); and

(5) Submittal of refund applications to the processor, and the remittance of refunds to the recipient agency, for donated foods contained in processed end products, in accordance with the current § 250.30(k).

All of these activities are currently performed by some food service management companies. Their performance helps school food authorities and other recipient agencies to conduct the food service in the most cost-efficient manner. However, we propose to clarify that, in ordering or selecting donated foods for use in preparing meals, the food service management company must coordinate with the recipient agency, in accordance with the proposed requirements in § 250.58(c).

Contracts and Procurement, § 250.51

In the new § 250.51(a), we propose to require that, prior to donated foods being made available to a food service management company, a recipient agency must enter into a written contract with a food service management company to allow it to perform food service activities, including the use of donated foods. We propose to require that the contract ensure that all donated foods received by the recipient agency for use in its food service in a school year or a fiscal year, as applicable, be used to benefit the recipient agency's food service. We propose to require that recipient agencies in child nutrition programs (i.e., NSLP and commodity schools, CACFP, SFSP, and SBP) meet additional requirements in this subpart, as discussed below, and also indicate that such recipient agencies must comply with Federal regulations in 7 CFR parts 210, 220, 225, and 226, (which concern, respectively, NSLP, SBP, SFSP, and CACFP), and 7 CFR parts 3016 or 3019 (the Department's regulations establishing administrative requirements for grants to governmental entities and nonprofit organizations, respectively), as applicable, in the procurement of such contracts.

In § 250.51(b), we propose to indicate that recipient agencies may enter into a fixed-price or a cost-reimbursable contract with food service management companies, except that recipient agencies in CACFP are prohibited from entering into cost-reimbursable contracts, in accordance with 7 CFR part 226. Under a fixed-price contract, the recipient agency pays a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the food service management company charges the recipient agency for food service operating costs, and also charges fixed fees for management or services. We include a reference to the FNS guidance entitled ''Contracting with Food Service Management Companies: Guidance for School Food Authorities'', which contains more detail on the distinguishing characteristics of the two allowable types of contracts, as well as their procurement.

In § 250.51(c), we propose to indicate that recipient agencies in child nutrition programs must adhere to the Federal regulations referenced above in the procurement of food service management companies. We also state that the required contract provisions proposed in § 250.54 of this rule must also be included in the contract solicitation documents, as required in 7 CFR parts 3016 and 3019. Such provisions include the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with the proposed § 250.52. The method used to determine the donated food values cannot be established through a post-award negotiation, or by another method that may directly or indirectly alter the terms and conditions of the solicitation or contract.

In § 250.51(d), we propose to prohibit a food service management company from entering into a contract or agreement with a processor to process donated foods or end products for use in the recipient agency's food service. In accordance with § 250.30, processing of donated foods must take place under a contract or agreement between a processor and the distributing or recipient agency, in order to ensure that the requirements in that section are met.

Crediting for, and Use of, Donated Foods, § 250.52

In the new § 250.52, we propose to describe how the recipient agency must ensure that it receives the value of donated foods in the meal service provided. In § 250.52(a), we propose to state that, in both fixed-price and cost-reimbursable contracts, the recipient agency must require the food service management company to credit it for the value of all donated foods received for use in the recipient agency's food

service in a school year or fiscal year (including both entitlement and bonus foods). We propose to require that crediting be performed through invoice reductions, refunds, discounts, or by another means of crediting.

The above proposals would permit the use of pre-crediting for donated foods in fixed-price contracts. If provided for in the contract between a recipient agency and food service management company, the recipient agency may permit the food service management company to deduct the value of donated foods from the established fixed price per meal. However, as noted previously in this preamble, the use of pre-crediting has not always resulted in crediting of recipient agencies for all donated foods received for the school or fiscal year. This has resulted because availability of some donated foods is not established until later in the year. Hence, we propose to clarify that the recipient agency must require the food service management company to provide an additional credit for the value of any donated foods not accounted for in the fixed-price per meal. Additionally, we propose to clarify that, in cost-reimbursable contracts, crediting may be performed by disclosure: i.e., the food service management company may indicate the value of donated foods credited for the period in which it bills the recipient agency for food costs.

To ensure that the food service management company credits the recipient agency for all donated foods received in the school or fiscal year, in the new § 250.55(c) we are proposing to require that the recipient agency conduct a reconciliation of such crediting at least annually in its review of food service management company activities. In § 250.52(a), we also propose to require that all forms of crediting, including pre-crediting, provide clear documentation of the value received from donated foods. For example, in crediting by invoice reductions, the value of donated foods must be included as separate line item entries on invoices.

In § 250.52(b), we propose to require that crediting be performed not less frequently than annually, and that such frequency be determined by the recipient agency. The frequency must be provided for in the contract between the recipient agency and the food service management company. For example, a food service management company that billed a school food authority for all meals provided in a quarter could include a reduction on the invoice for the value of all donated foods received by the school food authority in that quarter. Or, as another example, the food service management company may simply provide a refund at the end of the school year for the value of all donated foods received by the school food authority for that year. In determining the frequency of crediting, the recipient agency must ensure that the specified method of valuation of donated foods, as described in the following paragraphs, permits crediting to be achieved in the time period established. Additionally, a school food authority must ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).

In § 250.52(c), we propose to establish the donated food values that must be used in crediting. We propose to require that the recipient agency ensure that the food service management company uses the donated food values determined by the distributing agency, in accordance with the proposed § 250.58(g), or, if approved by the distributing agency, donated food values determined by an alternate means of the recipient agency's choosing. For example, the recipient agency may, with the approval of the distributing agency, specify that the value will be the average price per pound for a food, or for a group or category of foods (e.g., all frozen foods or cereal products), as listed in market journals over a specified period of time. This flexibility in valuing donated foods for the purpose of crediting would help to ensure that donated foods always provide a good value to the recipient agency, when compared, for example, to the cost of the same, or similar, foods in the commercial market.

In § 250.52(d), we propose to clarify that the actual donated food values are not required to be included in the solicitation and contract, but that the method of determining the donated food values to be used in crediting must be included in the solicitation and contract. For example, the solicitation and contract may stipulate that the average USDA purchase price for purchases made during the duration of the contract with the food vendor will be utilized, or the average price per pound listed in market journals over a specified period of time. Although the actual donated food values may also be included, the donated foods that a recipient agency will receive often are not known until after the procurement has taken place. However, we propose to require that the method of valuation specified must result in the determination of actual values, and may not permit any negotiation of such values. Additionally, we propose to state that the method of valuation must ensure that crediting may be achieved in accordance with the time frame established in the solicitation and contract (e.g., quarterly or annually).

In § 250.52(e), we propose to indicate that the food service management company is not required to credit the recipient agency for donated foods contained in processed end products. In accordance with current § 250.30, the processor must credit the recipient agency for donated foods contained in end products through a discount or refund sales system, or charge the recipient agency a fee-for-service to produce the end product, either directly or through a distributor. However, as indicated in proposed § 250.50(c), the food service management company, under its contract with the recipient agency, may be responsible for the payment of processing costs on behalf of the recipient agency, or the submittal of refund applications and remittance of refunds for donated foods contained in processed end products. In order to ensure that the recipient agency is credited for donated foods in such cases, we propose to require the recipient agency to ensure that the food service management company:

(1) Bills the recipient agency separately for processing costs, and not include these costs in a fixed-price charge for the food service; and

(2) Submits refund applications to processors, in accordance with the requirements in § 250.30(k), and remits refunds to the recipient agency in an expeditious manner.

In § 250.52(f), we propose to indicate that, with certain exceptions, as listed below, the food service management company is not required to use the donated foods received, or a commercial substitute of the same generic identity, in the recipient agency's meal service, unless the contract specifically stipulates that such foods must be used. However, the food service management company must ensure that:

(1) Donated ground beef and ground pork products, and all end products received from processors, are used in the recipient agency's meal service, for the benefit of eligible program recipients; and,

(2) If menu plans include foods of the same generic identity as the donated foods received, then such donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and identical or superior in quality, must be used in the recipient agency's food service.

The proposals described above would provide the recipient agency and its contractor with the flexibility needed to integrate donated foods into the food

service with minimal time and effort. Hence, as long as the food service management company credits the recipient agency for the donated foods, it would not be obligated to use those foods in the food service, with the following exceptions. Since USDA specifications for ground beef and ground pork include more stringent requirements for grading and testing for microbial pathogens than such products produced for the commercial market, we want to ensure that these donated foods are used in the recipient agency's food service. For the same reason, processors are currently prohibited from substituting commercial beef and pork for donated beef and pork. Additionally, since recipient agencies provide donated foods to processors for processing into specific end products in accordance with processing agreements or contracts, they must be assured of receiving those end products for use in their food service. Lastly, if menu plans include foods of the same generic identity as the donated foods received, then such donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and identical or superior in quality to the donated foods, must be used in the food service. For example, we would not want commercial canned corn of Grade B quality to be included in meals in place of the donated canned corn of Grade A quality that the recipient agency has received.

In § 250.52(g), we propose to require that, when a contract terminates, and is not extended, the food service management company must return any unused donated ground beef and ground pork products, and end products received from processors, to the recipient agency. This proposal is in accordance with the requirement that these foods must be used in the recipient agency's food service, for the reasons indicated above. We propose to state that the food service management company must, at the discretion of the recipient agency, return other donated foods for which the recipient agency has not been credited, or pay the recipient agency the value of such donated foods.

Storage and Inventory Management of Donated Foods, § 250.53

In the new § 250.53, we propose to include requirements for food service management companies to follow in the storage and inventory management of donated foods. In § 250.53(a), we propose to include the requirement that food service management companies must meet the general requirements in § 250.14 for the storage and inventory management of donated foods.

In § 250.53(b), we propose to allow the food service management company to store and inventory donated foods together with commercially purchased foods—*i.e.,* utilize a single inventory management system, as defined in this part—if allowed in its contract with the recipient agency. The use of single inventory management would reduce the time and effort required of food service management companies in the management and use of donated foods, and could result in reduced costs to schools. However, the food service management company must ensure that donated ground beef and ground pork products, and end products received from processors, are stored in a manner that assures they will be used in the recipient agency's food service.

We would also include a statement that, in cost-reimbursable contracts, the food service management company must ensure that its system of inventory management does not result in the recipient agency being charged for donated foods. Under such contracts, the food service management company often charges the recipient agency for food costs by measuring changes in its inventory records, which, under single inventory management, may result in a charge for donated foods in its billings for food costs. The food service management company may prevent this by checking inventory records against its actual costs for food purchases, or by differentiating between donated foods and end products, and commercially purchased foods, in its inventory records.

Contract Provisions, § 250.54

In the new § 250.54, we propose to require specific contract provisions relating to donated foods in fixed-price and cost-reimbursable contracts. We would stipulate, again, that such provisions must also be included in the contract solicitation documents. In § 250.54(a), we propose to require the following provisions in fixed-price contracts:

(1) A statement that the food service management company will credit the recipient agency for all donated foods received for use in the recipient agency's food service in the school year or fiscal year, as applicable.

(2) The method and frequency by which crediting will occur—*e.g.,* through invoice reductions, refunds, discounts, or other means of crediting—and the means of documentation to be utilized to verify that that the value of all donated foods has been credited.

(3) The method of determining the donated food values to be used in crediting, in accordance with § 250.52(c), or the actual donated food values;

(4) If applicable, a statement that the food service management company will ensure that the recipient agency receives the full benefit of all refunds and discounts received from processors and distributors for processed end products, and will not charge the recipient agency for processing costs paid on its behalf as part of a fixed-price charge for the food service.

(5) Any activities relating to donated foods that the food service management company will be responsible for, such as the payment of processing fees, or the remittance of refunds to the recipient agency for donated foods contained in processed end products.

(6) A statement that donated ground beef and ground pork products, and all end products received from processors, will be used in the food service, and will not be substituted with commercial products.

(7) A statement that, if menu plans include foods of the same generic identity as donated foods received, then those donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and identical or superior in quality to the donated foods, will be used.

(8) An assurance that the food service management company will use donated foods in accordance with the requirements in 7 CFR part 250.

(9) An assurance that the food service management company will not enter into a contract or agreement with a processor to process donated foods or end products for use in the recipient agency's food service.

(10) A statement that the distributing agency, subdistributing agency, or recipient agency, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform on-site reviews of the food service management company's food service operation to ensure that all activities relating to donated foods are performed in accordance with the requirements in 7 CFR part 250.

(11) A statement that the food service management company will maintain records to document that crediting for all donated foods received for the school year or fiscal year, as applicable, has been achieved, and will meet other recordkeeping requirements in 7 CFR part 250; and

(12) A statement that extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

In § 250.54(b), we propose to require the same provisions in cost-

reimbursable contracts as those listed in paragraph (a) of new § 250.54, but to propose, in addition, that the food service management company assure that its system of inventory management will not result in the recipient agency being charged for donated foods.

Recordkeeping and Reviews, § 250.55

In the new § 250.55, we propose to include the recordkeeping and review requirements for distributing and recipient agencies in contracts with food service management companies, to ensure that the use and management of donated foods is in accordance with the requirements of this part. In § 250.55(a), we propose to require that the recipient agency maintain the following records:

(1) The donated foods and end products received and provided to the food service management company for use in the food service.

(2) Crediting for donated foods by the food service management company, including documentation verifying that the full donated food value has been credited.

(3) The donated food values used in crediting.

In § 250.55(b), we propose to require that the food service management company maintain the following records:

(1) The donated foods and end products received from, or on behalf of, the recipient agency, for use in its food service.

(2) Documentation that all donated foods received for use in the recipient agency's food service have been credited.

In § 250.55(c), we propose to require that the recipient agency include a review of food service management company activities relating to the use and management of donated foods as part of its monitoring of the food service operation required in 7 CFR parts 210, 220, 225, or 226, as applicable. We also propose to require that the recipient agency conduct a reconciliation of the food service management company's crediting for donated foods at least annually to ensure that it has received credit for all donated foods received in the school year.

In § 250.55(d), we propose to require that the distributing agency conduct an on-site review of the recipient agency's use of donated foods in its food service in contracts with food service management companies, in accordance with the management reviews required in § 250.19(b)(1), as we propose to revise it in this rule. In accordance with the proposed § 250.19(b)(1)(iv), the distributing agency would be permitted to enter into an agreement with the State administering agency (if a different agency) for NSLP, SFSP, or CACFP, to include its review as part of the administrative review required of the State administering agency in 7 CFR parts 210, 225, or 226, as applicable.

Lastly, in § 250.55(e), we propose to state that USDA may conduct reviews of food service management company operations with respect to the use and management of donated foods, to ensure compliance with the requirements of this part.

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

As described earlier in the preamble, we propose to provide a clearer, more comprehensive, description of the requirements relating to donated foods in NSLP and other child nutrition programs in a new subpart E, which is described below. This new subpart would include seven new sections, which would replace the current §§ 250.48, 250.49, and 250.50. The new sections under subpart E would include the following:

§ 250.56, Provision of donated foods in NSLP.
§ 250.57, Commodity schools.
§ 250.58, Ordering donated foods and their provision to school food authorities.
§ 250.59, Storage and inventory management of donated foods.
§ 250.60, Use of donated foods in the school food service.
§ 250.61, Child and Adult Care Food Program (CACFP).
§ 250.62, Summer Food Service Program (SFSP).

Provision of Donated Foods in NSLP, § 250.56

In the new § 250.56, we propose to describe the basis for providing donated foods for use in NSLP, and for determining the types and amounts provided. In § 250.56(a), we propose to include the current regulatory provisions regarding the distribution of donated foods to distributing agencies, which provide them to school food authorities that participate in NSLP. The distributing agency must confirm the participation of school food authorities in NSLP with the State education agency (if different from the distributing agency). We would also indicate that, in addition to the requirements of this part relating to donated foods, distributing agencies, subdistributing agencies, and school food authorities that participate in NSLP must adhere to the requirements in 7 CFR part 210, as applicable. We propose to remove the reference in current § 250.48(a) to the provision of donated foods in the School Breakfast Program, as donated foods are not specifically provided for this program at the current time. However, school food authorities participating in NSLP may also use donated foods in their school breakfast programs, as indicated in the proposed § 250.60(a).

In § 250.56(b), we propose to indicate that a wide variety of donated foods is purchased for distribution to school food authorities participating in NSLP each school year. A list of available donated foods is made available to distributing agencies and school food authorities on the FNS Web site. We propose to include the types of available donated foods by legislative purchase authority, as currently included in § 250.48(e)—*i.e.*, section 6 and 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762a), and section 32, 416, and 709 foods, as available.

In § 250.56(c), we describe how FNS determines the quantity of donated foods to provide to distributing agencies each school year, as currently described in § 250.48(b). We indicate that, in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), the distributing agency receives, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served in the previous school year. We describe the annual adjustment of the national per-meal value of donated food assistance to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). However, we propose to remove the detail regarding the calculation of that value currently included in current § 250.48(b)(2). We propose, instead, to include a reference to the publication of a notice in the **Federal Register** each July that includes a more detailed description of the calculation of the national per-meal value for the school year. We propose to state that reimbursable lunches are those that meet the nutritional standards established in 7 CFR part 210, and that are reported to FNS, in accordance with the requirements in that part. We propose to remove the current description of the determination of the number of meals used in the above calculation through the submittal of claims, and the modification of such numbers in subsequent years based on current data, as this information is currently included in 7 CFR part 210.

In § 250.56(d), we propose to state that FNS uses the average price for USDA purchases of donated food made during the duration of the purchase contract to credit distributing agency entitlement levels. This information is not currently included in 7 CFR part 250.

Finally, in § 250.56(e), we propose that those States that phased out food distribution operations prior to July 1, 1974, are permitted to choose to receive cash in lieu of the donated foods to which they would be entitled in NSLP, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1765) and 7 CFR part 240.

Commodity Schools, § 250.57

In the new § 250.57, we propose to describe the provision of donated foods to commodity schools. In § 250.57(a), we propose to describe commodity schools as schools that operate a nonprofit school food service, in accordance with 7 CFR part 210, but receive additional donated food assistance rather than the general cash assistance available to them under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). We would also indicate that, in addition to the requirements of this part relating to donated foods, commodity schools must adhere to the requirements in 7 CFR part 210.

In § 250.57(b), we propose to describe how FNS determines the quantity of donated foods to provide to distributing agencies for commodity schools each school year, as described in current § 250.48(b)(2)(ii). We would indicate that, in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), the distributing agency receives, at a minimum, donated foods valued at the sum of the national per-meal value of donated food assistance and the national average cash payment established under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by commodity schools in the previous school year. We would include the current option for the commodity school to receive, from the total value of donated food assistance available to it, 5 cents per meal in cash to cover processing and handling expenses related to donated foods. We would also include the types of donated foods available to commodity schools by legislative purchase authority—*i.e.*, in addition to section 6 and section 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762(a)), and section 32, 416, and 709 foods, as included in current § 250.48(e).

We propose to remove provisions in current § 250.48 describing the distribution of donated foods to schools not participating in NSLP or as commodity schools, since we are proposing to include the distribution of donated foods to such schools as charitable institutions in the new § 250.67.

Ordering Donated Foods and Their Provision to School Food Authorities, § 250.58

In the new § 250.58, we propose to describe the means by which the distributing agency orders donated foods, and ensures that school food authorities receive the quantities and types of donated foods that they can best utilize in their food service each school year. In § 250.58(a), we state that the distributing agency orders donated foods through a web-based system called the Electronic Commodity Ordering System (ECOS). ECOS was fully implemented for all distributing agencies in July 2003, and replaced the more cumbersome system of data submission formerly utilized.

In § 250.58(b), we propose to describe the value of donated foods that the school food authority is eligible to receive each school year, as described in current § 250.48(c)(1). We propose to include the requirement, under section 6(c)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(2)), that the distributing agency offer the school food authority, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year. This is referred to as the commodity offer value. We also propose to include the requirement, under section 14(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762(f)), that the distributing agency offer commodity schools the national per-meal value of donated food assistance plus the national average cash payment established under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by the school in the previous school year, less, if applicable, the 5 cents per meal available as cash in lieu of donated foods. We would also include the eligibility of the school food authority to receive bonus foods in addition to the Section 6 foods. We propose to remove the current option provided to the distributing agency in § 250.48(c)(1) to use another method (instead of the one described above) to determine the value of donated foods offered to school food authorities that would provide them with an equitable share of foods.

Section 6(c)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C 1755(c)(2)) mandates that distributing agencies offer school food authorities the full range of commodities that are available from the Secretary of Agriculture to the extent that quantities requested are sufficient to allow efficient delivery to and within the State. Accordingly, § 250.48(c)(2) of current regulations requires the distributing agency to allow their school food authorities to order from the full range of donated foods offered by USDA. In the new § 250.58(c), we would retain this provision and clarify the legislative mandate by requiring additionally that the distributing agency solicit and receive orders from school food authorities before the distributing agency submits its orders to FNS.

Current regulations may be interpreted in a way that needlessly restricts school food authorities' access to some foods. Under current § 250.48(c)(2), the State must offer and efficiently deliver the full variety of available foods to the extent that quantities requested or available are sufficient to make a statewide distribution. However, depending on the State's storage and distribution system, it may be efficient to provide a given donated food to some of the school food authorities that have ordered it, but not to others. All school food authorities should not be denied a particular donated food because it would not be cost-effective to provide that food to one or more of them. Therefore, the proposal would remove the standard of statewide distribution, and the current stipulation that the distributing agency develop a procedure for the distribution of donated foods when the amount of such foods is not sufficient to make a statewide distribution. Instead, pursuant to the legislative standard (*i.e.*, to allow efficient delivery to and within a State), we propose to require in § 250.58(d) that the distributing agency ensure distribution of all donated foods selected by school food authorities that may be cost-effectively distributed to them.

In order to further ensure school food authorities' access to a wide variety of donated foods, we also propose to require, in § 250.58(d), that the distributing agency explore all available storage and distribution options to determine if distribution of the desired foods to each individual school food

authority that ordered them would be cost-effective. We propose to require that the distributing agency not prohibit the use of split shipments—*i.e.*, shipments that provide for a single truckload of a donated food to be divided among multiple stops. Other options that should be explored include direct shipments from vendors to a school food authority or to a processor designated by the school food authority to receive the foods. We also propose to require that, if distribution of donated foods to a school food authority would not be cost-effective, the distributing agency provide the school food authority with the opportunity to select other available donated foods that may be distributed to it cost-effectively. While this proposal would help to ensure that school food authorities receive the desired donated foods, we invite comments on whether further regulatory action would provide additional assurance. We are especially interested in receiving input from program operators at the State and local levels, and other parties, on what would constitute cost-effective distribution of donated foods, and whether further requirements in this area would be helpful.

Most States currently use the system proposed above to order and provide donated foods to school food authorities. However, some States order for delivery to a distributing agency storage facility a limited variety of the donated foods that USDA has made available, and then offer this limited selection to their school food authorities. This practice, which would be prohibited under the proposed rule, finds implicit support in current § 250.48(f). This section establishes an ''offer and refusal'' system under which school food authorities may refuse donated foods offered by the distributing agency, and receive other foods instead. The distributing agency is not required to replace more than 20 percent of donated foods so refused with other foods. We propose to remove this ''offer and refusal'' provision because implementation of the proposals described above would render it unnecessary. Under these proposals, the distributing agency must allow all school food authorities to order from the full list of available foods, and must provide all such foods that can be distributed to them in a cost-effective manner. If a selected food cannot be distributed cost-effectively to a school food authority that has ordered it, the distributing agency must allow the school food authority to select other available foods.

Under the proposals described above, school food authorities would have a better opportunity to select and receive the donated foods that they can best utilize in their food service. The proposals would also facilitate more efficient and effective use of donated foods by the food service management companies with which school food authorities enter into contracts to conduct their food service.

In § 250.58(e), we propose to describe some factors that may result in a school food authority receiving less than the commodity offer value of donated foods, which would be termed an ''adjusted assistance level''. We propose to state that a school food authority may receive an adjusted assistance level if, for example:

(1) The distributing agency, in consultation with the school food authority, determines that the school food authority cannot efficiently utilize the commodity offer value of donated foods; or

(2) The school food authority does not order, or select, donated foods equal to the commodity offer value that can be cost-effectively distributed to it.

A school food authority may not be able to utilize the commodity offer value of donated foods due, for example, to current food inventories, scheduled food purchases in the commercial market, or a projected reduction in school enrollment. Additionally, in certain cases a school food authority may not order, or select, donated foods equal to the commodity offer value that may be distributed to it cost-effectively. For example, a school food authority may order a specific type of donated food that may not be distributed to it in a full truckload, resulting in transportation costs that would be prohibitive. Unless the school food authority selects an alternate type of donated food that may be distributed cost-effectively, it may receive less than the commodity offer value.

In § 250.58(f), we propose to describe circumstances in which a school food authority may receive more than the commodity offer value of donated foods. We propose to state that the school food authority may receive more than the commodity offer value of donated foods if the distributing agency, in consultation with the school food authority, determines that the school food authority may efficiently utilize more donated foods than the commodity offer value, and more donated foods are available for distribution. This may occur, for example, if other school food authorities receive less than the commodity offer value of donated foods, for one of the reasons described above. A larger amount of donated foods may also be available for distribution as a result of the augmentation of donated food purchases to meet section 6(e) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(e)), as previously discussed in the preamble, or in accordance with agricultural support provisions under section 32 of the Act of August 24, 1935 (Section 32), of section 416 of the Agricultural Act of 1949 (Section 416), or under section 709 of the Food and Agriculture Act of 1965 (Section 709). This contingency, while already applicable, is not currently described in 7 CFR part 250.

In § 250.58(g), we propose to include the current options in § 250.13(a)(5) that the distributing agency may use to value donated foods in crediting school food authorities for the commodity offer value or adjusted assistance level. However, we propose to clarify that the USDA purchase price may be an average price paid for a donated food over the duration of the contract with the food vendor, rather than the actual price paid for a specific purchase or shipment.

Storage and Inventory Management of Donated Foods, § 250.59

Over the last several years, FNS has allowed for fuller integration of donated foods with commercially purchased foods in the inventories of program operators, in order to reduce their time and labor in administering the programs. In 1996, the Department initiated a pilot project to test the use of commercial labels for donated foods, instead of a special USDA label. Over the course of the pilot project, the use of commercial labels was found to result in lower costs to the program, as vendors did not have to meet the expense of creating distinct labels for the donated foods, or meet food specifications unique to USDA. Consequently, the Department allowed the use of commercial labels for an increasing number of donated foods; at present, most donated foods are now packed with commercial labels.

In a final rule published in the **Federal Register** on October 23, 2002, at 67 FR 65011, FNS amended § 250.14(b)(4) to remove the requirement that school food authorities, and other recipient agencies providing a meal service, maintain donated food inventories separate from inventories of commercially purchased foods. Hence, most distributing agencies currently allow school food authorities to commingle donated foods with commercially purchased foods in storage, and to maintain a single inventory record of all such foods. This type of system is referred to as single

inventory management, as we propose to define it in this rule. FNS also disseminated Policy Memorandum No. FD–020, on May 23, 2003, to further describe single inventory management and its applicability to the management of donated foods by recipient agencies in food distribution and child nutrition programs.

In the new § 250.59, we propose to describe the requirements for the storage and inventory management of donated foods at the distributing agency, subdistributing agency, and school food authority levels, including the use of commercial storage facilities. In § 250.59(a), we propose to state that distributing agencies, subdistributing agencies, and school food authorities must meet the requirements for storage and inventories of donated foods in § 250.14, in addition to the requirements in this section.

In § 250.59(b), we propose to include the requirement in current § 250.14(b)(4) that the distributing agency or subdistributing agency, or a commercial storage facility under contract with either, store and inventory donated foods separately from commercially purchased foods or other foods. This requirement is necessary to ensure distribution of the donated foods that have been purchased for school food authorities and other recipient agencies in child nutrition programs.

In § 250.59(c), we propose to state that the school food authority is not required to store and inventory donated foods separately from commercially purchased foods, unless the distributing agency requires separate storage and inventory of donated foods. This is in accordance with § 250.14(b)(4), as amended in the final rule of October 23, 2002, as described above. The use of single inventory management significantly reduces the time and paperwork required of school food authorities and other recipient agencies by more effectively integrating donated foods into program operations.

In § 250.59(d), we propose to indicate that a commercial storage facility under contract with the school food authority may store and inventory donated foods together with commercially purchased foods it is storing for the school food authority, unless it is prohibited under its contract with the school food authority. However, the commercial enterprise may not commingle foods it is storing for a school food authority with foods it is storing for a commercial enterprise or other entity, as this would jeopardize the use of the donated foods provided in the school food service. These storage and inventory requirements for commercial storage facilities are not clearly indicated in the current § 250.14.

Use of Donated Foods in the School Food Service, § 250.60

In the new § 250.60, we propose to describe the options and requirements for school food authorities in the use of donated foods in the school food service. In § 250.60(a), we propose to state that the school food authority should use donated foods, as far as practical, in the lunches served to schoolchildren, for which they receive, at a minimum, an established per-meal value of donated food assistance each year (i.e., the national per-meal value). However, we also propose to state that the school food authority may use donated foods in other nonprofit school food service activities. We propose to state that, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1751), revenues received from such meals or activities must accrue to the school food authority's nonprofit school food service account. We propose to include the following meals or activities in which donated foods may be used:

(1) School breakfasts or other meals served in child nutrition programs.

(2) A la carte foods sold to children.

(3) Meals served to adults directly involved in the operation and administration of the nonprofit food service; and,

(4) Training in nutrition, health, food service, or general home economics instruction for students.

The above list of meals or activities in which donated foods may be used incorporates some current regulatory provisions in 7 CFR part 250. In the current § 250.13(d)(1), donated foods may be used to serve meals to persons that are few in number and receive meals as an incident of service to eligible persons. Such persons may include teachers and other staff members. Also, in the current § 250.48(g), donated foods may be used in training students in the areas of nutrition, health, food service, or general home economics.

In § 250.60(b), we propose to state that donated foods should not be used in food service activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, their use in such activities may not always be avoided. This is true, for example, for a school food authority storing donated foods together with other foods, as in single inventory management. Thus, we propose to state that, in conducting activities described above, the school food authority must, in all cases, ensure reimbursement to the nonprofit school food service account for donated foods, in addition to reimbursement for other resources utilized from that account. Since school food authorities utilizing single inventory management cannot reimburse the nonprofit food service account based on actual usage of donated foods, they must establish an alternate method to ensure that donated foods do not subsidize food service activities that do not benefit schoolchildren—e.g., by including the current per-meal value of donated food reimbursement in the price charged for the food service activities. We also propose to include a reference to FNS Instruction 782–5, Pricing of Adult Meals in the National School Lunch and School Breakfast Programs, which provides further guidance in this area.

In § 250.60(c), we propose to include the school food authority's option to use donated foods in a contract with a food service management company to conduct its food service. We propose to state that the school food authority must meet the requirements in the proposed subpart D of this part with respect to the use and management of donated foods in such contracts, and must also meet requirements in 7 CFR part 210 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement and execution of such contracts. We also propose to require the school food authority to ensure that a food service management company providing catered meals, or other food service activities that do not benefit primarily schoolchildren, ensure reimbursement to the nonprofit food service account for donated foods used in such activities, in accordance with the proposed § 250.60(b), as described above.

In § 250.60(d), we propose to state that a school food authority may use donated foods to provide a meal service to other school food authorities, in accordance with an agreement between the parties. We propose to clarify that the school food authority providing such a service may commingle its own donated foods and the donated foods of the other school food authorities that are parties to the agreement.

Donated Foods in CACFP, § 250.61

In the new § 250.61, we propose to describe the use of donated foods in CACFP. As previously indicated, this new section would replace the current § 250.49. In § 250.61(a), we propose to describe the provision of donated foods to child and adult care institutions participating in CACFP for use in serving lunches and suppers to eligible recipients. We also propose to indicate that distributing agencies and child and

adult care institutions must also adhere to Federal regulations in 7 CFR part 226, as applicable.

In § 250.61(b), we propose to include the determination of the minimum value of donated foods provided for distribution to institutions participating in CACFP, in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). This is currently described in § 250.49(b). The value is determined by multiplying the national per-meal value of donated food assistance by the number of reimbursable lunches and suppers served in the previous school year. We would describe the annual adjustment of the national per-meal value of donated food assistance to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1755). However, we propose to remove the detail regarding the calculation of that value currently included in § 250.49(b)(2). We would include instead a reference to the publication of a notice in the **Federal Register** each July that includes a more detailed description of this calculation. We also propose to remove the current detail regarding the submittal of claims for reimbursement, and the adjustments in the number of reimbursable meals in subsequent years. We would simply indicate that the number of reimbursable lunches and suppers may be adjusted during, or at the end of the year, in accordance with 7 CFR part 226. We also propose to include the types of donated foods the distributing agency may receive for distribution to child and adult care institutions, i.e., section 6 and section 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762a), and section 32, 416, and 709 foods, as included in current § 250.49(d).

In § 250.61(c), we propose to include the current option in § 250.49(c) for the State education agency to receive cash in lieu of the donated foods to which it would be entitled in CACFP, which is provided under section 17(h)(1) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766(h)(1)). However, we propose to indicate that, in accordance with 7 CFR part 226, the State administering agency must determine whether child and adult care institutions participating in CACFP wish to receive donated foods or cash in lieu of donated foods, and ensure that they receive the preferred means of assistance. The State administering agency must inform the distributing agency (if a different agency) which institutions wish to receive donated foods and must ensure that such foods are provided to them. However, if the State administering agency, in consultation with the distributing agency, determines that distribution of such foods would not be cost-effective, it may, with the concurrence of FNS, provide cash payments to the applicable institutions instead.

In § 250.61(d), we propose to include the child or adult care institution's option to use donated foods in a contract with a food service management company to conduct its food service, as included in current § 250.49(a). We propose to state that the contract must meet the requirements with respect to donated foods in the proposed subpart D of 7 CFR part 250, and must also meet requirements in 7 CFR part 226 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

In § 250.61(e), we propose to indicate that the proposed requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to CACFP. However, we propose to indicate that, in accordance with 7 CFR part 226, a child or adult care institution that uses donated foods to prepare and provide meals to other such institutions is considered a food service management company.

Donated Foods in SFSP, § 250.62

In the new § 250.62, we propose to describe the use of donated foods in SFSP. As previously indicated, this new section would replace the current § 250.50. In § 250.62(a), we propose to describe the provision of donated foods to service institutions participating in SFSP for use in serving nutritious meals to needy children primarily in the summer months, in their nonprofit food service programs. We also propose to indicate the applicability of Federal regulations in 7 CFR part 225 to SFSP.

In § 250.62(b), we propose to describe the types and quantities of donated foods received by the distributing agency in SFSP. As currently indicated in § 250.50(c), the distributing agency may receive donated foods under section 14, and may receive donated foods under section 32, 416, and 709. However, we would also indicate that the distributing agency receives donated foods available under section 6 based on the number of meals served in the State in the previous year that are eligible for donated food support. While the Richard B. Russell National School Lunch Act does not establish a per-meal value of donated food assistance in SFSP, as it does in NSLP and CACFP, FNS has traditionally provided donated food assistance valued at 1.5 cents per meal.

In § 250.62(c), we propose to include the stipulation in current § 250.50(b) that the distributing agency provide donated foods to service institutions based on the number of meals served that are eligible for donated food support, in accordance with 7 CFR part 225.

In § 250.62(d), we propose to include the service institution's option to use donated foods in a contract with a food service management company to conduct its food service, as currently provided in 7 CFR part 225. We propose to state that the contract must meet the requirements in the proposed subpart D with respect to donated foods, and must also meet requirements in 7 CFR part 225 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

In § 250.62(e), we propose to indicate that the proposed requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to SFSP.

Subpart F—Household Programs

We propose to include, in a new subpart F, the current §§ 250.45, 250.46, 250.47, and 250.51, and redesignate them as §§ 250.63 through 250.66, respectively, but otherwise without change.

Subpart G—Other Donated Food Outlets

As described earlier in the preamble, we propose to add a new subpart G to include the distribution of donated foods to other outlets, including charitable institutions, NSIP, and to organizations assisting in situations of disasters and distress. In this new subpart, we propose to add two new sections to better describe the distribution of donated foods to charitable institutions (including summer camps) and in NSIP. The new sections would replace the current §§ 250.40, 250.41, and 250.42 in their entirety. However, as noted below, several of the provisions currently contained in those sections would be revised and included in the new §§ 250.67, Charitable Institutions, and 250.68, Nutrition Services Incentive Program (NSIP) in subpart G. Additionally, we propose to include the current §§ 250.43 and 250.44, which describe the distribution of donated foods in disasters and situations of distress, in their entirety and otherwise without change. However, we would redesignate the current sections as §§ 250.69 and 250.70.

Charitable Institutions, § 250.67

We propose to describe the distribution of donated foods to charitable institutions and summer camps in the new § 250.67. As discussed earlier in the preamble, the volume and variety of donated foods available to charitable institutions and summer camps that do not participate in a child nutrition program has decreased significantly in recent years. Therefore, in addition to including summer camps that do not participate in a child nutrition program in the definition of ''charitable institution,'' as discussed earlier, we propose to revise several of the provisions currently contained in §§ 250.40 and 250.41. These changes, which are discussed in detail below, would reduce the burden imposed on distributing agencies and better target limited resources.

In § 250.67(a), we propose to describe the distribution of donated foods to eligible charitable institutions, as defined in this part. We propose to retain the requirement, in current § 250.41(a)(1), that a charitable institution have a signed agreement with the distributing agency in order to receive donated foods. However, we propose to remove the current requirements in that section that the agreement include information on the days of operation, the number of participants and meals served, and data relating to the number of needy persons served. We also propose to remove the current requirements, in § 250.40(a)(1), that the agreement for summer camps include data on the number of adults participating at the camp relative to the number of children.

We propose to remove the requirement in current § 250.41(a)(1) that agreements between distributing agencies and charitable institutions include a statement assuring that proper inventory controls will be maintained and that all reports will be submitted as required by the distributing agency. In accordance with the current § 250.14(b), charitable institutions are not required to store and inventory donated foods separately from other foods. As stated above, we are proposing to remove the requirements for reporting information on participants and meals served.

In § 250.67(b), we propose to list some types of charitable institutions that may receive donated foods, if they meet the requirements of this section. In accordance with current § 250.41(a)(2), we propose to include the eligibility of adult correctional institutions that conduct rehabilitation programs for a majority of inmates. However, we propose to remove the additional eligibility requirement in that section that the rehabilitation programs be available to inmates for at least 10 hours per week, as it is overly restrictive. We propose to list schools, summer camps, service institutions, and child and adult care institutions that do not participate in child nutrition programs as eligible charitable institutions in this section. These organizations are currently included under the definition of charitable institution. In addition to the institutions described above, the list of eligible charitable institutions would include, but not be limited to:

(1) Hospitals or retirement homes.

(2) Emergency shelters, soup kitchens, or emergency kitchens.

(3) Elderly nutrition projects or adult day care centers.

In light of the above, we propose to clarify, in § 250.67(a), that the following organizations may not receive donated foods as charitable institutions:

(1) Schools, summer camps, service institutions, and child and adult care institutions that participate in child nutrition programs or as commodity schools.

(2) Adult correctional institutions that do not conduct rehabilitation programs for a majority of inmates.

In § 250.67(c), we propose to describe how the distributing agency must determine if an institution or organization serves predominantly needy persons, which is a requirement to meet the revised definition of ''charitable institution'' proposed in this rule. We propose to require that the distributing agency use data similar to the data currently used in 7 CFR part 251 to determine the eligibility of a recipient agency to receive donated foods in TEFAP. We would require the distributing agency to use:

(1) Socioeconomic data on the area in which the organization is located, or on the clientele served by the organization;

(2) Data from other public or private social service agencies, or from State advisory boards, such as those established in accordance with § 251.4(h)(4); or

(3) Other similar data.

Such data would replace the current information that a charitable institution is required to submit as part of the agreement: data on meals served and participation, or, for summer camps, data on the number of adults compared to the number of children at the camp. Thus, in place of the current review of such data, the distributing agency would use readily available data, as described above, to determine if the institution serves predominantly needy persons. The use of such data would significantly reduce the time and paperwork currently required of charitable institutions and distributing agencies, and would be more appropriate to the small and sporadic distributions of donated foods now provided to charitable institutions, for the reasons described earlier.

In § 250.67(d), we propose to include the types of donated foods provided to charitable institutions—donated foods under section 4(a), 32, 416, and 709 (i.e., surplus foods), as available. We propose to include the requirement that the distributing agency distribute donated foods to charitable institutions based on the amounts that they may effectively utilize without waste, and the total amounts available for distribution to such institutions. The distributing agency may determine the charitable institution's capacity to utilize a specific amount of donated foods by the means indicated under § 250.67(c), which may include specific information provided by charitable institutions, as the distributing agency deems necessary. This approach to donated food allocation renders unnecessary the requirement, in current § 250.41(b), that distribution be based on a calculation of the number of needy persons served by charitable institutions, using data provided by them.

In § 250.67(e), we propose to include the stipulation in current § 250.41(a)(3) that a charitable institution may use donated foods in a contract with a food service management company. We propose to require that the contract ensure that all donated foods received for use by the charitable institution in a fiscal year are used to benefit the charitable institution's food service. However, we propose to state that the charitable institution would not have to meet other requirements in the proposed subpart D to ensure this.

Nutrition Services Incentive Program (NSIP), § 250.68

With the enactment of the Older Americans Act Amendments of 2000 (Pub. L. 106–501), the Nutrition Program for the Elderly was renamed the Nutrition Services Incentive Program (NSIP). In addition to the name change, the allocation of resources in NSIP was changed to provide donated foods or funds to State Agencies on Aging and their participating organizations based on the number of meals served in the previous year, and not in the current year. Subsequently, with the enactment of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a) was amended to transfer the responsibility for the allocation of

program resources from USDA to DHHS. In concert with this legislative change, DHHS'' Administration on Aging (AoA) provides NSIP grants to State Agencies on Aging from the annual program appropriations provided to DHHS. However, under the amended Older Americans Act, State Agencies on Aging may still choose to receive all, or part, of their NSIP grants in the form of donated foods (rather than funds), on behalf of their participating elderly nutrition projects. In such cases, USDA is responsible for the purchase of the foods and their delivery to the appropriate State or local agency, using funds advanced to it by DHHS.

In the new § 250.68, we propose to remove provisions in current § 250.42 relating to administrative responsibilities that are now undertaken by AoA, and to revise other provisions to reflect USDA's current role in NSIP, in accordance with the amendments to the Older Americans Act described above. In § 250.68(a), we propose to describe the administration of NSIP by DHHS/AoA, and the FNS role in the purchase and delivery of donated foods to State Agencies on Aging in the program, as described above.

In § 250.68(b), we propose to indicate the types and quantity of donated foods that the State Agency on Aging may receive on behalf of its elderly nutrition projects. We propose to state that the State Agency on Aging may receive donated foods with a value up to its NSIP grant. We propose to state that the State Agency on Aging and its elderly nutrition projects may receive any types of donated foods available in other food distribution or child nutrition programs, to the extent that such foods may be distributed cost-effectively. We also propose to include the provision in current § 250.42(d) that the State Agency on Aging may also receive section 32, section 416, and section 709 donated foods, as available, and section 14 donated foods.

In § 250.68(c), we propose to clarify that FNS delivers the NSIP donated foods to distributing agencies, usually together with shipments of donated foods for NSLP, and the distributing agencies then distribute the NSIP donated foods to elderly nutrition projects selected by the State or Area Agency on Aging. This is the procedure currently used, although it is not currently described in 7 CFR part 250. The small amounts of donated foods ordered for NSIP would make the cost of direct shipments to State Agencies on Aging or elderly nutrition projects prohibitive. We propose to include the provision in current § 250.42(a) that the distributing agency must only distribute donated foods to elderly nutrition projects with which it has signed agreements. We propose to indicate that the agreements must include provisions that describe the roles of each party in ensuring that the desired donated foods are ordered, stored, and distributed in an effective manner.

In § 250.68(d), we propose to state that the donated food values used in crediting a State Agency on Aging's grant are the average price (cost per lb.) for USDA purchases of donated food made over a contract period. These are the same values used in crediting distributing agency entitlements in NSLP, in accordance with the proposed § 250.56(d).

Finally, in § 250.68(e), we propose to indicate that FNS and AoA coordinate their respective roles in NSIP through the execution of annual agreements. The agreements ensure that FNS is properly reimbursed for donated food purchases and related expenses, and that advanced funds not used for donated food purchases are returned to AoA for disbursement to the appropriate State Agencies on Aging.

We propose to remove the current provision in § 250.42(a) that allows food service management companies to use donated foods to provide the food service for elderly nutrition projects. Since USDA is now responsible only for the procurement and delivery of donated foods in the program, their use in contracts with food service management companies no longer falls under USDA's regulatory authority.

We propose to remove several other provisions included in current § 250.42 to reflect the legislative changes. These include provisions in § 250.42(b) relating to the per-meal value of donated foods and the reporting of meals served, and provisions in § 250.42(c) relating to the provision and use of program funds. The specific provisions in the latter section that would be removed include:

- Payments in funds made by FNS.
- Agreements between FNS and State Agencies on Aging choosing to receive funds.
- Monitoring of the disbursal of funds to elderly nutrition projects.
- Monitoring of the use of funds by elderly nutrition projects.
- Maintenance of records of the receipt and use of funds.

III. Procedural Matters

A. Public Comment Procedures

Your written comments on this proposed rule should be specific, confined to issues pertinent to the proposed rule, and should explain your reasons for any change recommended. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. Comments received after the close of the comment period (see **DATES**) will not be considered or included in the Administrative Record for the final rule.

The comments, including names, street addresses, and other contact information of commenters, will be available for public review at the Food and Nutrition Service, Room 500, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5 p.m.), Mondays through Fridays, except Federal holidays.

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these regulations easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) make it more or less clear?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the preamble section entitled ''Background and Discussion of the Proposed Rule'' helpful in understanding the rule? How could this description be more helpful?

B. Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

C. Regulatory Impact Analysis

Need for Action

This action is needed to respond to an OIG audit that found that school food authorities did not always receive the benefit of the donated foods provided for use in NSLP. It also incorporates amendments to the Older Americans Act of 1965 that affect NSIP.

Benefits

The regulatory changes would help ensure that school food authorities and other recipient agencies receive the benefit of all donated foods provided to food service management companies for use in serving school lunches and other meals. It would provide some flexibility in the use and management of donated foods by food service management

companies in providing the meal service. It would also help to ensure that school food authorities receive the donated foods they may best utilize in their food service, and would remove reporting requirements for charitable institutions to determine the amount of surplus donated foods they may receive for service to needy persons.

Costs

This action is not expected to significantly increase costs of State and local agencies, or their commercial contractors, in using donated foods.

D. Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary of Food, Nutrition, and Consumer Services, Eric M. Bost, has certified that this action will not have a significant impact on a substantial number of small entities. Although the rule would require specific procedures for food service management companies and contracting agencies to follow in using donated foods, USDA does not expect them to have a significant impact on such entities.

E. Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 12372

The donation of foods in USDA food distribution and child nutrition programs, to charitable institutions, and to elderly nutrition projects in NSIP is included in the Catalog of Federal Domestic Assistance under 10.550. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

G. Executive Order 13132

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

The programs affected by the regulatory proposals in this rule are all State-administered, Federally funded programs. Hence, our national headquarters and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program issues relating to the distribution of donated foods. FNS meets annually with the American Commodity Distribution Association, a national group with State, local, and industry representation, to discuss issues relating to food distribution.

Nature of Concerns and the Need To Issue This Rule

The rule addresses concerns identified in an OIG audit in a manner that will affect State and local agencies. While it may increase the workload of such agencies to a certain extent, it would help to ensure that school food authorities receive the benefit of the donated foods provided for their use. It also addresses the need to better ensure that all State agencies provide school food authorities with the opportunity to order all varieties of donated foods available for their use.

Extent To Which We Meet Those Concerns

FNS has considered the impact of the proposed rule on State and local agencies. The overall effect is to ensure that such agencies receive the greatest benefit from the donated foods made available for their use in food distribution and child nutrition programs. FNS is not aware of any case in which the provisions of the rule would preempt State law.

H. Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule, when finalized, would have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule would not have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

I. Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis'', to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

J. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This proposed rule contains information collections that are subject to review and approval by OMB; therefore, in accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other agencies to comment on the proposed information collections affected by the proposals in the rule. Written comments on this proposed information collection must be received on or before August 7, 2006.

Comments concerning the information collection aspects of this proposed rule should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, DC 20503, Attention: Desk Officer for

the Food and Nutrition Service. A copy of these comments may also be sent to Lillie F. Ragan, at the address listed in the **ADDRESSES** section of this preamble. Commenters are asked to separate their comments on the information collection requirements from their comments on the remainder of the proposed rule.

OMB is required to make a decision concerning the collection of information contained in this proposed regulation between 30 to 60 days after the publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having full consideration if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The title, description, and respondent description of the information collections affected by this rule are shown below, with an estimate of the annual reporting and recordkeeping burdens. These burden hours represent proposed changes to current reporting and recordkeeping requirements, and incorporate some additional proposed requirements.

Title: Food Distribution Forms.

OMB Number: 0584–0293.

Expiration Date: March 31, 2009.

Type of Request: Revision of a currently approved collection.

Abstract: This proposed rule would affect only the following reporting and recordkeeping requirements under 7 CFR part 250.

Reporting Requirements

Section 250.12(c), Recipient agency/food service management company contracts. Currently, the reporting burden associated with the use of donated foods in contracts with food service management companies is included in § 250.12(c) (the citation is in error, as current regulatory requirements for these contracts are included in § 250.12(d)). In this rule, we are proposing new requirements to ensure that recipient agencies in child nutrition programs receive the full benefit of donated foods in contracts with food service management companies. We propose to require that food service management companies credit such recipient agencies for all donated foods through invoice reductions, refunds, discounts, or other means of crediting. Such crediting would be required not less frequently than annually. In addition to the proposed new requirements, the number of contracts that recipient agencies enter into with food service management companies has increased over the last several years. Hence, we project the increase in the reporting burden for the use of donated foods in food service management company contracts as follows.

In school year 2000, 1,648 school food authorities of a total of 19,329 (8.5 percent) had contracts with food service management companies to conduct their food service. Hence, of the total of 20,770 school food authorities operating in school year 2004, we estimate that 1,765 had contracts with food service management companies. We estimate the burden hours needed to meet the requirements proposed for donated foods in the contract to be 1 hour. While each respondent (the food service management company) may submit more than one response per year, our proposal would allow for only one submittal per year. Hence, we project the number of reports submitted annually by each respondent to be 1. Hence, the estimated total annual reporting burden for food service management company contracts would be:

$1{,}765 \times 1$ hour = 1,765 hours.

$1{,}765 \times 1$ response per year = 1,765 burden hours annually.

The estimated total annual reporting burden of 1,765 hours would be an increase from the current reporting burden of 24.75 hours. As we are proposing to include requirements for the use of donated foods in contracts with food service management companies in the new § 250.54 in this rule, we would also include the burden associated with this activity under § 250.54 in the ICB package.

Section 250.17(e), Food orders. Currently, in § 250.17(e), the distributing agency must submit orders for donated foods in NSLP and other child nutrition programs using form FNS–52, Food Requisition. However, in July 2003, FNS implemented a web-based system called the Electronic Commodity Ordering System (ECOS), which allows distributing agencies to submit orders for donated foods electronically. In submitting orders through ECOS, the number of submissions has increased but the time needed for each submission has been substantially reduced. We estimate that each distributing agency submits 642 orders per year (one for each donated food ordered), instead of the 112 paper submittals (with multiple food orders) previously submitted annually. Each submission takes an estimated 30 seconds, rather than the current 2 hours. Hence, we propose to reduce the reporting burden for this activity to 416 hours from the current 18,144 hours. As we are proposing to include food ordering in NSLP in the new § 250.58 in this rule, we would also include the burden associated with this activity under § 250.58 in the ICB package.

Section 250.41(b), Reporting of needy persons served by charitable institutions. Currently, in § 250.41(b), charitable institutions must report the number of meals served, and information necessary to determine the number of meals served to needy persons. We are proposing to remove this submission requirement for charitable institutions in this rule, and to require instead that the distributing agency use readily available data to determine that a charitable institution serves predominantly needy persons. Hence, the reporting burden of 108 hours currently listed in § 250.41(b) would be removed.

Recordkeeping Requirements

Section 250.12(c), Food service records. The current recordkeeping burden for the use of donated foods in food service management company contracts is 24 hours. In this rule, we are proposing to require recipient agencies in child nutrition programs to maintain documentation of crediting of donated foods by food service management companies and the donated food values used in crediting. Hence, the recordkeeping burden for this activity would increase. We estimate the total number of respondents would be 1,765, as stated above. We estimate that each response would take 0.25 hours. Hence, the recordkeeping burden associated with the use of donated foods in food service management company contracts would increase to 442 hours from the current 24 hours. As we are proposing to include these recordkeeping requirements in the new § 250.55, we would also include the burden hours under § 250.55 in the ICB package.

Section 250.42(c)(5), Cash in lieu of donated foods for State Agencies on Aging. Currently, in § 250.42(c)(5), the State Agency on Aging must keep a

record of the agreement with FNS to receive cash in lieu of donated foods. We are proposing to remove this agreement requirement in this rule, as DHHS is now responsible for making cash disbursements to State Agencies on Aging. Hence, the recordkeeping burden of 5.60 hours currently listed in § 250.42(c)(5) would be removed.

Respondents: State, local, or Tribal Government; Program participants; Business or other for-profit; Nonprofit institutions; Federal government.

Total Annual Responses: Current: 1,272,952; Proposed: 1,317,518.

Estimated Total Annual Burden on Respondents: Current: 1,101,497; Proposed: 1,085,814.

The proposed changes in the reporting and recordkeeping requirements described above are included in the following table.

Section		Respondents	Responses per year	Total responses	Hours/ response	Total hours
Reporting:						
250.54	Current	300	0.25	75	0.33	24.75
	Proposed	1,765	1	1,765	1	1,765
250.58	Current	81	112	9,072	2	18,144
	Proposed	81	642	52,002	0.008	416
250.67	Current	54	1	54	2	108
	Proposed	0	0	0	0	0
Recordkeeping:						
250.54/250.55	Current	300			0.08	24
	Proposed	1,765			0.25	442
250.68	Current	70			0.08	5.60
	Proposed	0			0	0

The resulting changes in the reporting and recordkeeping requirements in OMB Number 0584–0293 are included in the following table.

	Respondents	Annual responses	Total hours
Part 250:			
Current	255,452	35,803	68,733
Proposed	258,258	80,369	53,049
Grand total:			
Current	367,182	1,272,952	1,101,497
Proposed	369,988	1,317,518	1,085,814

K. Government Paperwork Elimination Act Compliance

FNS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies to provide the public with the option of submitting information or transacting business electronically to the maximum extent possible. This commitment is exemplified by our transition to an electronic web-based system for the submittal of donated food orders, as described earlier in the preamble.

List of Subjects in 7 CFR Part 250

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR part 250 is proposed to be amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

2. In § 250.3:

a. Remove definitions of *Nonprofit summer camps for children*, *Nonresidential child or adult care institution*, *Nutrition program for the elderly*, *Offer-and-acceptance system*, *Program*, and *Students in home economics*.

b. Revise definitions of *Charitable institutions*, *Child nutrition program*, *Commodity school*, *End product*, *Food service management company*, *Processing*, *Processor*, *Recipient agencies*, *Recipients*, *Section 311*, *Service institutions*, and *State Agency on Aging*.

c. Add definitions, in the appropriate alphabetical order, of *Adult care institution*, *AoA*, *Bonus foods*, *CACFP*, *Child care institution*, *Commodity offer value*, *DHHS*, *Elderly nutrition project*, *Entitlement*, *Entitlement foods*, *National per-meal value*, *Nonprofit organization*, *Nonprofit school food service account*, *NSIP*, *NSLP*, *Reimbursable meals*, *SBP*, *7 CFR part 3016*, *7 CFR part 3019*, *SFSP*, *Single inventory management*, and *Summer camp*.

The revisions and additions read as follows:

§ 250.3 Definitions.

Adult care institution means a nonresidential adult day care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

AoA means the Administration on Aging, which is the DHHS agency that administers NSIP.

Bonus foods means Section 32, Section 416, and Section 709 donated foods, as defined in this section, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance.

CACFP means the Child and Adult Care Food Program, 7 CFR part 226.

Charitable institutions means public institutions or nonprofit organizations, as defined in this section, that provide a meal service on a regular basis to predominantly needy persons in the same place without marked changes. Charitable institutions include, but are not limited to, emergency shelters, soup kitchens, hospitals, retirement homes, elderly nutrition projects; schools, summer camps, service institutions, and child and adult care institutions that do not participate in a child nutrition program, or as a commodity school, as they are defined in this section; and adult correctional institutions that conduct rehabilitation programs for a majority of inmates.

Child care institution means a nonresidential child care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

Child nutrition program means NSLP, CACFP, SFSP, or SBP.

* * * * *

Commodity offer value means the minimum value of donated foods that the distributing agency must offer to a school food authority participating in NSLP each school year. The commodity offer value is equal to the national per-meal value of donated food assistance multiplied by the number of reimbursable meals served by the school food authority in the previous school year.

Commodity school means a school that operates a nonprofit food service, in accordance with 7 CFR part 210, but that receives additional donated food assistance rather than the cash assistance available to it under section 4 of the National School Lunch Act (42 U.S.C. 1753).

* * * * *

DHHS means the Department of Health and Human Services.

* * * * *

Elderly nutrition project means a recipient agency selected by the State or Area Agency on Aging to receive donated foods in NSIP, for use in serving meals to elderly persons.

End product means a food product that contains processed donated foods.

Entitlement means the value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation.

Entitlement foods means donated foods that USDA purchases and provides in accordance with levels of assistance mandated by program legislation.

* * * * *

Food service management company means a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR parts 210, 225, or 226, or, with respect to charitable institutions, in accordance with this part. However, a school food authority participating in NSLP that performs such functions is not considered a food service management company. Also, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in this section, is considered a processor in this part, and is subject to the requirements in subpart C of this part.

* * * * *

National per-meal value means the value of donated foods provided for each reimbursable lunch served in NSLP in the previous school year, and for each reimbursable lunch and supper served in CACFP in the previous school year, as established in section 6(c) of the National School Lunch Act.

* * * * *

Nonprofit organization means a private organization with tax-exempt status under the Internal Revenue Code. Nonprofit organizations operated exclusively for religious purposes are automatically tax-exempt under the Internal Revenue Code.

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted for the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

NSIP means the Nutrition Services Incentive Program.

NSLP means the National School Lunch Program, 7 CFR part 210.

* * * * *

Processing means a commercial enterprise's use of a commercial facility to:

(a) Convert donated foods into an end product;

(b) Repackage donated foods; or

(c) Use donated foods in the preparation of meals.

Processor means a commercial enterprise that processes donated foods at a commercial facility.

Recipient agencies means agencies or organizations that receive donated foods, in accordance with agreements signed with a distributing agency, or with another recipient agency.

Recipients means persons receiving donated foods, or meals containing donated foods, provided by recipient agencies.

* * * * *

Reimbursable meals means meals that meet the nutritional standards established in Federal regulations pertaining to NSLP, SFSP, and CACFP, and that are served to eligible recipients.

SBP means the School Breakfast Program, 7 CFR part 220.

* * * * *

Section 311 means section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a), which authorizes State Agencies on Aging under Title III of that Act, and any Title VI grantee (Indian Tribal Organization) under that Act, to receive all, or part, of their NSIP grant as donated foods.

* * * * *

Service institutions means recipient agencies that participate in SFSP.

7 CFR part 3016 means the Department's regulations establishing uniform administrative requirements for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments.

7 CFR part 3019 means the Department's regulations establishing uniform administrative requirements for Federal grants and cooperative agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations.

SFSP means the Summer Food Service Program, 7 CFR part 225.

* * * * *

Single inventory management means the commingling in storage of donated foods and foods from other sources, and the maintenance of a single inventory record of such commingled foods.

* * * * *

State Agency on Aging means:

(a) The State agency that has been designated by the Governor and approved by DHHS to administer the Nutrition Services Incentive Program; or

(b) The Indian Tribal Organization that has been approved by DHHS to administer the Nutrition Services Incentive Program.

* * * * *

Summer camp means a nonprofit or public camp for children aged 18 and under.

* * * * *

3. In § 250.12:

a. Revise the section heading to read, as set forth below.

b. Remove the last sentence in paragraph (a).

c. Remove paragraphs (d), (e), and (f).

The revision reads as follows:

§ 250.12 Agreements.

* * * * *

4. In § 250.19:

a. In the first sentence of the introductory text of paragraph (b)(1), after the word ''provisions'', add the words, '', as they apply to specific programs.''

b. Remove paragraph (b)(1)(i), and redesignate paragraphs (b)(1)(ii), (b)(1)(iii), (b)(1)(iv), and (b)(1)(v), as paragraphs (b)(1)(i), (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), respectively.

c. Revise newly redesignated paragraphs (b)(1)(i) and (b)(1)(iv).

d. Remove paragraph (d).

The revisions read as follows:

§ 250.19 Reviews.

* * * * *

(b) * * *

(1) * * *

(i) An on-site review of all charitable institutions, or the food service management companies under contract with them, at a minimum, whenever the distributing agency identifies actual or probable deficiencies in the use of donated foods by such institutions, or by their contractors, through audits, investigations, complaints, or any other information.

* * * * *

(iv) An on-site review of recipient agencies in NSLP, CACFP, and SFSP, to ensure compliance with requirements for the use of donated foods in contracts with food service management companies. Such a review must be conducted at the frequency established in 7 CFR parts 210, 225, or 226, as applicable, for the State administering agency, in the conduct of its reviews. The distributing agency may enter into an agreement with the appropriate State administering agency to include its review as part of the State administering agency's review.

* * * * *

5. In § 250.24, revise paragraphs (d)(8), (d)(9), and (d)(10), to read as follows:

§ 250.24 Distributing agency performance standards.

* * * * *

(d) * * *

(8) Providing recipient agencies with ordering options and commodity values, and considering the specific needs and capabilities of such agencies in ordering donated foods;

(9) Offering school food authorities participating in NSLP, or as commodity schools, at a minimum, the commodity offer value of donated food assistance, and determining an adjusted assistance level in consultation with school food authorities, as appropriate, in accordance with § 250.58; and

(10) Providing each school food authority participating in NSLP with the opportunity to order, or select, donated foods from the full list of available foods, and to distribute the selected donated foods to each school food authority, to the extent that distribution of such foods to, and within, the State would be cost-effective, in accordance with § 250.58.

* * * * *

6. Add the heading for new subpart F to read as follows:

Subpart F—Household Programs

7. Redesignate §§ 250.45, 250.46, 250.47, and 250.51, as §§ 250.63, 250.64, 250.65, and 250.66, respectively, and transfer them from subpart D to new subpart F.

8. Add the heading for new subpart G to read as follows:

Subpart G—Other Donated Food Outlets

9. Add new §§ 250.67 and 250.68 to new subpart G to read as follows:

§ 250.67 Charitable institutions.

(a) *Distribution to charitable institutions.* The Department provides donated foods to distributing agencies for distribution to charitable institutions, as defined in this part. A charitable institution must have a signed agreement with the distributing agency in order to receive donated foods, in accordance with § 250.12(b). However, the following organizations may not receive donated foods as charitable institutions:

(1) Schools, summer camps, service institutions, and child and adult care institutions that participate in child nutrition programs or as commodity schools; and

(2) Adult correctional institutions that do not conduct rehabilitation programs for a majority of inmates.

(b) *Types of charitable institutions.* Some types of charitable institutions that may receive donated foods, if they meet the requirements of this section, include:

(1) Hospitals or retirement homes;

(2) Emergency shelters, soup kitchens, or emergency kitchens;

(3) Elderly nutrition projects or adult day care centers;

(4) Schools, summer camps, service institutions, and child care institutions that do not participate in child nutrition programs; and

(5) Adult correctional institutions that conduct rehabilitation programs for a majority of inmates.

(c) *Determining service to predominantly needy persons.* To determine if a charitable institution serves predominantly needy persons, the distributing agency must use:

(1) Socioeconomic data of the area in which the organization is located, or of the clientele served by the organization;

(2) Data from other public or private social service agencies, or from State advisory boards, such as those established in accordance with 7 CFR 251.4(h)(4); or

(3) Other similar data.

(d) *Types and quantities of donated foods distributed.* A charitable institution may receive donated foods under section 4(a), section 32, section 416, or section 709, as available. The distributing agency must distribute donated foods to charitable institutions based on the quantities that each may effectively utilize without waste, and the total quantities available for distribution to such institutions.

(e) *Contracts with food service management companies.* A charitable institution may use donated foods in a contract with a food service management company. The contract must ensure that all donated foods received for use by the charitable institution in a fiscal year are used to benefit the charitable institution's food service. However, the charitable institution is not subject to the other requirements in subpart D of this part relating to the use of donated foods under such contracts.

§ 250.68 Nutrition Services Incentive Program (NSIP).

(a) *Distribution of donated foods in NSIP.* The Department provides donated foods in NSIP to State Agencies on Aging and their selected elderly nutrition projects, for use in providing meals to elderly persons. NSIP is administered at the Federal level by DHHS' Administration on Aging (AoA), which provides an NSIP grant each year to State Agencies on Aging. The State agencies may choose to receive all, or part, of the grant as donated foods, on behalf of its elderly nutrition projects. The Department is responsible for the purchase of the donated foods and their delivery to State Agencies on Aging. AoA is responsible for reimbursing the Department for the cost of donated food purchases and related administrative expenses.

(b) *Types and quantities of donated foods distributed.* The State Agency, and its elderly nutrition projects, may receive any types of donated foods

available in food distribution or child nutrition programs, to the extent that such foods may be distributed cost-effectively. The State Agency on Aging may receive donated foods with a value equal to its NSIP grant. The State Agency on Aging and elderly nutrition projects may also receive donated foods under section 32, section 416, and section 709, as available, and under section 14 (42 U.S.C. 1762(a)).

(c) *Role of distributing agency.* The Department delivers NSIP donated foods to distributing agencies, which distribute them to elderly nutrition projects selected by the State or Area Agency on Aging. The distributing agency may only distribute donated foods to elderly nutrition projects with which they have signed agreements. The agreements must contain provisions that describe the roles of each party in ensuring that the desired donated foods are ordered, stored, and distributed in an effective manner.

(d) *Donated food values used in crediting a State Agency on Aging's NSIP grant.* FNS uses the average price (cost per pound) for USDA purchases of a donated food made in a contract period in crediting a State Agency on Aging's NSIP grant.

(e) *Coordination between FNS and AoA.* FNS and AoA coordinate their respective roles in NSIP through the execution of annual agreements. The agreement ensures that FNS is properly reimbursed for donated food purchases and related expenses, and that advanced funds not used for donated food purchases are returned to AoA for disbursement to the appropriate State Agencies on Aging.

§§ 250.43, 250.44 [Redesignated]

10. Redesignate §§ 250.43 and 250.44 as §§ 250.69 and 250.70, respectively, and transfer them from subpart D to new subpart G.

11. Revise subparts D and E to read as follows:

Subpart D—Donated Foods in Contracts With Food Service Management Companies

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

Subpart D—Donated Foods in Contracts With Food Service Management Companies

§ 250.50 Food service management companies.

(a) *Categorizing a food service management company.* As defined in § 250.3, a food service management company is a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR parts 210, 225, or 226, or, with respect to charitable institutions, in accordance with this part. To the extent that such management includes the use of donated foods, the food service management company is subject to the applicable requirements in this subpart. However, a school food authority participating in NSLP that performs such functions is not considered a food service management company. Also, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in § 250.3, is considered a processor in this part, and is subject to the requirements in subpart C of this part, rather than the requirements of this subpart.

(b) *Activities relating to donated foods.* A food service management company may perform the following activities relating to donated foods, in accordance with its contract with the recipient agency:

(1) Preparing and serving meals;

(2) Ordering or selecting donated foods, in coordination with the recipient agency, and in accordance with § 250.58(c);

(3) Storage and inventory management of donated foods, in accordance with § 250.53;

(4) Payment of processing fees or costs on behalf of the recipient agency, in accordance with the requirements in § 250.52(e); and

(5) Submittal of refund applications to the processor, and remittance of refunds to the recipient agency, for donated foods contained in processed end products, in accordance with the requirements of § 250.30(k).

§ 250.51 Contracts and procurement.

(a) *Contract requirement.* Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received for use by the recipient agency for a period specified as either the school year or fiscal year are used to benefit the recipient agency's food service. Contracts between child nutrition program recipient agencies and food service management companies must also ensure that the other requirements in this subpart relating to donated foods, as well as other Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable, are met. Contracts between other recipient agencies—i.e., charitable institutions and recipient agencies utilizing TEFAP foods—and food service management companies are not subject to the other requirements in this subpart.

(b) *Types of contracts.* Recipient agencies may enter into a fixed-price or a cost-reimbursable contract with a food service management company, except that recipient agencies in CACFP are prohibited from entering into cost-reimbursable contracts, in accordance with 7 CFR part 226. Under a fixed-price contract, the recipient agency pays a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the food service management company charges the recipient agency for food service operating costs, and also charges fixed fees for management or services.

(c) *Requirements for procurement.* The recipient agency must meet Federal requirements relating to the procurement of a food service management company in 7 CFR parts 210, 220, 225, or 226, and with 7 CFR parts 3016 or 3019, as applicable. The recipient agency must ensure that required contract provisions relating to donated foods, as listed in § 250.54, are also included in the contract solicitation documents. Such provisions include the method used to determine the donated food values to be used in crediting, or the actual values assigned, in accordance with § 250.52. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the solicitation or contract.

(d) *Prohibition against contracts or agreements with processors.* A food service management company may not enter into a contract or agreement with a processor to process donated foods or end products for use in the recipient agency's food service.

§ 250.52 Crediting for, and use of, donated foods.

(a) *Crediting for donated foods.* In both fixed-price and cost-reimbursable contracts, the recipient agency must require the food service management company to credit it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods). The recipient agency may permit crediting through invoice reductions, refunds, discounts, or by another means of crediting. All forms of crediting must provide clear documentation of the value received from the donated foods—e.g., by separate line item entries on invoices. If provided for in a fixed-price contract, the recipient agency may permit a food service management company to pre-credit for donated foods. In pre-crediting, a deduction for the value of donated foods is included in the established fixed price per meal. However, the recipient agency must ensure that the food service management company provides an additional credit for any donated foods not accounted for in the fixed price per meal—e.g., for donated foods that are not made available until later in the year. In cost-reimbursable contracts, crediting may be performed by disclosure: i.e., the food service management company may indicate the value of donated foods credited for the period in which it bills the recipient agency for food costs.

(b) *Frequency of crediting.* The recipient agency must require crediting to be performed not less frequently than annually, and must ensure that the specified method of valuation of donated foods permits crediting to be achieved in the required time period. A school food authority must also ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).

(c) *Donated food values required in crediting.* The recipient agency must ensure that the food service management company uses the donated food values determined by the distributing agency, in accordance with § 250.58(g), or, if approved by the distributing agency, donated food values determined by an alternate means of the recipient agency's choosing. For example, the recipient agency may, with the approval of the distributing agency, specify that the value will be the average price per pound for a food, or for a group or category of foods (e.g., all frozen foods or cereal products), as listed in market journals over a specified period of time.

(d) *Method of determining values of donated foods required in solicitation and contract.* The method of determining the donated food values to be used in crediting must be included in the solicitation and contract: e.g., the value will be the average USDA purchase price for the period of the contract with the food vendor, or the average price per pound listed in market journals over a specified period of time. The method of valuation must result in the determination of actual values; any negotiation of donated food values is not permitted. Additionally, the method of valuation must ensure that crediting may be achieved in accordance with the time frame specifically established in the solicitation and contract (e.g., quarterly or annually).

(e) *Donated foods in processed end products.* In accordance with § 250.30, the processor must credit the recipient agency for donated foods contained in end products through a discount or refund sales system, or charge the recipient agency a fee-for-service to produce the end product. Hence, the food service management company is not required to credit recipient agencies for donated foods contained in processed end products. However, as indicated in § 250.50(b), the food service management company may, under its contract with the recipient agency, be responsible for the payment of processing costs, or the submittal of refund applications, and the remittance of refunds, for donated foods contained in processed end products. In such cases, the recipient agency must ensure that the food service management company:

(1) Bills it separately for processing costs, and does not include these costs in a fixed-price charge for the food service; and

(2) Submits refund applications to processors, in accordance with the requirements in § 250.30(k), and remits refunds to the recipient agency in an expeditious manner.

(f) *Use of donated foods in the recipient agency's meal service.* While the food service management company must credit the recipient agency for all donated foods received, it is not required to use those donated foods, or a commercial substitute of the same generic identity, in the recipient agency's meal service, unless the contract specifically stipulates that such foods must be used. However, the food service management company must ensure that:

(1) Donated ground beef and ground pork products, and all end products received from processors are used in the recipient agency's food service, for the benefit of eligible program recipients; and

(2) If menu plans include foods of the same generic identity as the donated foods received, then such donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and identical or superior in quality, are used in the recipient agency's food service.

(g) *Return of unused donated foods upon termination of the contract.* The food service management company must return all donated ground beef and ground pork products, and end products received from processors, to the recipient agency when the contract is terminated by either party, or is not extended. The food service management company must, at the discretion of the recipient agency, return other donated foods for which the recipient agency has not been credited, or pay the recipient agency the value of such donated foods.

§ 250.53 Storage and inventory management of donated foods.

(a) *General requirements.* The food service management company must meet the general requirements in § 250.14 for the storage and inventory management of donated foods.

(b) *Storage with commercially purchased foods.* The food service management company may store and inventory donated foods together with commercially purchased foods, if provided for in its contract with the recipient agency. However, the food service management company must ensure that donated ground beef and ground pork products, and all end products received from processors, are stored in a manner that assures they will be used in the recipient agency's food service. Additionally, under cost-reimbursable contracts, the food service management company must ensure that its system of inventory management does not result in the recipient agency being charged for donated foods.

§ 250.54 Contract provisions.

(a) *Required contract provisions in fixed-price contracts.* The following provisions relating to the use of donated foods must be included in a recipient agency's fixed-price contract with a food service management company. Such provisions must also be included in the contract solicitation documents. The required provisions are:

(1) A statement that the food service management company will credit the recipient agency for all donated foods received for use in the recipient agency's food service for the school year or fiscal year, as applicable;

(2) The method and frequency by which crediting will occur—e.g., through invoice reductions, refunds, discounts, or other means of crediting—and the means of documentation to be utilized to verify that the value of all donated foods has been credited;

(3) The method of determining the donated food values to be used in crediting, in accordance with § 250.52(c), or the actual donated food values;

(4) If applicable, a statement that the food service management company will ensure that the recipient agency receives the full benefit of all refunds and discounts received from processors and distributors for processed end products, and will not charge the recipient agency for processing costs paid on its behalf as part of a fixed-price charge for the food service;

(5) Any activities relating to donated foods that the food service management company will be responsible for, such as the payment of processing fees, or the remittance of refunds to the recipient agency for donated foods contained in processed end products;

(6) A statement that donated ground beef and ground pork products, and all end products received from processors, will be used in the food service, and will not be substituted with commercial products;

(7) A statement that, if menu plans include foods of the same generic identity as the donated foods received, then those donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and identical or superior in quality to the donated foods, will be used;

(8) An assurance that the food service management company will use donated foods in accordance with the requirements in this part;

(9) An assurance that the food service management company will not enter into a contract or agreement with a processor to process donated foods or end products for use in the recipient agency's food service;

(10) A statement that the distributing agency, subdistributing agency, or recipient agency, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform on-site reviews of the food service management company's food service operation to ensure that all activities relating to donated foods are performed in accordance with the requirements in this part;

(11) A statement that the food service management company will maintain records to document that crediting for all donated foods received for the school or fiscal year has been achieved, and will meet other recordkeeping requirements in this part; and

(12) A statement that extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

(b) *Required contract provisions in cost-reimbursable contracts.* A cost-reimbursable contract must include the same provisions as those required for a fixed-price contract in paragraph (a) of this section. Such provisions must also be included in the contract solicitation documents. However, in a cost-reimbursable contract, the food service management company must also assure that its system of inventory management will not result in the recipient agency being charged for donated foods.

§ 250.55 Recordkeeping and reviews.

(a) *Record requirements for the recipient agency.* The recipient agency must maintain the following records relating to the use of donated foods in a contract with a food service management company:

(1) The donated foods and end products received and provided to the food service management company for use in the food service;

(2) Crediting for donated foods by the food service management company, including documentation verifying that the full donated food value has been credited; and

(3) The actual donated food values used in crediting.

(b) *Record requirements for the food service management company.* The food service management company must maintain the following records relating to the use of donated foods in its contract with the recipient agency:

(1) The donated foods and end products received from, or on behalf of, the recipient agency, for use in its food service; and

(2) Documentation that all donated foods received for use in the recipient agency's food service have been credited.

(c) *Review requirements for the recipient agency.* The recipient agency must include a review of food service management company activities relating to the use of donated foods as part its monitoring of the food service operation required in 7 CFR parts 210, 220, 225, or 226, as applicable. The recipient agency must also conduct a reconciliation of the food service management company's crediting for donated foods at least annually to ensure that it has received credit for all donated foods received in the school year or fiscal year.

(d) *Review requirements for the distributing agency.* The distributing agency must conduct an on-site review of the recipient agency's use of donated foods in its food service in contracts with food service management companies, in accordance with the management reviews required in § 250.19(b)(1). In accordance with § 250.19(b)(1)(iv), the distributing agency may enter into an agreement with the State administering agency (if a different agency) for NSLP, SFSP, or CACFP, to include its review as part of the administrative review required of the State administering agency in 7 CFR parts 210, 225, or 226, as applicable.

(e) *Departmental reviews of food service management companies.* The Department may conduct reviews of food service management company operations with respect to the use and management of donated foods to ensure compliance with the requirements of this part.

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

§ 250.56 Provision of donated foods in NSLP.

(a) *Distribution of donated foods in NSLP.* The Department provides donated foods in NSLP to distributing agencies. Distributing agencies provide donated foods to school food authorities that participate in NSLP for use in serving nutritious lunches or other meals to schoolchildren in their nonprofit school food service. The distributing agency must confirm the participation of school food authorities in NSLP with the State education agency (if different from the distributing agency). In addition to requirements in this part relating to donated foods, distributing agencies and school food authorities in NSLP must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Types of donated foods distributed.* The Department purchases a wide variety of foods for distribution in NSLP each school year. A list of available foods is posted on the FNS web site, for access by distributing agencies and school food authorities. In addition to section 6 foods (42 U.S.C. 1755) as described in paragraph (c) of this section, the distributing agency may also receive section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under section 32, section 416, or section 709, as available.

(c) *National per-meal value of donated foods.* For each school year, the distributing agency receives, at a minimum, the national per-meal value

of donated foods, as established by section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), multiplied by the number of reimbursable lunches served in the State in the previous school year. The donated foods provided in this manner are referred to as section 6 foods, or entitlement foods. The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions, in accordance with the Richard B. Russell National School Lunch Act. The adjusted value is published in a notice in the Federal Register in July of each year. Reimbursable lunches are those that meet the nutritional standards established in 7 CFR part 210, and that are reported to FNS, in accordance with the requirements in that part.

(d) *Donated food values used to credit distributing agency entitlement levels.* FNS uses the average price (cost per pound) for USDA purchases of donated food made in a contract period to credit distributing agency entitlement levels.

(e) *Cash in lieu of donated foods.* States that phased out their food distribution facilities prior to July 1, 1974, are permitted to choose to receive cash in lieu of the donated foods to which they would be entitled in NSLP, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1765) and with 7 CFR part 240.

§ 250.57 Commodity schools.

(a) *Categorization of commodity schools.* Commodity schools are schools that operate a nonprofit school food service in accordance with 7 CFR part 210, but receive additional donated food assistance rather than the general cash payment available to them under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). In addition to requirements in this part relating to donated foods, commodity schools must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Value of donated foods for commodity schools.* For participating commodity schools, the distributing agency receives donated foods valued at the sum of the national per-meal value and the value of the general cash payment available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by commodity schools in the previous school year. From the total value of donated food assistance for which it is eligible, a commodity school may elect to receive up to 5 cents per meal in cash to cover processing and handling expenses related to the use of donated foods. In addition to section 6 and section 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762(a)), the distributing agency may also receive donated foods under section 32, section 416, or section 709, as available, for commodity schools.

§ 250.58 Ordering donated foods and their provision to school food authorities.

(a) *Ordering donated foods.* The distributing agency orders donated foods through a web-based system called the Electronic Commodity Ordering System (ECOS). Through ECOS, the distributing agency places orders directly into a centralized computer system.

(b) *Value of donated foods offered to school food authorities.* In accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), the distributing agency must offer the school food authority, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year. This is referred to as the commodity offer value. For a commodity school, the distributing agency must offer the sum of the national per-meal value of donated foods and the value of the general cash payment available to it under section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by the school in the previous school year. The school food authority may also receive bonus foods, as available, in addition to the section 6 foods.

(c) *Variety of donated foods offered to school food authorities.* Before submitting orders for donated foods to FNS, the distributing agency must provide the school food authority with the opportunity to order, or select, donated foods for its school food service from the full list of available foods.

(d) *Distribution of donated foods to school food authorities.* The distributing agency must ensure distribution of all donated foods selected by the school food authority that may be cost-effectively distributed to it. The distributing agency must explore all available storage and distribution options to determine if distribution of the desired foods to the school food authority would be cost-effective, and may not prohibit the use of split shipments. If distribution of such foods would not be cost-effective, the distributing agency must provide the school food authority with an opportunity to select other available donated foods that may be distributed to it cost-effectively.

(e) *Receipt of less donated foods than the commodity offer value.* In certain cases, the school food authority may receive less donated foods than the commodity offer value in a school year. This ''adjusted'' value of donated foods is referred to as the adjusted assistance level. For example, the school food authority may receive an adjusted assistance level if:

(1) The distributing agency, in consultation with the school food authority, determines that the school food authority cannot efficiently utilize the commodity offer value of donated foods; or

(2) The school food authority does not order, or select, donated foods equal to the commodity offer value that can be cost-effectively distributed to it.

(f) *Receipt of more donated foods than the commodity offer value.* The school food authority may receive more donated foods than the commodity offer value if the distributing agency, in consultation with the school food authority, determines that the school food authority may efficiently utilize more donated foods than the commodity offer value, and more donated foods are available for distribution. This may occur, for example, if other school food authorities receive less than the commodity offer value of donated foods for one of the reasons described in paragraph (e) of this section.

(g) *Donated food values required in crediting school food authorities.* The distributing agency must use one of the following values for donated foods, in crediting the school food authority for its commodity offer value or adjusted assistance level:

(1) The USDA purchase price (cost per lb.), which may be an average price for purchases made for the duration of the contract with the food vendor;

(2) Estimated cost-per-pound data provided by the Department, as included in commodity survey memoranda; or

(3) The USDA commodity file cost as of a date specified by the distributing agency.

§ 250.59 Storage and inventory management of donated foods.

(a) *General requirements.* Distributing agencies, subdistributing agencies, and school food authorities must meet the requirements for storage and inventory of donated foods in § 250.14, in addition to the requirements in this section.

(b) *Storage at distributing agency level.* The distributing or subdistributing

agency, or storage facilities with which they have contracts, must store donated foods separately from commercially purchased foods or other foods to ensure distribution of the donated foods that have been purchased for school food authorities.

(c) *Storage by school food authorities.* The school food authority may store and inventory donated foods with commercially purchased foods and other foods, under a single inventory management system, as defined in this part, unless the distributing agency requires separate storage and inventory of donated foods.

(d) *Storage by storage facilities under contract with school food authorities.* A storage facility under contract with a school food authority may store and inventory donated foods together with commercially purchased foods it is storing for the school food authority, unless its contract with the school food authority prohibits this. However, the storage facility may not commingle foods it is storing for a school food authority with foods it is storing for a commercial enterprise or other entity.

§ 250.60 Use of donated foods in the school food service.

(a) *Use of donated foods in school lunches and other meals or activities.* The school food authority should use donated foods, as far as practical, in the lunches served to schoolchildren, for which they receive an established per-meal value of donated food assistance each school year. However, the school food authority may also use donated foods in other nonprofit school food service activities. Revenues received from such activities must accrue to the school food authority's nonprofit school food service account. Some examples of other activities in which donated foods may be used include:

(1) School breakfasts or other meals served in child nutrition programs;

(2) A la carte foods sold to children;

(3) Meals served to adults directly involved in the operation and administration of the nonprofit food service; and

(4) Training in nutrition, health, food service, or general home economics instruction for students.

(b) *Use of donated foods outside of the nonprofit school food service.* The school food authority should not use donated foods in meals or food service activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, their use in such meals or activities may not always be avoided, *e.g.*, for a school food authority utilizing single inventory management. In all cases, the school food authority must ensure reimbursement to the nonprofit food service account for donated foods used in such activities, in addition to reimbursement for other resources utilized from that account. Since school food authorities utilizing single inventory management cannot reimburse the nonprofit food service account based on actual usage of donated foods, they must establish an alternate method to ensure that donated foods do not subsidize food service activities that do not benefit schoolchildren—*e.g.*, by including the current per-meal value of donated food reimbursement in the price charged for the food service activities.

(c) *Use of donated foods in a contract with a food service management company.* A school food authority may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 210 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts. The school food authority must also ensure that a food service management company providing catered meals, or other food service activities that do not benefit primarily schoolchildren, ensure reimbursement to the nonprofit school food service account for donated foods used in such activities, in accordance with paragraph (b) of this section.

(d) *Use of donated foods in providing a meal service to other school food authorities.* A school food authority may use donated foods to provide a meal service to other school food authorities, under an agreement between the parties. A school food authority providing such a service may commingle its own donated foods and the donated foods of other school food authorities that are parties to the agreement.

§ 250.61 Child and Adult Care Food Program (CACFP).

(a) *Distribution of donated foods in CACFP.* The Department provides donated foods in CACFP to distributing agencies, which provide them to child and adult care institutions participating in CACFP for use in serving nutritious lunches and suppers to eligible recipients. Distributing agencies and child and adult care institutions must also adhere to Federal regulations in 7 CFR part 226, as applicable.

(b) *Types and quantities of donated foods distributed.* For each school year, the distributing agency receives, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches and suppers served in the State in the previous school year, as established in section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistics' Producer Price Index for Foods Used in Schools and Institutions. The adjusted per-meal value is published in a notice in the **Federal Register** in July of each year. Reimbursable lunches and suppers are those meeting the nutritional standards established in 7 CFR part 226. The number of reimbursable lunches and suppers may be adjusted during, or at the end of the school year, in accordance with 7 CFR part 226. In addition to section 6 entitlement foods (42 U.S.C. 1755(c)), the distributing agency may also receive section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under section 32, section 416, or section 709, as available, for distribution to child and adult care institutions participating in CACFP.

(c) *Cash in lieu of donated foods.* In accordance with the Richard B. Russell National School Lunch Act, and with 7 CFR part 226, the State administering agency must determine whether child and adult care institutions participating in CACFP wish to receive donated foods or cash in lieu of donated foods, and ensure that they receive the preferred form of assistance. The State agency must inform the distributing agency (if a different agency) which institutions wish to receive donated foods and must ensure that such foods are provided to them. However, if the State agency, in consultation with the distributing agency, determines that distribution of such foods would not be cost-effective, it may, with the concurrence of FNS, provide cash payments to the applicable institutions instead.

(d) *Use of donated foods in a contract with a food service management company.* A child or adult care institution may use donated foods in a contract with a food service management company to conduct its food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 226 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

(e) *Applicability of other requirements in this subpart to CACFP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to CACFP. However, in accordance with 7 CFR part 226, a child or adult care institution that

uses donated foods to prepare and provide meals to other such institutions is considered a food service management company.

§ 250.62 Summer Food Service Program (SFSP).

(a) *Distribution of donated foods in SFSP.* The Department provides donated foods in SFSP to distributing agencies, which provide them to eligible service institutions participating in SFSP for use in serving nutritious meals to needy children primarily in the summer months, in their nonprofit food service programs. Distributing agencies and service institutions in SFSP must also adhere to Federal regulations in 7 CFR part 225, as applicable.

(b) *Types and quantities of donated foods distributed.* The distributing agency receives donated foods available under section 6 and section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762), and may also receive donated foods under section 32, section 416, or section 709, as available, for distribution to eligible service institutions participating in SFSP. Section 6 donated foods are provided to distributing agencies in accordance with the number of meals served in the State in the previous school year that are eligible for donated food support, in accordance with 7 CFR part 225.

(c) *Distribution of donated foods to service institutions in SFSP.* The distributing agency provides donated food assistance to eligible service institutions participating in SFSP based on the number of meals served that are eligible for donated food support, in accordance with 7 CFR part 225.

(d) *Use of donated foods in a contract with a food service management company.* A service institution may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 225 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

(e) *Applicability of other requirements in this subpart to SFSP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to SFSP.

Dated: May 25, 2006.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 06–5143 Filed 6–7–06; 8:45 am]

BILLING CODE 3410–30–P

Federal Register

Thursday,
June 8, 2006

Part III

The President

Proclamation 8028—Caribbean-American Heritage Month, 2006

Federal Register
Vol. 71, No. 110
Thursday, June 8, 2006

Presidential Documents

Title 3—

The President

Proclamation 8028 of June 5, 2006

Caribbean-American Heritage Month, 2006

By the President of the United States of America

A Proclamation

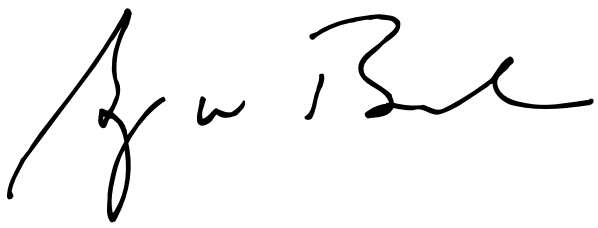
During Caribbean-American Heritage Month, we celebrate the great contributions of Caribbean Americans to the fabric of our Nation, and we pay tribute to the common culture and bonds of friendship that unite the United States and the Caribbean countries.

Our Nation has thrived as a country of immigrants, and we are more vibrant and hopeful because of the talent, faith, and values of Caribbean Americans. For centuries, Caribbean Americans have enriched our society and added to the strength of America. They have been leaders in government, sports, entertainment, the arts, and many other fields.

During the month of June, we also honor the friendship between the United States and the Caribbean countries. We are united by our common values and shared history, and I join all Americans in celebrating the rich Caribbean heritage and the many ways in which Caribbean Americans have helped shape this Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 2006 as Caribbean-American Heritage Month. I encourage all Americans to learn more about the history of Caribbean Americans and their contributions to our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirtieth.



[FR Doc. 06–5278
Filed 6–7–06; 9:20 am]
Billing code 3195–01–P

Reader Aids

Federal Register

Vol. 71, No. 110

Thursday, June 8, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives. gov/federal__register/**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

31069–31914 1
31915–32264 2
32265–32414 5
32415–32800 6
32801–33146 7
33147–33374 8

3 CFR

Proclamations:
8026 32799
8027 32801
8028 33373

Executive Orders:
13222 (See Memorandum of May 12, 2006) 31909

Administrative Orders:
Memorandums:
Memorandum of May 12, 2006 31909

6 CFR

25 33147

7 CFR

205 32803
301 33168
319 33172
979 33178
1410 31915
1421 32415
1427 32415
1980 33181
4279 33181

Proposed Rules:
250 33344
3411 32479

9 CFR

93 31069
94 31069

Proposed Rules:
160 31109
161 31109
162 31109

10 CFR

170 33190
171 33190

11 CFR

109 33190

12 CFR

229 32265

Proposed Rules:
1732 31121

14 CFR

39 ..... 31070, 31918, 32266, 32268, 32427, 32434, 32807, 32811, 32815, 32818
71 ..... 31919, 31920, 32270, 32271, 32822, 32823, 32824, 32825, 32826
121 31921

Proposed Rules:
39 ..... 31978, 31980, 32484, 32487, 32489, 32491, 32492, 32873, 33260, 33262, 33264, 33267, 33270
71 ..... 31983, 32876
91 32877
121 32877
125 32877
135 32877

15 CFR

4 31073
736 ..... 32272, 33211
744 ..... 32272, 33211
902 33211

16 CFR

Proposed Rules:
437 31124
Ch. II 32882

18 CFR

Proposed Rules:
35 ..... 32636, 33102
37 32636
366 31125
367 31125
368 31125
369 31125
375 31125

19 CFR

101 33235
141 31921
142 31921

Proposed Rules:
12 31125

20 CFR

Proposed Rules:
401 32494
402 32494

21 CFR

50 32827
73 31927
520 ..... 33236, 33237
522 32436
558 31073
874 32832

22 CFR

62 33237

24 CFR

115 33138
203 33138
320 32388

Proposed Rules:
81 33144
203 32392
291 32392

26 CFR

1 ..... 31074, 31268, 32437, 33239
602 31268

Proposed Rules:
1 ..... 31128, 31985, 32495, 33273

27 CFR

9.....33239

29 CFR

458.....31929
4000.....31077
4006.....31077
4007.....31077

30 CFR

925.....33243
944.....33249

Proposed Rules:

924.....33273
948.....31996

32 CFR

199.....31942, 31943
216.....31082

33 CFR

100.....32836
165 .....31085, 31088, 31945, 32838, 32839

Proposed Rules:

117.....32883
165 .....31999, 32002, 32004

34 CFR

304.....32396

36 CFR

1151.....33254

37 CFR

201.....31089
202.....31089
212.....31089

Proposed Rules:

1.....32285
41.....32285

40 CFR

51.....31092
52 .....31093, 31097, 32274, 32448
60.....31100
61.....32276
69.....32450
80.....31947
82.....32840
93.....31092
180 .....31102, 32841, 32846, 32849
372.....32464

Proposed Rules:

52.....31129, 32291
60.....32885
70.....32006
71.....32006
80.....32015
122.....32887
180.....32895, 32899

47 CFR

73.....32853, 32854

Proposed Rules:

64.....31131
73.....32909

48 CFR

1532.....32282
1552.....32282

49 CFR

171.....32244
172.....32244
173.....32244
175.....32244
571.....32855
1544.....31964
1546.....31964
1548.....31964, 33254

Proposed Rules:

173.....32909
604.....32496
655.....32298

50 CFR

36.....33255
223.....31965
648.....33211
660.....31104
679.....31105
680.....32862

Proposed Rules:

17 .....31137, 32496, 32746
665.....32911
679.....33040

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT JUNE 8, 2006

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Organic and nonorganic product use (livestock) Harvey v. Johanns; revisions; published 6-7-06

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Citrus canker; certified citrus nursery stock compensation; published 6-8-06

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Bylaws:

Vice-chairs of subject matter committees; election procedures; published 6-8-06

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Endangered and threatened species:

Elkhorn coral and staghorn coral; published 5-9-06

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Animal drugs, feeds, and related products:

Oxibendazole paste; published 6-8-06

Oxibendazole suspension; published 6-8-06

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Hawaiian picture-wing flies; published 5-9-06

National Wildlife Refuge System:

Refuge-specific public use regulations—

Kodiak National Wildlife Refuge, AK; conservation easement; published 6-8-06

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Missouri; published 6-8-06

Utah; published 6-8-06

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Official seals:

NARA seals and logos and their use; published 5-9-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 5-4-06

Area navigation routes; published 3-27-06

Correction; published 4-13-06

Class D airspace; published 4-17-06

Class D airspace; Class E airspace; published 4-11-06

Class E airspace; published 1-26-06

Correction; published 4-24-06

Colored Federal airways; published 3-1-06

IFR altitudes; published 5-12-06

Offshore airspace areas; published 3-7-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

National Organic Program:

Livestock; pasture access; comments due by 6-12-06; published 4-13-06 [FR 06-03541]

Onions grown in Texas; comments due by 6-15-06; published 5-30-06 [FR E6-08208]

AGRICULTURE DEPARTMENT

Commodity Credit Corporation

Export programs:

Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:

National School Lunch Program and School Breakfast Program; food safety inspections requirement; comments due by 6-15-06; published 6-15-05 [FR 05-11805]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Makhnati Island area; subsistence management jurisdiction; comments due by 6-15-06; published 5-1-06 [FR 06-04012]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Freedom of information and public information:

Meat or poultry product recalls; retail consignees; lists availability; comments due by 6-11-06; published 5-10-06 [FR 06-04394]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Grain inspection:

Rice; fees increase; comments due by 6-12-06; published 4-11-06 [FR 06-03507]

AGRICULTURE DEPARTMENT

Natural Resources Conservation Service

Conservation operations:

Appeals procedures; comments due by 6-15-06; published 5-16-06 [FR 06-04572]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

West Coast States and Western Pacific fisheries—

Pacific Coast groundfish; comments due by 6-16-06; published 6-1-06 [FR 06-04987]

DEFENSE DEPARTMENT

Defense Acquisition Regulations System

Acquisition regulations:

Commercial information technology; Buy American Act exemption; comments due by 6-12-06; published 4-12-06 [FR E6-05281]

Component and domestic manufacture definitions; comments due by 6-12-06; published 4-12-06 [FR E6-05282]

ENERGY DEPARTMENT

Advanced nuclear power facilities; licensing or litigation delays; standby support; comments due by 6-14-06; published 5-15-06 [FR 06-04398]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Commercial and industrial equipment, energy efficiency program—

Commercial heating, air conditioning, and water heating equipment; efficiency certification, compliance, and enforcement requirements; comments due by 6-12-06; published 4-28-06 [FR 06-03319]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Public Utility Holding Company Act of 2005; implementation:

Financial accounting, reporting, and records retention requirements; comments due by 6-15-06; published 5-16-06 [FR 06-04043]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:

State operating permits programs—-

Missouri; comments due by 6-12-06; published 5-12-06 [FR 06-04432]

Missouri; comments due by 6-12-06; published 5-12-06 [FR 06-04433]

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

Arizona; comments due by 6-15-06; published 5-16-06 [FR 06-04515]

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

California; comments due by 6-15-06; published 5-16-06 [FR E6-07411]

West Virginia; comments due by 6-12-06; published 5-11-06 [FR E6-07216]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal**

Register but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

S. 1736/P.L. 109–229
To provide for the participation of employees in the judicial branch in the Federal leave transfer program for disasters and emergencies. (May 31, 2006; 120 Stat. 390)
Last List May 31, 2006

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.