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

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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, July 17, 2007
9:00 a.m.–Noon

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

Federal Register

Vol. 72, No. 122

Tuesday, June 26, 2007

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Leeward Biotechnology, Inc., 35029

Agriculture Department
See Agricultural Research Service
See Forest Service
See Rural Utilities Service

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
East Hampton, NY, 35013–35015
NOTICES
Meetings:
Great Lakes Pilotage Advisory Committee, 35060–35061

Commerce Department
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Institute of Standards and Technology
See Technology Administration

Defense Department
RULES
Grants and agreements:
Nonprocurement debarment and suspension; OMB guidance, implementation, 34983–34999
NOTICES
Meetings:
Defense Science Board, 35036
Reports and guidance documents; availability, etc.:
National Information Assurance Program; fee adjustment, 35036–35042

Economic Development Administration
NOTICES
Adjustment assistance; applications, determinations, etc.:
Compulogic Design Co. et al, 35032–35033

Employment and Training Administration
NOTICES
Grants and cooperative agreement awards:
Rural Industrialization Loan and Grant Program; compliance certification requests, 35072

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Fusion Energy Sciences Advisory Committee, 35042–35043
National Petroleum Council, 35043

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho and Washington, 35015–35018
Iowa, 35018–35021
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Idaho and Washington, 35022–35023
Iowa, 35022

Executive Office of the President
See Management and Budget Office

Export-Import Bank
NOTICES
Economic impact policy; finance applications:
Spain; steel processing mill, 35048

Federal Aviation Administration
RULES
Existing regulations review, 34999–35006
Standard instrument approach procedures, 35006–35008

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35071–35072

Federal Communications Commission
NOTICES
Meetings; Sunshine Act, 35048

Federal Energy Regulatory Commission
NOTICES
Complaints filed:
Midwest ISO Transmission Owners, 35046
Environmental statements; availability, etc.:
Gulfstream Natural Gas System, LLC, 35046–35047
Ketchikan Public Utilities, 35047
Applications, hearings, determinations, etc.:
ANR Storage Co., 35043–35044
Cedar Rapids Transmission Co., 35044
Grays Harbor Energy, LLC, 35045
GSG, LLC, 35045
RPL Holdings, Inc., 35045–35046

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Travis and Hays Counties, TX, 35083

Federal Housing Finance Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35048–35049

Federal Trade Commission
NOTICES
Prohibited trade practices:
South Carolina State Board of Dentistry, 35049–35052

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Critical habitat designations—
Marbled murrelet, 35025–35028

Forest Service
NOTICES
Environmental statements; notice of intent:
Chequamegon-Nicolet National Forest, WI, 35029–35030
Meetings:
Resource Advisory Committees—
Southwest Mississippi, 35031

Health and Human Services Department
See National Institutes of Health
NOTICES
Privacy Act; systems of records, 35052–35055

Homeland Security Department
See Coast Guard
PROPOSED RULES
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel with Western Hemisphere; documents required for persons departing from or arriving in United States at sea and land ports-of-entry, 35088–35116

Housing and Urban Development Department
NOTICES
Mortgage and loan insurance programs:
Credit Watch Termination Initiative; mortgagees whose Origination Approval Agreements have been terminated; list, 35061–35062

Industry and Security Bureau
NOTICES
Meetings:
Materials Technical Advisory Committee, 35033

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Stainless steel bar from—
India, 35033–35034

International Trade Commission
NOTICES
Antidumping:
Stainless steel bar from—
Various countries, 35066–35068
Privacy Act; systems of records, 35068–35071

Justice Department
See Federal Bureau of Investigation

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Alaska Native claims selection:
Port Graham Corp., 35062
Meetings:
Resource Advisory Councils—
Front Range, 35062–35063
Public land orders:
Wyoming, 35063
Realty actions; sales, leases, etc.:
California, 35063–35064
Nevada, 35064–35065

Management and Budget Office
NOTICES
Audits of States, local governments, and non-profit organizations (Circular A-133), 35080–35081

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35072–35073

National Institute of Standards and Technology
NOTICES
Meetings:
National Conference on Weights and Measures, 35034–35035

National Institutes of Health
NOTICES
Inventions, Government-owned; availability for licensing, 35055–35057
Meetings:
National Heart, Lung, and Blood Institute, 35057–35058
National Institute of Child Health and Human Development, 35059
National Institute of General Medical Sciences, 35058
National Institute on Alcohol Abuse and Alcoholism, 35058–35059
Scientific Review Center, 35059–35060

National Park Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35065–35066

National Science Foundation
NOTICES
Senior Executive Service Performance Review Board; membership, 35073

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 35078–35079
Regulatory guides; issuance, availability, and withdrawal, 35079–35080
Applications, hearings, determinations, etc.:
General Electric Co., 35073–35078

Office of Management and Budget
See Management and Budget Office

Postal Regulatory Commission
NOTICES
Commission tour:
Irwindale, CA, 35081

Rural Utilities Service
NOTICES
Environmental statements; availability, etc.:
East Kentucky Power Cooperative, 35031–35032

Securities and Exchange Commission
PROPOSED RULES
Securities:
Primary securities offerings on Forms S-3 and F3; eligibility requirements, 35118–35136

Small Business Administration
NOTICES
Meetings:
Regional Fairness Boards—
Region II; hearing, 35081

State Department
PROPOSED RULES
Acquisition regulations:
Information technology systems; security issues, 35023–35025
Intelligence Reform and Terrorism Prevention Act of 2004; implementation:
Travel with Western Hemisphere; documents required for persons departing from or arriving in United States at sea and land ports-of-entry, 35088–35116
NOTICES
Culturally significant objects imported for exhibition:
Impressed by Light: British Photographs from Paper Negatives, 1840-1860, 35081–35082
Maps: Finding Our Way in the World, 35082

Surface Transportation Board
NOTICES
Railroad services abandonment:
CSX Transportation, Inc., 35083–35084

Technology Administration
NOTICES
National Medal of Technology Program; nominations, 35035–35036

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 35082
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 35082–35083
Applications, hearings, determinations, etc.:
Inter Island Air, 35082

Treasury Department
RULES
Currency and foreign transactions; financial reporting and recordkeeping requirements:
Bank Secrecy Act; implementation—
Casinos; reportable currency transactions; exemptions, 35008–35013
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 35084–35085

Separate Parts In This Issue

Part II
Homeland Security Department; State Department, 35088–35116

Part III
Securities and Exchange Commission, 35118–35136

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.

2 CFR
1125 34983

8 CFR
Proposed Rules:
212 35088
235 35088

14 CFR
Ch. I 34999
97 35006
Ch. III 34999

17 CFR
Proposed Rules:
239 35118

22 CFR
Proposed Rules:
41 35088
53 35088

31 CFR
103 35008

32 CFR
21 34983
22 34983
25 34983
32 34983
33 34983
34 34983
37 34983

33 CFR
165 35013

40 CFR
52 (2 documents) 35015, 35018
Proposed Rules:
52 (2 documents) 35022

48 CFR
Proposed Rules:
639 35023
652 35023

50 CFR
Proposed Rules:
17 35025

Rules and Regulations

Federal Register
Vol. 72, No. 122
Tuesday, June 26, 2007

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

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DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0137]

RIN 0790–AH97

2 CFR Part 1125

32 CFR Parts 21, 22, 25, 32, 33, 34 and 37

Nonprocurement Debarment and Suspension

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising the DoD Grant and Agreement Regulations (DoDGARs) to adopt and implement Office of Management and Budget (OMB) guidance on nonprocurement suspension and debarment and to make needed technical corrections. DoD is adopting and implementing the OMB guidance in a new part in title 2 of the CFR, the Governmentwide title recently established for OMB guidance and agencies' implementing regulations on grants and agreements. The Department also is removing the common rule on nonprocurement suspension and debarment that is in 32 CFR, Chapter I, Subchapter C, since the common rule is superseded by the new part implementing the OMB guidance. Adopting and implementing the OMB guidance and removing the common rule completes the DoD actions that the OMB guidance specifies. This regulatory action also is the first step toward relocating all of the DoDGARs to 2 CFR.

DATES: This final rule is effective on August 27, 2007 without further action. Submit comments by July 26, 2007 on any unintended changes this action makes in DoD policies and procedures for nonprocurement debarment and suspension. All comments on unintended changes will be considered and, if warranted, DoD will revise the rule.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 588–1377 or *mark.herbst@osd.mil.*

SUPPLEMENTARY INFORMATION:

Governmentwide Context for This DoD Regulatory Action

This DoD regulatory action is part of a Governmentwide initiative to streamline and simplify the Federal Government's policy framework for grants and agreements. As part of this initiative, OMB established a new title 2 of the CFR for grants and agreements [69 FR 26276, May 11, 2004], a step recommended by an interagency work group helping to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107). The primary purpose of the title is to co-locate OMB circulars and other guidance on grants and agreements with Federal agencies' regulations implementing those OMB issuances.

The **Federal Register** notice establishing 2 CFR also stated that OMB would issue in that new title Governmentwide guidance on nonprocurement debarment and suspension in a form that agencies could adopt by regulation. That approach enables a Federal agency to implement the guidance without having to repeat the full text, as it must do with a common rule. Instead, the agency's brief adopting regulation just needs to state any agency-specific additions and clarifications to the guidance. The approach is similar to the one that OMB and the agencies have used to implement the Governmentwide cost principles in OMB Circulars A–21, A–87, and A–122, and the audit guidance in OMB Circular A–133.

This new approach has two major advantages. First, it will reduce the volume of Federal regulations. We estimate that today's regulatory action reduces the volume of the DoDGARs by about eight percent. Second, the brief adopting part makes it easy for the affected public to identify an agency's additions and clarifications to the Governmentwide policies and procedures, something that was difficult with the common rule.

DoD Implementation of the OMB Guidance on Nonprocurement Suspension and Debarment

DoD is taking three steps in this regulatory action to implement the OMB guidance. First, DoD is establishing Chapter XI, ''Department of Defense,'' in Subtitle B of 2 CFR, where all of the DoDGARs ultimately will be located. Second, it is adding a new part 1125 to Chapter XI, as the brief part to adopt the OMB guidance and state DoD-specific additions and clarifications. Third, it is removing 32 CFR part 25, the part containing the common rule on nonprocurement debarment and suspension that the OMB guidance supersedes.

Technical Corrections to the DoD Grant and Agreement Regulations

The technical corrections that DoD is making to the DoDGARs through this regulatory action accomplish two purposes. First, they replace the references to 32 CFR part 25 that appeared in other DoDGARs parts with references to the OMB guidance, as implemented by the new 2 CFR part 1125 (see amendment numbers 2.d, 3.b, 3.d–f, 3.i, 5.b–f, 6.b, 7.b–d, and 8.b–d following this preamble). Second, they correct typesetting errors made to some DoDGARs parts in an August 2005 **Federal Register** notice [70 FR 49460] (see amendment numbers 2.c, 3.c, 3.e–h, and 8.c following this preamble).

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553) agencies generally

offer interested parties the opportunity to comment on proposed regulations before they become effective. However, in this case, the substance of the regulation already has been subject to comment on two occasions. The first occasion was through DoD's adoption of the update to the Governmentwide nonprocurement debarment and suspension common rule that recast the regulation in plain English and made other needed changes. DoD proposed that regulation for comment on January 23, 2002 [67 FR 3265], before adopting the final rule on November 26, 2003 [68 FR 65534]. As permitted by OMB, DoD made a few agency-specific additions and clarifications to the Governmentwide wording when it adopted the common rule.

The second opportunity to comment was through OMB's conversion of the substance of the Governmentwide common rule to guidance suitable for agency adoption. OMB issued the guidance in interim final form on August 31, 2005 [70 FR 51863], with an opportunity for comment. It then issued the final guidance on November 15, 2006 [71 FR 66431].

Adopting 2 CFR part 1125 as a direct final rule constitutes an administrative simplification that makes no substantive changes to DoD policy or procedures for nonprocurement debarment and suspension. The new part includes the same agency-specific additions and clarifications to the OMB guidance that DoD made when it adopted the Governmentwide common rule in 2003. The substance of this final rule therefore is unchanged from what was adopted previously with opportunity for comment.

Accordingly, the Department finds that the solicitation of public comments on this direct final rule is unnecessary and that "'good cause'" exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on August 27, 2007 without further action.

Invitation To Comment

Although it is not necessary, DoD is providing an opportunity for comment. In doing so, we are not seeking to revisit substantive issues that were resolved during the adoption of the final common rule in 2003. Rather, we specifically invite comments only on any unintended substantive changes that the new 2 CFR part 1125 makes relative to DoD policy and procedures in 32 CFR part 25, the part that it is supersedes. If any comments identifying unintended substantive changes are received by July 26, 2007, the Department will make any amendments to the final rule that are warranted.

Executive Order 12866

This rule is not significant because the replacement of the common rule with OMB guidance and a brief DoD adopting regulation does not make any changes in current policies and procedures.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

2 CFR Part 1125

Administrative practice and procedure, Debarment and suspension, Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 21

Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 22

Accounting, Grant programs, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 25

Administrative practice and procedure, Grant programs, Loan programs, Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 33

Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Government property, Grant programs, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

■ Accordingly, under the authority of 5 U.S.C. 301 and 10 U.S.C. 113, the Department of Defense amends the Code of Federal Regulations, Title 2, Subtitle B, and Title 32, Chapter I, Subchapter C, to read as follows:

Title 2—Grants and Agreements

■ 1. Chapter XI, consisting of part 1125, to Subtitle B is added to read as follows:

Chapter XI—Department of Defense

PART 1125—NONPROCUREMENT DEBARMENT AND SUSPENSION

Sec.
1125.10 What does this part do?
1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?
1125.30 Does this part apply to me?
1125.40 What policies and procedures must I follow?

Subpart A—General

1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Subpart B—Covered Transactions

1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Subpart C—Responsibilities of Participants Regarding Transactions

1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

Subpart D—Responsibilities of DoD Officials Regarding Transactions

1125.425 When do I check to see if a person is excluded or disqualified?
1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

Subpart E—H [Reserved]

Subpart I—Definitions

1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

1125.937 DoD Component.
1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235; 5 U.S.C. 301 and 10 U.S.C. 113.

§ 1125.10 What does this part do?

This part adopts the Office of Management and Budget (OMB) guidance in Subparts A through I of 2 CFR part 180, as supplemented by this part, as the Department of Defense (DoD) policies and procedures for nonprocurement debarment and suspension. It thereby gives regulatory effect for the Department of Defense to the OMB guidance as supplemented by this part. This part satisfies the requirements in section 3 of Executive Order 12549, ''Debarment and Suspension'' (3 CFR 1986 Comp., p. 189), Executive Order 12689, ''Debarment and Suspension'' (3 CFR 1989 Comp., p. 235) and 31 U.S.C. 6101 note (Section 2455, Public Law 103–355, 108 Stat. 3327).

§ 1125.20 Does this part implement the OMB guidance in 2 CFR part 180 for all DoD nonprocurement transactions?

This part implements the OMB guidelines in 2 CFR part 180 for most DoD nonprocurement transactions. However, it does not implement the guidelines as they apply to prototype projects under the authority of Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160), as amended. The Director of Defense Procurement and Acquisition Policy maintains a DoD issuance separate from this part that addresses section 845 transactions.

§ 1125.30 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through I of 2 CFR part 180 (see table at 2 CFR 180.100(b)) apply to you if you are a—

(a) Participant or principal in a ''covered transaction'' (see Subpart B of 2 CFR part 180 and the definition of ''nonprocurement transaction'' at 2 CFR 180.970, as supplemented by Subpart B of this part), other than a section 845 transaction described in § 1125.20;

(b) Respondent in a DoD Component's nonprocurement suspension or debarment action;

(c) DoD Component's debarment or suspension official; or

(d) DoD Component's grants officer, agreements officer, or other official authorized to enter into a nonprocurement transaction that is a covered transaction.

§ 1125.40 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through I of 2 CFR part 180, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 180, this part supplements eight sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 180.135	§ 1125.137	Who in DoD may grant an exception for an excluded person to participate in a covered transaction.
(2) 2 CFR 180.220	§ 1125.220	Which lower-tier contracts under a nonprocurement transaction are covered transactions.
(3) 2 CFR 180.330	§ 1125.332	What method a participant must use to communicate requirements to a lower-tier participant.
(4) 2 CFR 180.425	§ 1125.425	When a DoD awarding official must check to see if a person is excluded or disqualified.
(5) 2 CFR 180.435	§ 1125.437	What method a DoD official must use to communicate requirements to a participant.
(6) 2 CFR 180.930	§ 1125.930	Which DoD officials are debarring officials.
(7) 2 CFR 180.1010	§ 1125.1010	Which DoD officials are suspending officials.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through I of 2 CFR 180 that is not listed in paragraph (b) of this section, DoD policies and procedures are the same as those in the OMB guidance.

Subpart A—General

§ 1125.137 Who in the Department of Defense may grant an exception to let an excluded person participate in a covered transaction?

Within the Department of Defense, the Secretary of Defense, Secretary of a Military Department, Head of a Defense Agency, Head of the Office of Economic Adjustment, and Head of the Special Operations Command have the authority to grant an exception to let an excluded person participate in a covered transaction, as provided in the OMB guidance at 2 CFR 180.135.

Subpart B—Covered Transactions

§ 1125.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

Although the OMB guidance at 2 CFR 180.220(c) allows a Federal agency to do so (also see optional lower tier coverage in the figure in the Appendix to 2 CFR part 180), the Department of Defense does not extend coverage of nonprocurement suspension and debarment requirements beyond first-tier procurement contracts under a covered nonprocurement transaction.

Subpart C—Responsibilities of Participants Regarding Transactions

§ 1125.332 What method must I use to pass requirements down to participants at lower tiers with whom I intend to do business?

You as a participant in a covered transaction must include a term or condition in any lower-tier covered transaction into which you enter, to require the participant of that transaction to—

(a) Comply with Subpart C of the OMB guidance in 2 CFR part 180; and

(b) Include a similar term or condition in any covered transaction into which it enters at the next lower tier.

Subpart D—Responsibilities of DoD Officials Regarding Transactions

§ 1125.425 When do I check to see if a person is excluded or disqualified?

In addition to the four instances identified in the OMB guidance at 2 CFR 180.425, you as a DoD Component official must check to see if a person is excluded or disqualified before you obligate additional funding (*e.g.*, through an incremental funding action) for a pre-existing grant or cooperative agreement with an institution of higher education, as provided in 32 CFR 22.520(e)(5).

§ 1125.437 What method do I use to communicate to a participant the requirements described in the OMB guidance at 2 CFR 180.435?

You as a DoD Component official must include a term or condition in each covered transaction into which you enter, to communicate to the participant the requirements to—

(a) Comply with subpart C of 2 CFR part 180, as supplemented by Subpart C of this part; and

(b) Include a similar term or condition in any lower-tier covered transactions into which the participant enters.

Subpart E–H—[Reserved]

Subpart I—Definitions

§ 1125.930 Debarring official (DoD supplement to Governmentwide definition at 2 CFR 180.930).

DoD Components' debarring officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as debarring officials for procurement contracts.

§ 1125.937 DoD Component

In this part, DoD Component means the Office of the Secretary of Defense, a Military Department, a Defense Agency, a DoD Field Activity, or any other organizational entity of the Department of Defense that is authorized to award or administer grants, cooperative agreements, or other nonprocurement transactions.

§ 1125.1010 Suspending official (DoD supplement to Governmentwide definition at 2 CFR 180.1010).

DoD Components' suspending officials for nonprocurement transactions are the same officials identified in 48 CFR part 209, subpart 209.4, as suspending officials for procurement contracts.

Title 32—National Defense

PART 21—DOD GRANTS AND AGREEMENTS—GENERAL MATTERS

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

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 2. Section 21.330 is amended by revising paragraph (a) to read as follows:

§ 21.330 How are the DoDGARs published and maintained?

(a) The DoD publishes the DoDGARs in the Code of Federal Regulations (CFR) and in a separate internal DoD document (DoD 3210.6–R).

(1) The location of the DoDGARs in the CFR currently is in transition. They are moving from Chapter I, Subchapter C, Title 32, to a new location in Chapter XI, Title 2 of the CFR. During the transition, there will be some parts of the DoDGARs in each of the two titles.

(2) The DoD document is divided into parts, subparts, and sections, to parallel the CFR publication. Cross references within the DoD document are stated as CFR citations (*e.g.*, a reference to section 21.215 in part 21 would be to 32 CFR 21.215), which also is how they are stated in the CFR publication of the DoDGARs.

* * * * *

■ 3. Section 21.565 is revised to read as follows:

§ 21.565 Must DoD Components' electronic systems accept Data Universal Numbering System (DUNS) numbers?

The DoD Components must comply with paragraph 5.e of the Office of Management and Budget (OMB) policy directive entitled, ''Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements.'' [6] Paragraph 5.e requires electronic systems that handle information about grants and cooperative agreements (which, for the DoD, include Technology Investment Agreements) to accept DUNS numbers. Each DoD Component that awards or administers grants or cooperative agreements must ensure that DUNS numbers are accepted by each such system for which the DoD Component controls the system specifications. If the specifications of such a system are subject to another organization's control and the system can not accept DUNS numbers, the DoD Component must alert that organization to the OMB policy directive's requirement for use of DUNS numbers with a copy to: Director for Basic Sciences, ODDR&E, 3040 Defense Pentagon, Washington, DC 20301–3040.

■ 4. Appendix A to part 21 is revised to read as follows:

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[6] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html.*

Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations	"awards," which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D	Authorities and responsibilities for assistance award and administration	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E	DoD Components' information reporting requirements	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements	grants and cooperative agreements other than TIAs.
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of "award" at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of "Federal grant" and "Federal cooperative agreement" at 32 CFR 28.105.
Part 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	grants, cooperative agreements other than TIAs, and other assistance included in "award," as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments	grants, cooperative agreements other than TIAs, and other assistance included in "grant," as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations	grants and cooperative agreements other than TIAs ("awards," as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.
Part 1125 (2 CFR part 1125)	Governmentwide debarment and suspension requirements	nonprocurement generally, including grants, cooperative agreements, TIAs, and any other instruments that are covered transactions under OMB guidance in 2 CFR 180.210 and 180.215, as implemented by 2 CFR part 1125, except acquisition transactions to carry out prototype projects (see 2 CFR 1125.20).

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PART 22—DOD GRANTS AND AGREEMENTS—AWARD AND ADMINISTRATION

■ 5. The authority citation for part 22 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 6. Section 22.100 is amended by revising paragraph (b)(1) to read as follows:

§ 22.100 Purpose, relation to other parts, and organization.

* * * * *

(b) * * *

(1) The DoD implementation, in 2 CFR part 1125, of OMB guidance on nonprocurement debarment and suspension.

* * * * *

■ 7. Section 22.315 is amended by:

■ a. Revising paragraph (a)(2) to read as follows; and

■ b. Revising footnotes 2, 3, and 4 to read as follows:

§ 22.315 Merit-based, competitive procedures.

* * * * *

(a) * * *

(2) In accordance with that OMB policy directive, DoD Components also must post on the Internet any notice under which domestic entities may submit proposals, if the distribution of the notice is unlimited. DoD Components are encouraged to simultaneously publish the notice in other media (*e.g.*, the **Federal Register**), if doing so would increase the likelihood of its being seen by potential proposers. If a DoD Component issues a specific notice with limited distribution (*e.g.*, for national security considerations), the notice need not be posted on the Internet.

* * * * *

[2] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Final Policy Directive on Financial Assistance Program Announcements'').

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Office of Federal Financial Management Policy Directive on Use of Grants.Gov FIND'').

[4] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants_docs.html* (the link is ''Use of a Universal Identifier by Grant Applicants'').

§ 22.405 [Amended]

■ 8. Section 22.405, paragraph (a) is amended by revising ''Governmentwide policy, stated at 32 CFR 25.110(a), to do business only with responsible persons'' to read ''Governmentwide policy to do business only with responsible persons, which is stated in OMB guidance at 2 CFR 180.125(a) and implemented by the Department of Defense in 2 CFR part 1125''.

■ 9. Section 22.420 is amended by revising paragraph (c)(1) to read as follows:

§ 22.420 Pre-award procedures.

* * * * *

(c) * * *

(1) Is not identified in the Governmentwide Excluded Parties List System (EPLS) as being debarred, suspended, or otherwise ineligible to receive the award. In addition to being a requirement for every new award, note that checking the EPLS also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, in the case of pre-existing awards to institutions of higher education, as described at 32 CFR 22.520(e)(5). The grants officer's responsibilities include (see the OMB guidance at 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR 1125.425) checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined in OMB guidance at 2 CFR 180.995, implemented by the Department of Defense in 2 CFR part 1125), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals or lower-tier recipients is required under the terms of the award (*e.g.*, if a subsequent change in a recipient's principal investigator or other key person would be subject to the DoD Component's prior approval under 32 CFR 32.25(c)(2), 33.30(d)(3), or 34.15(c)(2)(i)).

* * * * *

■ 10. Section 22.520 is amended by revising:

■ a. Paragraphs (c)(3) and (4);

■ b. Paragraph (d)(1);

■ c. Paragraphs (e)(1), (3), (4), (5) introductory text, (5)(i), and (5)(ii); and

■ d. Paragraph (f)(2)

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

* * * * *

(c) * * *

(3) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution):

(i) Names, addresses, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees received, and the most recent educational institution enrolled in by the student.

(d) *Policy*—(1) *Applicability to cooperative agreements.* As a matter of DoD policy, the restrictions of 10 U.S.C. 983, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(2) * * *

(e) *Grants officers' responsibilities.* (1) A grants officer shall not award any grant or cooperative agreement to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible on the Governmentwide Excluded Parties List System (EPLS). The cause and treatment code on the EPLS indicates the reason for an institution's ineligibility, as well as the effect of the exclusion. Note that OMB guidance in 2 CFR 180.425 and 180.430, as implemented by the Department of Defense at 2 CFR part 1125, require a grants officer to check the EPLS prior to determining that a recipient is qualified to receive an award.

(2) * * *

(3) A grants officer shall include the following award term in each grant or cooperative agreement with an institution of higher education (note that this requirement does not flow down and that recipients are not required to include the award term in subawards):

''As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(A) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(B) Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(C) The Secretary of a Military Department or Secretary of Homeland Security from

gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(D) Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreement and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of award.''

(4) If an institution of higher education refuses to accept the award term in paragraph (e)(3) of this section, the grants officer shall:

(i) Determine that the institution is not qualified with respect to the award. The grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director for Accession Policy, Office of the Deputy Under Secretary of Defense for Military Personnel Policy (ODUSD(MPP)), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow ODUSD(MPP) to decide whether to initiate an evaluation of the institution under 32 CFR part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(5) With respect to any pre-existing award to an institution of higher education that currently is listed on the EPLS pursuant to a determination under 32 CFR part 216, a grants officer:

(i) Shall not obligate additional funds available to the DoD for the award. A grants officer therefore must check the EPLS before approving an incremental funding action or other additional funding for any pre-existing award to an institution of higher education. The grants officer may not obligate the additional funds if the cause and treatment code indicates that the reason for an institution's EPLS listing is a determination under 32 CFR part 216 that institutional policies or practices restrict campus access of military recruiters or ROTC.

(ii) Shall not approve any request for payment submitted by such an institution (including payments for costs already incurred).

(iii) * * *

(f) * * *

(2) Awarding offices in DoD Components that may be identified from data in the Defense Assistance Awards Data System (see 32 CFR 21.520 through 21.555) as having awards with such institutions for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (e)(5) of this section.

■ 11. Section 22.710 is amended by revising the introductory text to read as follows:

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as ''grants administration offices'') that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the ''Federal Directory of Contract Administration Services (CAS) Components'' [10] for specific addresses of administration offices):

* * * * *

■ 12. Section 22.715 is amended by revising paragraph (a)(4) to read as follows:

§ 22.715 Grants administration office functions.

* * * * *

(a) * * *

(4) Issuing timely management decisions, in accordance with DoD Directive 7640.2, ''Policy for Follow-up on Contract Audit Reports,'' [13] on single audit findings referred by the OIG, DoD, under DoD Directive 7600.10, ''Audits of States, Local Governments, and Non-Profit Organizations.'' [14]

* * * * *

■ 13. Appendix B to part 22 is revised to read as follows:

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[10] The ''Federal Directory of Contract Administration Services (CAS) Components'' may be accessed through the Defense Contract Management Agency hompage at *http://www.dcma.mil.*

[14] *See* footnote 13 to § 22.715(a)(4).

Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements that Often Apply

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Nondiscrimination By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any.	Any.	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	Any.	Awards under which construction work is to be done.	The grants officer should inform recipients that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(l)(3) and in Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Any [for sex discrimination, 32 CFR 196.235 excepts an entity controlled by a religious organization, if not consistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	32 CFR 196.115 requires assurance of compliance. The inclusion of subrecipients in the definition of "recipient" at 32 CFR 196.105 requires recipient to flow down requirements to subrecipients.
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	Any.	Any.	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1-4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) , and guidelines in the National Academy of Sciences (NAS) "Guide for the Care and Use of Laboratory Animals" (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1[1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any.	Any.	Activities that may involve or impact wildlife and plants.	

1 Electronic copies may be obtained at the Washington Headquarters Services Internet site http://www.dtic.mil/whs/directives. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Debarment and Suspension The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the Department of Defense in 2 CFR part 1125. The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.	Any nonprocurement transaction [see "covered transaction" as specified in Subpart B of 2 CFR part 180, especially sections 180.210 and 180.215]	All but foreign governments, foreign governmental entities, and others excluded at 2 CFR 180.215(a)	Any	
Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will: a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.	Any nonprocurement transaction [see 40 CFR 32.1110].	Any.	Any.	Executive Order 11738 establishes additional responsibilities for grants officers.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any.	Any.	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Drug-Free Workplace The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).	Any financial assistance, including any grant or cooperative agreement [see "award" as broadly defined at 32 CFR 26.605]	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 26.110]	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

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PART 25—[REMOVED]

■ 14. Under the authority of 5 U.S.C. 301, 32 CFR part 25 is removed.

PART 32—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

■ 15. The authority citation for part 32 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 16. Section 32.2 is amended by revising the introductory text and the definition of ''suspension'' to read as follows:

§ 32.2 Definitions.

The following are definitions of terms used in this part. Grants officers are cautioned that terms may be defined differently in this part than they are in other parts of the DoD Grant and Agreement Regulations, because this part implements OMB Circular A–110 and uses definitions as stated in that Circular. In such cases, the definition given in this section applies to the term as it is used in this part, and the definition given in other parts applies to the term as it is used in those parts. For example, ''suspension'' is defined in this section to mean temporary withdrawal of Federal sponsorship under an award, but is defined in the part of the DoD Grant and Agreement Regulations on nonprocurement suspension and debarment (2 CFR part 1125, which implements OMB guidance at 2 CFR part 180) to be an action taken to exclude a person from participating in a grant, cooperative agreement, or other covered transaction (see definition at 2 CFR 180.1015).

* * * * *

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 2 CFR part 1125.

* * * * *

■ 17. Section 32.13 is revised to read as follows:

§ 32.13 Debarment and suspension.

DoD Components and recipients shall comply with the policy and procedural requirements in the OMB guidance on nonprocurement debarment and suspension (2 CFR part 180), as implemented by the Department of Defense in 2 CFR part 1125. Those policies and procedures restrict subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 32.44 [Amended]

■ 18. Paragraph (d) of § 32.44 is amended in the third sentence by revising ''contracts with certain parties are restricted by the DoD implementation, in 32 CFR part 25, of E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension'' to read ''contracts with certain parties are restricted by the DoD implementation, in 2 CFR part 1125, of OMB guidance on nonprocurement debarment and suspension (2 CFR part 180)''.

§ 32.62 [Amended]

■ 19. Paragraph (d) of section 32.62 is amended by revising ''debarment and suspension under 32 CFR part 25'' to read ''debarment and suspension under 2 CFR part 1125''.

■ 20. Paragraph 8 of Appendix A to part 32 is revised to read as follows:

Appendix A to Part 32—Contract Provisions

* * * * *

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System accessible on the Internet at www.epls.gov contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 33—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 21. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 33.35 [Amended]

■ 22. Section 33.35 is amended by revising ''comply with the requirements of Subpart C, 32 CFR part 25, including the restrictions on entering into a covered transaction with'' to read ''comply with the requirements of OMB guidance in Subpart C, 2 CFR part 180, as implemented by the Department of Defense in 2 CFR part 1125. Those requirements include restrictions on entering into a covered transaction with''.

PART 34—ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH FOR-PROFIT ORGANIZATIONS

■ 23. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 24. Section 34.2 is amended by revising the definition of ''suspension'' to read as follows:

§ 34.2 Definitions.

* * * * *

Suspension. An action by a DoD Component that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the DoD Component. Suspension of an award is a separate action from suspension of a participant under 2 CFR part 1125.

* * * * *

§ 34.52 [Amended]

■ 25. Paragraph (d) of section 34.52 is amended by revising ''debarment and suspension under 32 CFR part 25'' to read ''debarment and suspension under 2 CFR part 1125''.

■ 26. Paragraph 7 of Appendix A to part 34 is revised to read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance at 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System accessible on the Internet at *www.epls.gov* contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 37—TECHNOLOGY INVESTMENT AGREEMENTS

■ 27. The authority citation for part 37 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 28. Section 37.130 is amended by revising paragraph (b)(1) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(b) * * *

(1) Part 1125 (2 CFR part 1125) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

* * * * *

■ 29. Appendix D to part 37 is amended by revising the introductory text and paragraphs A, B, B.1, B.3, and B.5 to read as follows:

Appendix D to Part 37—What Common National Policy Requirements May Apply and Need To Be Included in TIAs?

Whether your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statutes and regulations. This appendix lists some of the more common requirements to aid you in identifying ones that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are others that apply in your situation (*e.g.*, due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

One requirement that applies to all TIAs currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

B. Assurances That Apply to All TIAs

DoD policy is to use a certification, as described in the preceding paragraph, only for a national policy requirement that specifically requires one. The usual approach to communicating other national policy requirements to recipients is to incorporate them as award terms or conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the OMB guidance in 2 CFR part 180, as implemented by the DoD at 2 CFR part 1125. The requirements apply to all nonprocurement transactions.

* * * * *

3. Prohibitions on discrimination on the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*). These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to suppliers from whom recipients purchase goods or services). For further information, see item a. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

* * * * *

5. Prohibitions on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading ''Nondiscrimination'' in Appendix B to 32 CFR part 22.

* * * * *

■ 30. Appendix E to part 37 is amended by revising paragraph B.2 to read as follows:

Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?

* * * * *

B. * * *

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 2 CFR 1125.220, which implements OMB guidance in 2 CFR 180.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 2 CFR part 1125 of the OMB guidance implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.'' The Excluded Parties List System accessible on the Internet at *www.epls.gov* contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

* * * * *

Dated: June 18, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3086 Filed 6–25–07; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapters I and III

[Docket No.: FAA–2004–17168]

Review of Existing Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on existing regulations.

SUMMARY: The FAA is notifying the public of the outcome of our periodic review of existing regulations. This notice summarizes the public comments we received and our responses to them. This action is part of our effort to make our regulatory program more effective and less burdensome.

FOR FURTHER INFORMATION CONTACT: Patrick W. Boyd, Office of Rulemaking, ARM–23, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7320.

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of Executive Order 12866, Regulatory Planning and Review, each agency must develop a program to periodically review its existing regulations to determine if they should be changed or eliminated (58 FR 51735, October 4, 1993). The purposes of the review are to make the agency's regulatory program more effective in achieving the regulatory objectives and less burdensome. The FAA conducts its review on a three-year cycle.

On February 25, 2004, we published a notice in the **Federal Register** asking the public to tell us which regulations we should amend, remove, or simplify (69 FR 8575). The notice stated that we would consider the comments and adjust our regulatory priorities consistent with our statutory responsibilities. The notice also stated we would publish a summary of the comments and an explanation of how we would act on them.

Summary of Comments

In response to the February 2004 notice, we received 97 comments from 30 different commenters. For comparison, we received 476 comments during the previous review and 82 comments the time before that. We received comments from citizens, private pilots, commercial pilots, and representatives of interest groups and commercial entities. The interest groups that filed comments include the Air Transport Association, the Allied Pilots

Association, the Experimental Aircraft Association, the National Air Carrier Association, and the Regional Airline Association. The commercial entities that filed comments include ABX Air, Inc.; Alteon Training; Apex Aviation Corporation; Boeing Commercial Airplanes; General Electric Aircraft Engines; Honeywell Engines, Systems and Services; Morris Research, Inc.; the Orange County (Ca.) Flight Center; Southwest Airlines; and World Airways.

Our February 2004 request for comments asked that commenters identify three regulations that we should amend or remove. This is to enable us to focus on commenters' high priority concerns. Most commenters limited themselves to three or fewer comments. However, the Air Transport Association filed 21 comments, while Southwest Airlines and the National Air Carrier Association filed 5 each.

Our February 2004 request for comments also asked the public to direct comments about 14 CFR parts 125 and 135 to the working group that is conducting a separate review of those parts to avoid any duplication of effort. We appreciate that commenters complied with this request. For the first time, the regulatory review included 14 CFR Chapter III, the regulations governing commercial space transportation. However, we did not receive any comments on these regulations.

Response to Comments

We have organized the comments in four groups:

- Comments that we have already addressed,
- Comments that we are addressing,
- Comments that we will address, and
- Comments that we will not address at this time.

Readers should note that, in this document, when we say we ''are addressing'' a comment, we do not mean we will necessarily address a comment exactly as proposed by a commenter. We reserve the right to ''address'' comments in a way that is in accord with our statutory authority, balances competing interests, and fosters a safe and efficient civil aviation system. We have carefully considered issues raised by commenters and are taking, or will take, action to address those issues, as discussed below, but we do not guarantee the outcome of our action will always correspond to the commenters' views. With regard to comments that we will not address now, readers should note that, while we disagree with some of the comments, in other cases we simply cannot take action now due to competing priorities and limited resources.

Comments That We Have Already Addressed

We have already addressed 23 of the 97 comments. One individual commenter asked us to amend the medical examination requirement to require pilots to report only new medical examinations that occurred after the last application date. Response: We have already included this in the instructions printed on the form.

Southwest Airlines asked us to restructure the environmental assessment process for routine airspace and airport expansion. *Response:* On June 8, 2004, we issued revised FAA Order No. 1050.1E, entitled, ''Environmental Impacts: Policies and Procedures.'' The order establishes a categorical exclusion from National Environmental Policy Act requirements for these changes.

The Air Transport Association asked that, before undertaking new regulatory reviews, we conduct a thorough analysis of the accomplishments of the previous review. *Response:* We already do this as part of the review of existing regulations and through the reviews conducted under section 610 of the Regulatory Flexibility Act.

The Air Transport Association also asked that the FAA conduct a rigorous evaluation of the need and impact of every proposed regulation. *Response:* Existing laws and Executive Orders already require this. For example, the National Environmental Policy Act requires analysis of the environmental impact of Federal actions, and Executive Order 12866, Regulatory Review, requires analysis of the costs and benefits of proposed regulatory actions.

An individual commenter asked that the FAA control air pollution, aircraft noise, and crashes and prevent pilots who are under the influence of illegal substances from operating aircraft. *Response:* We already have regulations in place for these purposes, including 14 CFR part 34 (air pollution), part 36 (noise), and part 61 (drug and alcohol testing).

An individual commenter asked that we allow general aviation operations at the Ronald Reagan Washington National Airport. *Response:* While the airport was closed to general aviation as part of the security measures adopted in the aftermath of the terrorist attacks on September 11, 2001, the Transportation Security Administration (TSA) has since reopened the airport to general aviation operations that meet specific security criteria (70 FR 41585, July 19, 2005).

ABX Air recommended removing from 14 CFR part 39 airworthiness directive 91–08–51, amendment 39–7031. This amendment requires certain actions for aircraft equipped with a Honeywell flight management system that had a navigational database. The AD became effective on June 24, 1991 and had a compliance period of 72 hours. *Response:* We agree with the commenter and withdrew AD 91–08–51 on October 5, 2005.

We received four comments on 14 CFR 91.205(b)(12) and 121.353 asking us to require pyrotechnic signaling devices only for aircraft used in extended over-water operations. *Response:* On December 27, 2004, we published a final rule that removes the requirement for a pyrotechnic signaling device for aircraft operated for hire over water and beyond power-off gliding distance from shore for air carriers operating under Part 121 unless it is part of a required life raft. All other operators will continue to be required to have onboard one pyrotechnic signaling device if they operate aircraft for hire over water and beyond power-off gliding distance from shore (69 FR 77596).

World Airways asked us to amend 14 CFR 121.311(e)(2) to allow certain passengers the ability to keep their seats reclined if they do not obstruct others' access to the aisle or emergency exits. *Response:* Paragraph (e)(2) is an exception to the requirement in paragraph (e) that no certificate holder may take off or land an airplane unless each passenger seat back is in the upright position. Paragraph (e)(2) states that paragraph (e) does not apply to seats on which cargo or persons who are unable to sit erect for a medical reason are carried in accordance with procedures in the certificate holder's manual if the seat back does not obstruct any passenger's access to the aisle or to any emergency exit. Thus, we see no need to amend the regulation since it already allows the flexibility the commenter is seeking.

Three commenters, including World Airways, the National Air Carrier Association and the Air Transport Association, filed four comments on the topic of supplemental oxygen. Specifically, they requested we change 14 CFR 121.333(c)(3) and 91. 211(b)(2) to allow for a quick seat swap or quick leave by one pilot without requiring the remaining pilot to put on an oxygen mask. *Response:* On November 10, 2005, we published a direct final rule to address these comments (70 FR 68330). The direct final rule procedure involves issuing a final rule with request for comments. If we receive any adverse

comment, we withdraw the rule before it becomes effective. We may then issue a notice of proposed rulemaking. We received an adverse comment from the National Transportation Safety Board stating that we relied on data that did not represent actual pilot performance under realistic decompression conditions. *See* Docket No. FAA–2005–22915. For this reason, we withdrew the final rule on January 11, 2006 (71 FR 1688). We don't plan any further action at this time.

The Air Transport Association asked that we amend 14 CFR 121.368 by adopting its comments dated May 5, 2003, on inspection procedures. *Response:* Chapter 10, Volume 3 of FAA Order No. 8300.10, Airworthiness Inspectors' Handbook, addresses these comments.

The Air Transport Association also commented on supplemental inspections, 14 CFR 121.370a. This rule requires all aircraft in operation after December 20, 2010, to have a maintenance program that includes damage-tolerance based inspections and procedures. The Association asked that we adopt its comments on inspection procedures dated May 5, 2003 (Docket No. FAA 1999–5401). The regulation imposes an undue burden on operators and may also duplicate other existing regulatory requirements. *Response:* These comments were addressed in the aging aircraft safety final rule, which was published on February 5, 2005 (70 FR 5517).

The Air Transport Association asked for confirmation that 14 CFR 121.393(b) allows a pilot to substitute for a flight attendant during an intermediate stop. *Response:* Existing paragraph (b)(2) allows the certificate holder to substitute for the required flight attendants other persons qualified in the emergency evacuation procedures for that aircraft as required in 14 CFR 121.417 if these persons are identified to the passengers. So the answer is a qualified ''yes.'' A pilot could substitute for a flight attendant during an intermediate stop. The pilot would have to be qualified in the aircraft's emergency evacuation procedures and would have to be identified to the passengers.

We received three comments on our regulations governing mechanical reliability reports (14 CFR 121.703). The Air Transport Association recommended that we require reporting only of significant occurrences and within 72 hours after the aircraft has returned to service, rather than 72 hours after the occurrence. Southwest Airlines asked us to remove service difficulty reporting requirements that have been previously tracked by individual carriers. The Regional Airline Association asked that we offer air carriers the option to refrain from submitting mechanical reliability reports. *Response*: This issue was the subject of a final rule we published on December 30, 2003 (68 FR 75380), with a request for comments. We subsequently delayed the effective date of the final rule to give us time to consider the comments. On December 29, 2005, we withdrew the final rule to re-examine the Service Difficulty Report (SDR) program. In the same document, we adopted several amendments that improve the functioning of the SDR program (70 FR 76974). These amendments include increasing the time for submitting an SDR from 72 hours to 96 hours after an event occurs that requires an SDR. This change gives certificate holders additional time to prepare the SDR and should reduce the number of supplemental SDRs that need to be filed.

One commenter representing General Electric Aircraft Engines asked that we amend 14 CFR part 187 to correspond with laws passed by Congress that eliminate some fees. The fees that are the subject of the comment are for certification services performed outside the United States. *Response*: We decided in 1997 not to charge these particular fees. Part 187 does not require the agency to charge these fees. It only establishes a method for calculating them.

Comments That We Are Addressing

We are in the process of addressing 13 of the 97 comments. General Electric Aircraft Engines commented on the parts manufacturer approval regulations in 14 CFR parts 21 and 45. The comment urged FAA to issue for public comment the most recent version of the document originally prepared by the Parts and Production Certification Working Group of the Aviation Rulemaking Advisory Committee in February 1999. *Response*: We have incorporated the working group's recommendations into an ongoing rulemaking project to revise 14 CFR parts 21 and 45.

Another representative of General Electric Aircraft Engines made several comments on 14 CFR part 21, Certification Procedures for Products and Parts. One comment urged us to address international consortium arrangements in part 21 by allowing multiple international production authorizations. Another comment recommended allowing and recognizing work on complete products that is done by one production certificate (PC) holder at another PC holder's facility without requiring formal extension of the PC. A third comment asked us to clarify exactly when an engine or propeller is submitted for airworthiness certification or approval. A representative of Honeywell Engines, Systems and Services also commented on part 21. One comment asked us to remove 14 CFR 21.325(b)(3), which limits export airworthiness approvals to products manufactured and located in the United States. The commenter believes that this regulation is unnecessary and costly and does not support a global manufacturing environment. Honeywell stated that it should be the production approval holder's responsibility to make sure products meet the approved design, and the place of production should not matter. Another comment urged elimination of 14 CFR 21.147, which requires the holder of a production certificate to notify us of each change to the quality control system that may affect the inspection, conformity, or airworthiness of the product. In the commenter's view, this requirement is burdensome, unnecessary, and subject to varying interpretation. *Response*: All of these comments are being addressed in an ongoing project to amend part 21 that was published for public comment on October 5, 2006 (71 FR 58913). The comment period closed on February 5, 2007, and we are now in the process of analyzing the comments.

An individual commenter proposed that we require separate exit doors for passengers and flight crewmembers to prevent hijacking of commercial airliners. *Response*: The existing regulations require a reinforced flight deck door that significantly reduces the risk of forced entry onto the flight deck. For airplanes of 20 passengers or greater, the regulations already prescribe separate emergency exits for passengers and flightcrew. It would not be feasible to retrofit the existing commercial airline fleet with separate exit doors. Further, a separate project is addressing suspicious activity or security breaches in the cabin. On September 21, 2005, we issued a notice of proposed rulemaking concerning flightdeck door monitoring and crew discreet alerting systems (70 FR 55492). This proposal would require a means to monitor the door area outside the flightdeck and a means to discretely notify the flightcrew of threats. The comment period closed on November 21, 2005, and we are in the process of preparing the final rule. The existing regulations and this proposal, when it is finalized, will help address

the commenter's concern about hijacking.

A representative of Alteon Training commented there is a pressing need within the industry to update, standardize, and harmonize the various regulations and documents relating to airman and crewmember training. There are multiple documents that include qualification and training requirements for pilots, flight instructors, simulator instructors, check airmen, and training evaluators. Many of the sources of information are in conflict with one another. These documents include 14 CFR parts 61, 91, 135, 121, and 142; various Practical Test Standards; Operations Inspector's Handbooks; and several FAA forms. *Response:* These comments are being addressed by the Flight Simulation final rule, published on October 30, 2006 (71 FR 63391) and by an upcoming proposal to amend subparts N and O of 14 CFR part 121.

One individual recommended we abolish or amend 14 CFR 121.383(c), which prohibits people aged 60 and older from serving as commercial pilots. According to the commenter, the rule is baseless, discriminatory, and deprives the U.S. airline industry of some of its most able and experienced pilots. *Response:* On January 30, 2007, the Administrator announced that the FAA will propose a raise in the mandatory retirement age for U.S. commercial pilots from 60 to 65. The FAA plans to have an NPRM out by the end of calendar year 2007. The public, industry, and individual pilots will then have the opportunity to comment.

Another of the Air Transport Association's comments concerns crewmember requirements at stops where passengers remain on board, 14 CFR 121.393. The Association asked us to confirm that flight attendants may leave the aircraft to conduct passenger-related business as long as the engines are shut down and at least one floor level exit is open when staffing is reduced in accordance with 14 CFR 121.393(b). The reason is that allowing flight attendants to step onto the jet bridge at intermediate stops facilitates communication with ground personnel, reduces delays, and otherwise promotes the efficient use of personnel on through flights. *Response:* A rulemaking team has been established, is considering the issues, and will recommend the best way to proceed.

Another Air Transport Association comment concerns crewmember emergency training, 14 CFR 121.417(c)(2)(ii)(B). The Association recommended elimination of the requirement that recurrent training must include a module on transferring each type of slide or raft pack from one door to another. The Association believes it is impractical to expect that a crewmember would be able to complete the complex series of steps required to remove a slide or raft from one exit and install it in another in a post-ditching situation. *Response:* This issue is being addressed in an ongoing rulemaking project to revise subparts N and O of 14 CFR part 121.

The Air Transport Association also requested a change to 14 CFR 121.434 to allow the check pilot to step away during flight without a replacement and allow the pilot in training to remain at the controls under certain circumstances. *Response:* This comment is being addressed by an upcoming proposal to amend subparts N and O of 14 CFR part 121.

The Boeing Company commented regarding 14 CFR 25.777, Cockpit controls, and 14 CFR 25.779, Motion and effect of cockpit controls. According to the commenter, 14 CFR 25.777(b) states the direction of movement of cockpit controls must meet the requirements of 14 CFR 25.779. However, that regulation explicitly addresses only a certain list of controls, leaving other controls subject to implicit coverage. The commenter urged us to revise the requirements to either list all controls or include language describing how to show compliance for nonlisted controls. In the commenter's view, the recommended change would improve the efficiency of the production approval process without compromising aviation safety. *Response:* A rulemaking team has been established, is considering the issues, and will recommend the best way to proceed.

Comments That We Will Address

We plan to address 13 of the comments. ABX Air commented there are overlaps between 14 CFR 121.370, 121.370a, the proposed widespread fatigue damage rule, and various airworthiness directives on the subject of aging aircraft. The commenter recommends forming a committee to coordinate and eliminate duplication between these items. *Response:* The FAA recently performed a comprehensive review of the Aging Airplane Program. Among other things, our review identified overlapping and redundant requirements in certain rulemaking initiatives, such as those identified by the commenter. Based on this, we developed ways to eliminate duplication between the rulemaking initiatives. A public notice entitled ''Fuel Tank Safety Compliance Extension and Aging Airplane Program Update,'' which was issued on July 30, 2004, summarized the FAA's conclusions and plans (69 FR 45936). These plans should address the recommendation made by the commenter.

The Air Transport Association recommended we adopt the rulemaking recommendations of the Clarification of Major/Minor Repairs or Alterations Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This change would address a controversial enforcement and compliance issue. *Response:* The recently formed Aviation Safety Repairs and Alterations Team is conducting a thorough evaluation of all comments we have received on this issue, including the ARAC recommendations. The team plans to make recommendations for changes to existing policies and development of new policies.

We received 11 comments from several commenters on various aspects of flight time limitations and rest requirements, which are found in 14 CFR 121.471 to 525. Some of the commenters wanted us to guarantee that flight crewmembers get enough rest and to base rest requirements on time on duty rather than on flight time. Some suggested specific language that would require crewmembers to have at least 10 consecutive hours of rest after completing a flight. Another commenter suggested that we restrict the ability of carriers to reduce rest time by allowing reduced rest time only when delays occur that are beyond the carriers' control. Alternatively, one commenter asked us to consider the rest periods during duty in setting the rest-time requirements. *Response:* In 1995, the FAA published a comprehensive notice of proposed rulemaking addressing duty period limitations, flight time limitations, and rest requirements for flight crewmembers. We received a large number of comments. We intend to address these issues and are currently considering our next action.

Comments That We Will Not Address at This Time

We received 48 comments that we will not address at this time. We have arranged this section in numerical order of the regulation cited by the commenters, except that we discuss general or overarching comments up front.

The Regional Airline Association made a comment about recent rulemaking proposals. The Association believes FAA policy seems to support the notion that certain advisory material currently contained in Advisory Circulars should instead be placed into the appendices of the FAA regulations.

The justification is not that the FAA wants the industry to conform to only ''one means of compliance,'' but that advisory material placed into an appendix will somehow be easier to revise. The association believes we should use appendices sparingly and not to establish requirements. *Response:* It is true that we have recently adopted Quality Performance Standards (QPS) appendices that contain both regulatory and informational material. We have two reasons for doing so. Much of the material in the QPS appendices is regulatory and properly belongs in the regulations. Secondly, we believe this is a user-friendly approach. By having the advisory material close to the QPS requirements in one document, people will not have to refer to several documents to learn both what is required and a recommended way of complying.

We received two comments on 14 CFR part 1, which contains definitions of terms used throughout our regulations. The National Air Carrier Association proposed we revise part 1 to include definitions of ''accepted,'' ''airworthy,'' ''competent,'' and ''repair.'' *Response:* We disagree with the comment. These particular terms are used in a number of different circumstances in the regulations, and it would not be possible to write all-purpose definitions.

The other comment on part 1 came from a representative of GE Aircraft Engines who urged us to amend part 1 to include definitions of words used in our regulations that have a meaning different from that given in the dictionary. We do not believe this is appropriate. Terms are included in part 1 or in individual regulations because they have specialized meanings.

An individual commenter suggested the cost of the requirements for flotation equipment (14 CFR 25.801) and crewmember training in ditching procedures (14 CFR 121.417) are not offset by any benefits in lives saved or injuries prevented. *Response:* These requirements have been in place for many years. While we acknowledge the number of ditching incidents is low, we do not have any information that the relatively minor cost of these requirements exceeds the benefits they would provide in the event ditching became necessary.

The same commenter questioned whether it is necessary to supply oxygen to the passenger cabin in the event of an emergency. *Response:* Between 1959 and 1996, there were about 40 reported decompression events in the worldwide fleet of large transport category airplanes over 60,000 pounds. Airplanes are being approved to operate at ever-increasing altitudes, which increases the risk to passengers should a cabin decompression occur. The FAA believes it is necessary to supply oxygen to the passenger cabin in the event of an emergency because any cabin decompression is a serious matter that could lead to permanent injury or death due to lack of oxygen. While these events are rare, we believe the emergency oxygen systems play a significant role in ensuring the well-being of passengers.

An individual proposed that we eliminate the vertical burn test requirement for seat cushions in 14 CFR 25.853(c). In the commenter's view, this is a costly requirement that is not necessary due to advances in technology. *Response:* We do not necessarily disagree with the comment, but due to other ongoing projects, it is not an immediate priority. Southwest Airlines proposed we eliminate 14 CFR 25.853(g) and 121.215(d), which contain requirements to provide lavatory ashtrays and no-smoking signs in the aircraft cabin. According to the commenter, these requirements are unnecessary since smoking has been banned on commercial flights in the U.S. for almost 20 years and announcements to this effect are made throughout each flight. *Response:* We disagree with the comment. Even though smoking is prohibited, there are still smokers, and the lavatory ashtrays provide a safe place to extinguish illegal smoking material. We also believe the sign or placard requirement provides a continuous reminder to passengers of the ban on smoking. This is especially important on longer flights.

ABX Air stated there is a conflict between 14 CFR 25.857 and 121.583 with regard to carrying supernumeraries aboard a cargo airplane. The commenter recommended changing 14 CFR 25.857(e) to allow the supernumeraries identified in 14 CFR 121.583 to be carried aboard airplanes with a Class E cargo compartment. In the commenter's view, the change would eliminate the need for individual exemptions. *Response:* Because the kinds of supernumeraries identified in part 121 are varied, and the duties they may perform during flight are also varied, it is not a straightforward matter to include them all in part 25. We find it appropriate to use the exemption process to consider each case on merit and may initiate rulemaking action as appropriate at some future time.

A representative of General Electric Aircraft Engines recommends we rescind 14 CFR 25.901(b)(2) as obsolete, impossible to interpret consistently, and having no well-defined means of compliance. This regulation requires the components of each powerplant installation to be constructed, arranged, and installed to ensure their continued safe operation between normal inspections or overhauls. According to the commenter, engines are currently overhauled when a departure from normal operation is observed, not according to a specific time interval. Also, the current large commercial transport fleet operates at an extremely high level of propulsion system reliability. *Response:* We acknowledge that a literal application of this rule at the component level has long since given way to the realities of meeting the intent of the requirement at the airplane system level. This regulation prohibits intentionally exposing the airplane to practically preventable powerplant installation failures. Consequently, we do not agree the regulation is no longer useful or effective. While we plan no immediate action on this issue, we may consider rulemaking in the future to update the requirement and provide standardized compliance guidance, as resources and priorities allow.

The Boeing Company commented that 14 CFR 25.1353, Electrical equipment and installations, and 14 CFR 25.1431, Electronic equipment should be revised to clarify what is meant by ''electronic'' versus ''electrical.'' The lack of a clear distinction between the terms has posed problems and duplicated efforts during aircraft certification activities. At times, the commenter has shown compliance with both regulations, when compliance with only one is sufficient. To remedy the problem, the commenter suggested we revise 14 CFR 25.1353 to clarify that it pertains to equipment directly related to generation and distribution of primary electrical power. The commenter also recommended we revise 14 CFR 25.1431 to clarify that it pertains to all other electrically powered equipment. *Response:* Existing § 25.1353 applies to both electronic and electrical equipment. While § 25.1353(c) references storage batteries, the regulation is not limited to power generation and distribution functions. For example § 25.1353(a), (b), and (d) apply to all electrical and electronic equipment. Existing § 25.1431 clearly states that it applies to radio and electronic equipment. We are not aware of any misunderstanding of how this regulation applies to the aircraft certification process. For these reasons, we do not believe the recommended changes are necessary.

General Electric Aircraft Engines filed four comments on 14 CFR part 33, which contains the airworthiness

standards for aircraft engines. The commenter believes § 33.17, Fire prevention, does not take account of fire protection zones as used at the aircraft level for engine certification. As a result, the commenter recommends we revise the regulation to allow for the actual installations, with the installation assumptions documented in the installation manual. *Response:* We agree that § 33.17 does not address fire zone definitions. We consider fire zones and aircraft-level installation assessments to be outside the scope of the engine certification process and are addressed during aircraft certification. Changes to part 33 are not appropriate.

The commenter recommended we revise 14 CFR 33.87, Endurance test, to allow the use of other test cycles based on submittal of acceptable data. The commenter notes that the test cycle was defined when engine architecture and control systems were simpler and may not provide the best current test for a specific change or application. *Response:* The test cycle of § 33.87 and its associated test conditions have been revised in the four decades since we adopted them. There have been two major revisions to the regulation (Amendments 6 and 10) to accommodate the increasing complexity of the engine, airframe, and their interface. The purpose of the endurance test is to show a level of engine operability and durability within the approved engine ratings and limitations and to contribute to an acceptable level of safety for aircraft gas turbine engines. An alternate test cycle may not be as reliable as the one specified in § 33.87. However, our regulations do provide a means for evaluating alternatives and approving those that provide an equivalent level of safety (14 CFR 21.21).

Concerning 14 CFR 33.88, Engine overtemperature test, the commenter stated that the requirement was originally a 5-minute uncooled rotor integrity demonstration (reference AC33–3). As implemented by Amendment 6, it became a 30-minute test which was found to be overly severe because of flowpath limitations. Amendment 10 changed the duration back to 5 minutes but also changed the focus from a rotor integrity demonstration to an overall hot section durability demonstration. There is little evidence that cooled rotors are significantly influenced by a 75 degrees F increase in gas path temperature, making this requirement superfluous from a safety standpoint. Further there is no direct Joint Aviation Requirements—Engines (JAR–E) or Certification Specification—Engines (CS–E) corollary. JAR–E 700 and CS–E 700, Excess Operating Conditions, is the closest related requirement, and it only comes into play if the conditions of speed and temperature can arise. *Response:* The engine overtemperature test is intended to ensure that turbine engine hot sections can safely accommodate overtemperature events, which history has shown do occur. Many years of successful service experience provide the necessary validation for the overtemperature requirement. We agree there is no direct JAR–E or CS–E corollary for this requirement. The FAA and the European Aviation Safety Authority continue to work cooperatively toward harmonized regulations, as appropriate.

Concerning 14 CFR 33.97, Thrust reversers, the commenter recommended a revision to address the difference between fan (cold structure) and core (hot structure) reversers. The commenter also pointed out the endurance and calibration tests are almost never performed with the reversers installed. More often than not, simulated service cycles satisfy the requirement of § 33.97(a). *Response:* We agree there have been a number of instances where the endurance, calibration, operation, and vibration tests are run without the reverser installed. We evaluate these instances on a case-by-case basis for compliance. We may consider a change to § 33.97(a) to remove the strict requirement of running tests with the reverser installed; expand the scope of which block tests require an engine and thrust reverser compatibility evaluation; and allow alternate considerations, other than tests, for these evaluations in the future as workload and resources permit.

ABX Air filed four comments on specific airworthiness directives (AD). In each case, the commenter suggested the AD was obsolete and should be withdrawn. Withdrawing the AD would eliminate the cost of tracking and maintaining records. *Response:* In one case, we agree with the suggestion and discussed the issue earlier in this document under the heading ''Comments we have already addressed.'' Two of the comments concern ADs that require modification of certain protective breathing equipment mask assemblies. Without more information about how cancellation of these ADs would relieve the burden on the commenter, we are unable to evaluate the merits of these recommendations. The fourth comment concerns AD 84–18–07, Amendment 39–4915, which requires inspection of certain discharge cartridges for erroneously placed aluminum foil in the electrical connector pins. *Response:* We would like to point out that this AD does not apply to components installed on foreign-registered aircraft. It is possible that a U.S. carrier could buy an aircraft that has one of these components installed and has not complied with this AD. Thus, the possibility exists that withdrawal of this AD could lead to an unsafe condition. For this reason, we disagree with the comment.

The Air Transport Association suggested we amend the appropriate section of 14 CFR part 39 to allow the FAA Certificate Management Office (CMO) to approve minor changes or deviations from the means of compliance specified in an Airworthiness Directive. Currently, § 39.19 requires an operator to send a proposed alternate means of compliance through its principal inspector to the manager of the office that issued the AD for review and approval. According to the commenter, allowing the CMO to approve minor deviations would streamline the process and reduce aircraft and engine downtime. *Response:* We disagree with the proposal. Alternative means of compliance to an AD need to be reviewed by an engineer familiar with the technical information in the type design to assure the objective of the AD is attained.

A representative of General Electric Aircraft Engines recommended that we amend 14 CFR 43.3(j) to allow a manufacturer to perform maintenance on any aircraft, aircraft engine, propeller, or part thereof manufactured by him under a type or production certificate without needing any other certificate or authorization. Currently, the regulations allow a manufacturer to either rebuild or alter, but not to perform maintenance on those items. In the commenter's view, requiring a manufacturer to hold a repair station license to perform maintenance on the manufacturer's own products adds an administrative burden on the manufacturer and diverts FAA resources away from critical safety functions. *Response:* We disagree with the comment. The holder of a production certificate has demonstrated the capability to produce accurate copies of a particular design, but has made no showing about the ability to perform various kinds of maintenance. To allow a manufacturer, based on a production certificate, to perform maintenance without determining the manufacturer meets the repair station criteria of 14 CFR part 145 would not be prudent and would not contribute to safety.

The same representative of General Electric Aircraft Engines also filed a comment on 14 CFR part 45, Identification and registration marking. The commenter recommended we coordinate with the Department of Defense (DoD) to make the DoD's unique item identification and the FAA part marking requirements the same for products used in both military and civil aviation. *Response:* We do not disagree with the comment. Currently, DoD is developing its marking requirements. We are monitoring their activities and may consider rulemaking once we have a clear picture of what they will require.

The Experimental Aircraft Association filed a comment on 14 CFR 47.33(c), which contains the requirements for registering aircraft not previously registered anywhere. The Association recommends we allow an applicant for registration of an aircraft built from a kit to file either a bill of sale or an invoice from the manufacturer. Currently, the regulation requires a bill of sale. In the Association's view, this requirement is burdensome because most kit manufacturers do not provide a bill of sale. *Response:* Invoices do not themselves provide proof of ownership. Proof of ownership should include language that shows a sale took place and the signature of the seller. For this reason, we do accept some invoices if they have a signature for the manufacturer and some wording such as ''sold to [name of buyer].''

An individual commenter recommended that we eliminate the requirement in 14 CFR 61.23 that private pilots hold a third-class medical certificate. In its place, the commenter suggested we accept a driver's license and require the private pilot to consult an aviation medical examiner if an illness occurs that might reasonably be expected to affect the ability to fly. *Response:* Out of a concern for the potential safety impact of the change given the large number of private pilots, and in the absence of any data to support the change, we are not inclined to change the rule at this time.

A representative of World Airways objected to the requirements of 14 CFR 61.18, 63.14, and 65.14 concerning security disqualification. These regulations require the FAA to deny a pilot certificate when the Transportation Security Administration (TSA) has notified the FAA in writing that an individual poses a security threat. The commenter believes it is inappropriate for FAA to deny a certificate based solely on the recommendation of another organization. The commenter suggested the FAA set up an independent review process to prevent the careers of aviation professionals from being unjustly terminated by unilateral action of the TSA. *Response:* We disagree with the comment. Congress has given TSA legal authority to make these determinations. It is beyond the scope of FAA's authority to establish a separate mechanism that duplicates TSA's duties. Although in this one particular area there is a separation of duties, FAA and TSA are working closely and cooperating to ensure a safe and secure aviation system.

We received several comments on 14 CFR part 91, which contains our general operating and flight rules. A representative of Apex Aviation proposed that we amend 14 CFR 91.117(c) by adding the words ''under VFR'' after the word ''aircraft.'' The commenter believes the change would allow operation of an aircraft under IFR at up to 250 knots in certain areas. In the commenter's view, the current regulation unnecessarily slows traffic flow, may interfere with sequencing of aircraft by air traffic control, and costs money and wastes fuel by extending flight time. *Response:* All IFR traffic is under air traffic control, which can specify any speed less than 250 knots that may be necessary. We believe the commenter may have misunderstood the regulation. The speed restrictions in the existing rule do not distinguish between VFR and IFR. The speed restrictions are based on the flight altitude or airspace designation.

A representative of World Airways also commented on 14 CFR 91.117(c), asking that it either be eliminated or restricted to VFR aircraft not in contact with air traffic control. In the commenter's view, the existing limitation may serve a purpose for keeping the closure speeds of aircraft not in contact with air traffic control to a minimum, but for those who routinely operate below Class B airspace in contact with, or at the direction of, air traffic control, this restriction is unnecessary. In fact, it has the potential to degrade safety due to pilot distraction while trying to determine the lateral limits of Class B airspace when on an IFR flight plan. *Response:* The maximum allowable speed is governed by aircraft altitude or airspace designation. There is an exception where the minimum safe airspeed for a particular operation is greater than the maximum prescribed by the rule. In this case, the aircraft may be operated at that minimum, and air traffic control should be advised.

One individual commenter suggested we update 14 CFR 91.207, Emergency locator transmitters, to include the new 406MHz emergency locator transmitter. The change should include actual decoding and reading of the transmitter's identification number and GPS location by independent test equipment to verify the transmitter is sending the correct information through its antenna. *Response:* We disagree with the comment. Approved emergency locator transmitters are specified in technical standard orders (TSOs), which are more easily updated than regulations. The 406 MHz transmitter is included in TSO–C126, which was last updated on December 8, 2006.

Another individual commenter suggested we create an exception from 14 CFR 91.207 to allow turbojet aircraft to use portable emergency locator transmitters, rather than requiring the transmitters to be attached to the aircraft. *Response:* We disagree with the comment. The requirement for transmitters to be attached to the aircraft ensures they are on board for every flight and automatically activate when needed.

A representative of Morris Research, Inc, proposed that we amend 14 CFR 91.213(a)(2) to allow operation of turbine-powered aircraft under part 91 using the FAA-approved master minimum equipment list for that type of aircraft as the approved minimum equipment list without having to get a letter of authorization from the FAA. Among its reasons for the proposed change, the commenter noted that it is burdensome to require each turbine-powered aircraft operated under part 91 to get a letter of authorization to operate with the most insignificant inoperative equipment, such as a passenger reading light. *Response:* While we do not necessarily disagree with the comment, due to resources allocated to other projects, this is not a high priority.

The National Air Carrier Association recommended that we eliminate the requirement that the FAA review and approve wet leases before a certificate holder conducts operations involving a wet lease (14 CFR 119.53). The Association considers this requirement unnecessary, costly, and burdensome. It suggested that providing the wet lease agreement to the FAA before or after the operation allows the FAA to provide adequate surveillance over operational control. *Response:* We are not persuaded that this requirement is unnecessary. In a wet lease situation, the party exercising operational control is held responsible for the safety and regulatory compliance of the flights conducted under the wet lease. It is not in the public interest to allow operations to be conducted under a wet lease (without the FAA having an

opportunity to review the wet lease and determine beforehand which party has operational control) if the party alleging to have operational control is later found not to be responsible for the safety and regulatory compliance of the flights.

There were nine comments filed by the Air Transport Association on 14 CFR part 121 that may have merit, but we are unable to devote resources to a rulemaking project at this time. We do not view these recommended changes as being higher priority than the rulemaking projects already in progress. These comments include the following:

- Amend 14 CFR 121.335, Equipment standards, to eliminate the reference to an obsolete regulation;
- Amend 14 CFR 121.367, Maintenance, preventive maintenance, and alterations programs, by revising the introductory language to consolidate the regulatory requirements;
- Amend 14 CFR 121.613, Dispatch or flight release under IFR or over the top, to allow a flight to be released without meeting the required approach minimums at the destination if an alternate airport is given in the dispatch release;
- Amend 14 CFR 121.619, Alternate airport for destination, to reflect current aircraft and airport approach capabilities;
- Amend 14 CFR 121.619 to reduce minimums from 2,000 to 1,000 feet and from three miles to one mile visibility during the period from one hour before to one hour after estimated time of arrival;
- Amend 14 CFR 121.621, Alternate airport for destination, to either remove or extend the current six-hour time limit on no-alternate operations;
- Amend 14 CFR 121.645, Fuel supply, to eliminate the requirement that fuel loads for international aircraft operations include an extra 10 percent of the total flight time;
- Amend 14 CFR 121.652, Landing weather minimums, to eliminate the reduced landing weather minimums for less experienced pilots when an autopilot or head-up guidance is used (the National Air Carrier Association also filed a comment on this topic); and
- Amend 14 CFR 121.655, Applicability of reported weather minimums, to allow some flexibility when the reported visibility in the main body of the weather report is less than four miles.

The National Air Carrier Association suggested we delete 14 CFR 121.139, Requirements for manual aboard aircraft, in its entirety. This regulation, in part, requires certificate holders conducting supplemental operations to carry appropriate parts of the printed manual on each airplane when away from the principal base of operations. If the manual is not in printed form, it requires the airplane to carry a compatible reading device. The commenters believe this is an unnecessary requirement given the state of technology today. *Response:* Our view is that the information in the manual must be available wherever the aircraft goes. For this reason, we are not inclined to change the regulation.

A representative of the Orange County (CA) Flight Center suggested we amend one of the flight training requirements of 14 CFR 141.79 to allow use of a flight training device to accomplish the recurrent proficiency check required by paragraph (d)(2). The commenter suggested allowing the flight training device on a rotational basis at schools that have an approved instrument course that requires use of the flight training device. *Response:* While we do not necessarily disagree with the comment, due to resources allocated to other projects, it is not a high priority.

A representative of Honeywell Engines, Systems and Services suggested we change 14 CFR 145.153(b)(1), which requires certificated U.S. repair stations to employ supervisors who are certificated under 14 CFR part 65. The commenter feels this requirement is burdensome, unnecessary, and costly and suggests that a technical lead could ensure that employees performing the work are capable. *Response:* We believe that supervisors must be certified to ensure they can direct the activities of workers who may not be at the journeyman level. For this reason, we are not inclined to change the regulation.

The Boeing Company suggested a change to 14 CFR 183.29(i), which prohibits an acoustical engineering representative (AER) from determining a type design change is not an acoustical change. In the commenter's view, this limit is not consistent with how we manage other designated engineering representatives. It also requires applicants to provide a significant amount of information to FAA to enable us to determine how a type design change should be certified for noise. Removing this limit could improve efficiency without adversely affecting safety. *Response:* We disagree with the comment. An AER is authorized only to determine the noise test, test data, and associated analyses comply with the applicable regulations. A determination that a type design change is an acoustical change is not a compliance determination and would not be appropriate for an AER, even if the limit were not spelled out in the regulation.

Conclusion

The FAA finds that reviewing public comments on our regulations helps us in assessing the effectiveness of our regulatory agenda and adjusting the agenda when necessary. As a result of this review, we have identified many issues of importance to the industry and other interested parties. Some of these issues, we are pleased to note, we either have already addressed or are currently addressing. In addition, the review offers us a general understanding of industry's and the public's concerns about our regulations. We intend to continue to request public comments on a three-year cycle to identify any necessary changes to our regulatory program. We plan to issue a notice requesting public comments for our next review later this year.

Issued in Washington, DC, on June 19, 2007.

Nicholas A. Sabatini,

Associate Administrator for Aviation Safety.

[FR Doc. E7–12285 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30556 Amdt. No. 3223]

Standard Instrument Approach Procedures, Weather Takeoff Minimums; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and/or Weather Takeoff Minimums for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective June 26, 2007. The compliance date for each

SIAP and/or Weather Takeoff Minimums is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP and Weather Takeoff Minimums copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs and Weather Takeoff Minimums mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), establishes, amends, suspends, or revokes SIAPs and/or Weather Takeoff Minimums. The complete regulatory description of each SIAP and/or Weather Takeoff Minimums is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, 8260–5 and 8260–15A. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs and/or Weather Takeoff Minimums, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs and/or Weather Takeoff Minimums but refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP and/or Weather Takeoff Minimums contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR sections, with the types and effective dates of the SIAPs and/or Weather Takeoff Minimums. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and/or Weather Takeoff Minimums as contained in the transmittal. Some SIAP and/or Weather Takeoff Minimums amendments may have been previously issued by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP, and/or Weather Takeoff Minimums amendments may require making them effective in less than 30 days. For the remaining SIAPs and/or Weather Takeoff Minimums, an effective date at least 30 days after publication is provided.

Further, the SIAPs and/or Weather Takeoff Minimums contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and/or Weather Takeoff Minimums, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and/or Weather Takeoff Minimums and safety in air commerce, I find that notice and public procedure before adopting these SIAPs and/or Weather Takeoff Minimums are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs and/or Weather Takeoff Minimums effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on June 15, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and Weather Takeoff Minimums effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 2 AUG 2007

Provincetown, MA, Provincetown Muni, Takeoff Minimums and Obstacle DP, Orig

Ridgley, MD, Ridgely Airpark, Takeoff Minimums and Textual DP, Orig

Portsmouth, NH, Portsmouth International at Pease, Takeoff Minimums and Obstacle DP, Orig

Batavia, NY, Genesee County Airport, Takeoff Minimums and Obstacle DP, Orig

Jamestown, NY, Chautauqua County/ Jamestown, Takeoff Minimums and Obstacle DP, Amdt 6
Williamson/Sodus, NY, Williamson/Sodus, Takeoff Minimums and Obstacle DP, Orig
Clarion, PA, Clarion County, Takeoff Minimums and Obstacle DP, Orig
Titusville, PA, Titusville, Takeoff Minimums and Obstacle DP, Orig
Wilkes-Barre/Scranton, PA, Wilkes-Barre/ Scranton Intl, ILS OR LOC/DME RWY 4, Amdt 35
Wilkes-Barre/Scranton, PA, Wilkes-Barre/ Scranton Intl, ILS OR LOC/DME RWY 22, Amdt 5
Wise, VA, Lonesome Pine, GPS RWY 6, Orig, CANCELLED
Wheeling, WV, Wheeling Ohio CO, VOR RWY 21, Amdt 15
Wheeling, WV, Wheeling Ohio CO, ILS OR LOC RWY 3, Amdt 21
Wheeling, WV, Wheeling Ohio CO, RNAV (GPS) RWY 21, Orig
Wheeling, WV, Wheeling Ohio CO, Takeoff Minimums and Obstacle DP, Amdt 3

Effective 30 AUG 2007

Albertville, AL, Albertville Rgnl/Thomas J Brumlik Fld, Takeoff
Minimums and Obstacle DP, Orig
Russellville, AR, Russellville Regional, RNAV (GPS) RWY 7, Orig
Atlanta, GA, Dekalb-Peachtree, RNAV (RNP) Z RWY 20L, Orig
Atlanta, GA, Dekalb-Peachtree, RNAV (RNP) RWY 2R, Orig
Atlanta, GA, Fulton County Airport-Brown Field, RNAV (RNP) Z RWY 8, Orig
Augusta, GA, Augusta Regional at Bush Field, ILS OR LOC RWY 35, Amdt 27
Cartersville, GA, Cartersville, RNAV (GPS) RWY 19, Amdt 1
Sylvania, GA, Plantation Arpk, RNAV (GPS) RWY 5, Orig
Sylvania, GA, Plantation Arpk, RNAV (GPS) RWY 23, Orig
Maquoketa, IA, Maquoketa Muni, NDB RWY 15, Amdt 3, CANCELLED
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 2, Orig
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 9, Orig
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 20, Orig
Chicago/Romeoville, IL, Lewis University, RNAV (GPS) RWY 27, Orig
Chicago/Romeoville, IL, Lewis University, LOC/DME RWY 9, Amdt 1
Chicago/Romeoville, IL, Lewis University, VOR RWY 9, Amdt 3
Chicago/Romeoville, IL, Lewis University, GPS RWY 9, Orig, CANCELLED
Chicago/Romeoville, IL, Lewis University, GPS RWY 27, Amdt 2, CANCELLED
Chicago/Romeoville, IL, Lewis University, Takeoff Minimums and Obstacle DP, Orig
Danville, IL, Vermilion County, RNAV (GPS) RWY 3, Orig
Danville, IL, Vermilion County, RNAV (GPS) RWY 21, Orig
Danville, IL, Vermilion County, RNAV (GPS) RWY 34, Orig
Danville, IL, Vermilion County, VOR/DME RWY 3, Amdt 12
Danville, IL, Vermilion County, VOR RWY 21, Amdt 14
Danville, IL, Vermilion County, VOR/DME RNAV OR GPS RWY 34, Amdt 4A, CANCELLED
Freeport, IL, Albertus, ILS OR LOC RWY 24, Orig
Freeport, IL, Albertus, RNAV (GPS) RWY 6, Orig
Freeport, IL, Albertus, RNAV (GPS) RWY 24, Amdt 1
Freeport, IL, Albertus, LOC RWY 24, Orig-C, CANCELLED
Freeport, IL, Albertus, VOR/DME RNAV OR GPS RWY 6, Amdt 5C, CANCELLED
Huntingburg, IN, Huntingburg, NDB RWY 27, Amdt 3
Albert Lea, MN, Albert Lea Muni, RNAV (GPS) RWY 16, Amdt 1
Roseau, MN, Roseau Muni/Rudy Billberg Field, RNAV (GPS) RWY 16, Orig
Roseau, MN, Roseau Muni/Rudy Billberg Field, RNAV (GPS) RWY 34, Orig
Roseau, MN, Roseau Muni/Rudy Billberg Field, VOR RWY 16, Amdt 8
Roseau, MN, Roseau Muni/Rudy Billberg Field, VOR RWY 34, Amdt 1
Roseau, MN, Roseau Muni/Rudy Billberg Field, Takeoff Minimums and Obstacle DP, Orig
Lee's Summit, MO, Lee's Summit Municipal, NDB RWY 18, Amdt 1A, CANCELLED
Lee's Summit, MO, Lee's Summit Municipal, NDB RWY 36, Orig, CANCELLED
Batesville, MS, Panola County, Takeoff Minimums and Obstacle DP, Orig
Starkville, MS, George M Bryan, RNAV (GPS) RWY 36, Amdt 1
Gastonia, NC, Gastonia Muni, RNAV (GPS) RWY 3, Amdt 1A
Gastonia, NC, Gastonia Muni, RNAV (GPS) RWY 21, Orig-A
Gastonia, NC, Gastonia Muni, VOR/DME OR GPS-A, Amdt 4, CANCELLED
Findlay, OH, Findlay, RNAV (GPS) RWY 18, Amdt 1
Findlay, OH, Findlay, RNAV (GPS) RWY 25, Amdt 1
Findlay, OH, Findlay, RNAV (GPS) RWY 36, Amdt 1
Findlay, OH, Findlay, Takeoff Minimums and Obstacle DP, Orig
Hamilton, OH, Butler Co Rgnl, ILS OR LOC RWY 29, Amdt 1
Hamilton, OH, Butler Co Rgnl, RNAV (GPS) RWY 11, Orig
Hamilton, OH, Butler Co Rgnl, RNAV (GPS) RWY 29, Orig
Hamilton, OH, Butler Co Rgnl, GPS RWY 11, Orig, CANCELLED
Hamilton, OH, Butler Co Rgnl, GPS RWY 29, Amdt 2, CANCELLED
Hamilton, OH, Butler Co Rgnl, NDB-A, Amdt 3, CANCELLED
Marion, OH, Marion Muni, RNAV (GPS) RWY 7, Orig
Marion, OH, Marion Muni, RNAV (GPS) RWY 25, Orig
Marion, OH, Marion Muni, VOR-A, Amdt 1
Marion, OH, Marion Muni, GPS RWY 25, Orig-B, CANCELLED
Marion, OH, Marion Muni, Takeoff Minimums and Obstacle DP, Orig
Fairview, OK, Fairview Muni, NDB RWY 17, Amdt 4, CANCELLED
Salem, OR, McNary Fld, RNAV (GPS) Y RWY 31, Orig-A
Salem, OR, McNary Fld, RNAV (GPS) Z RWY 31, Amdt 1A
Salem, OR, McNary Fld, LOC BC RWY 13, Amdt 6D
Salem, OR, McNary Fld, LOC/DME RWY 31, Amdt 2B
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 7, Amdt 2
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 13, Amdt 2
Pierre, SD, Pierre Regional, RNAV (GPS) RWY 25, Amdt 2
Amarillo, TX, Rick Husband Amarillo Intl, Takeoff Minimums and Obstacle DP, Amdt 1
Canadian, TX, Hemphill County, Takeoff Minimums and Obstacle DP, Amdt 2
Beaver, UT, Beaver Muni, RNAV (GPS)-A, Orig
Beaver, UT, Beaver Muni, Takeoff Minimums and Obstacle DP, Orig
Ogden, UT, Ogden-Hinckley, ILS OR LOC RWY 3, Amdt 4A
Seattle, WA, Seattle-Tacoma Intl, ILS OR LOC/DME RWY 34R, Orig-E, ILS RWY 34R (CAT II)
Shawno, WI, Shawno Muni, Takeoff Minimums and Obstacle DP, Amdt 2

Effective 25 OCT 2007

Logansport, IN, Logansport/Cass County, NDB RWY 9, Amdt 2A, CANCELLED

[FR Doc. E7–12122 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA84

Financial Crimes Enforcement Network; Amendments to Bank Secrecy Act Regulations Regarding Casino Recordkeeping and Reporting Requirements

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) is issuing this final rule to amend the Bank Secrecy Act regulation requiring casinos to report transactions in currency. Specifically, the amendments exempt, as reportable transactions in currency, jackpots from slot machines and video lottery terminals, as well as transactions, under certain conditions, involving certain money plays and bills inserted into electronic gaming devices. We also are exempting certain transactions between casinos and currency dealers or exchangers, and casinos and check cashers. Finally, the amendments provide additional examples of ''cash in'' and ''cash out'' transactions.

DATES: *Effective Date:* June 26, 2007.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs

Division, Financial Crimes Enforcement Network, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Director of FinCEN is the delegated administrator of the Bank Secrecy Act.[1] The Bank Secrecy Act authorizes the Director to issue regulations that require all financial institutions defined as such in the Bank Secrecy Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism and to prevent, deter, and detect money laundering.[2]

Casinos are cash-intensive businesses that also offer a broad array of financial services. These services include providing customer deposit or credit accounts, transmitting and receiving funds transfers directly from other financial institutions, check cashing, and currency exchanging. Consequently, casinos offer services that are similar to and may serve as substitutes for services ordinarily provided by depository institutions and certain non-bank financial institutions. As such, casinos are vulnerable to abuse by money launderers, terrorist financiers, and tax evaders.

In general, state-licensed casinos were made subject to the Bank Secrecy Act by regulation in 1985.[3] The 1985 rulemaking was based on the authority of the Secretary of the Treasury to designate as financial institutions for Bank Secrecy Act purposes: (i) Businesses that engage in activities that are ''similar to, related to, or a substitute for'' the activities of businesses defined as ''financial institutions''[4] in the Bank Secrecy Act and (ii) other businesses ''whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.''[5] Congress later explicitly added casinos and other gaming establishments to the definition of ''financial institution'' in the Bank Secrecy Act.[6] Casinos authorized to conduct business under the Indian Gaming Regulatory Act became subject to the Bank Secrecy Act by regulation in 1996,[7] and card clubs became subject to the Bank Secrecy Act by regulation in 1998.[8]

B. Casino Currency Transaction Reporting Requirements

Regulations under the Bank Secrecy Act define a ''transaction in currency'' as any transaction ''involving the physical transfer of currency from one person to another.''[9] Casinos must report each transaction in currency involving ''cash in'' or ''cash out'' of more than $10,000,[10] and are required to aggregate transactions in currency (that is, treat the transactions as a single transaction) if the casino has knowledge that the transactions are conducted by or on behalf of the same person and result in cash in or cash out of more than $10,000 during any gaming day.[11] The rule requiring casinos to report transactions in currency also lists examples of transactions in currency involving cash in and cash out.[12]

Casinos must report transactions in currency by filing FinCEN Form 103—''Currency Transaction Report by Casinos.'' A casino must record on the Currency Transaction Report identifying information for persons involved in the transaction, verify identifying information, and include information describing the transaction.[13] In addition, a casino must file the report within 15 days following the date of the reportable transaction and retain a copy of the report for a period of five years from the date of the currency transaction(s).[14]

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the Notice of Proposed Rulemaking published March 21, 2006 (''Notice'').[15] The Notice proposed to exempt from coverage of the rule requiring casinos to file Currency Transaction Reports: (i) Jackpots from slot machines and video lottery terminals, (ii) certain transactions between casinos and currency dealers or exchangers, and (iii) certain transactions between casinos and check cashers. Also, the Notice proposed to provide additional examples of cash in and cash out transactions.

III. Comments on the Notice—Overview and General Issues

The comment period for the Notice of Proposed Rulemaking ended on May 22, 2006. We received a total of 16 comment letters. Of these, five were submitted by casinos, two by casino trade associations, seven by agencies representing state or tribal governments, one by a casino gaming equipment manufacturer, and one by an agency of the United States Government.

There was strong support for exempting the following transactions from the requirement to file Currency Transaction Reports: (i) Jackpots from slot machines and video lottery terminals, (ii) certain transactions between casinos and currency dealers or exchangers, and (iii) certain transactions between casinos and check cashers. In addition, commenters were generally supportive of nine of the eleven additional examples of cash in and cash out transactions.

The following two proposed amendments received extensive comment: (i) The addition of ''money plays'' as ''bets of currency'' and

[1] The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Pub. L. 91–508, as amended, is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332.

[2] Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (''USA PATRIOT'') Act of 2001, Pub. L. 107–56 (Oct. 26, 2001).

[3] See 50 FR 5065 (Feb. 6, 1985). Casinos with gross annual gaming revenue not exceeding $1 million were, and continue to be, excluded from requirements otherwise applicable to casinos and card clubs.

[4] The Bank Secrecy Act defines the term ''financial institution'' at 31 U.S.C. 5312(a)(2).

[5] See 31 U.S.C. 5312(a)(2)(Y) and (Z).

[6] Section 409 of the Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325. The definition of ''financial institution'' currently reads in relevant part as follows:

(2) Financial institution means—

* * * * *

(X) A casino, gambling casino, or gaming establishment with an annual gaming revenue of more than $1,000,000 which—

(i) Is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or

(ii) Is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act); * * * 31 U.S.C. 5312(a)(2)(X).

[7] See 61 FR 7054 (Feb. 23, 1996).

[8] See 63 FR 1919 (Jan. 13, 1998). Card clubs generally are subject to the same rules as casinos, unless a different treatment for card clubs is explicitly stated in our rules. Therefore, for purposes of this rulemaking, and unless the context indicates otherwise, the term ''casino'' refers to both casinos and to card clubs.

[9] See 31 CFR 103.11(ii)(2).

[10] See 31 CFR 103.22(b)(2).

[11] See 31 CFR 103.22(c)(3).

[12] See 31 CFR 103.22(b)(2)(i) and (ii). The list is not exhaustive. The terms cash in and cash out refer to direction—currency to the casino in the case of cash in transactions, and currency from the casino in the case of cash out transactions.

[13] See FinCEN Form 103; 31 CFR 103.27(d) and 103.28.

[14] FinCEN Form 103 must be sent either through regular mail within 15 calendar days from the date of the transaction(s) (see 31 CFR 103.27) to the IRS Detroit Computing Center's address found in the instructions to this form or electronically within 25 calendar days from the date of the currency transaction(s) through FinCEN's BSA Direct E-Filing System.

[15] See 71 FR 14129 (March 21, 2006).

therefore as examples of cash in transactions; and (ii) the addition of bills inserted into electronic gaming devices as an example of a cash in transaction. A discussion of the comments follows in the section-by-section analysis below.

IV. Section-by-Section Analysis

A. Jackpots From Slot Machines and Video Lottery Terminals—103.22(b)(2)(ii)(E) and 103.22(b)(2)(iii)(D)

As we explained in the Notice, jackpots from slot machines and video lottery terminals account for a significant portion of Currency Transaction Reports filed by casinos. Absent fraud or abuse of the slot machine or video lottery terminal, a customer [16] who wins more than $10,000 in jackpots at a slot machine or video lottery terminal generally will have won those funds solely because of the workings of the random number generator in the slot machine or in a central computer that is networked with the video lottery terminal. Accordingly, the jackpots are not likely to form part of a scheme to launder funds through the casino. Moreover, casinos are required to file federal income tax forms with the Internal Revenue Service on jackpots of $1,200 or more; therefore, jackpots from slot machines and video terminals are not likely to form part of a scheme to evade taxes.

The commenters agreed with modifying 103.22(b)(2) to delete the reference to slot jackpots as reportable cash out transactions in currency. In addition, the commenters were nearly unanimous in asserting that this deletion would have no negative impact on law enforcement investigations.

We are adopting the proposed amendments regarding slot machine and video terminal jackpots without change. Thus, the final rule amends 103.22(b)(2)(ii)(E) by removing the reference to ''slot jackpots'' from the examples of cash out transactions, and adding paragraph 103.22(b)(2)(iii)(D), which exempts jackpots from slot machines and video lottery terminals as reportable cash out transactions.

B. Transactions With Currency Dealers or Exchangers and Check Cashers—103.22(b)(2)(iii)(A)

As described above, existing regulations require a casino to file a Currency Transaction Report for cash in or cash out transactions in excess of $10,000 conducted between casinos and currency dealers or exchangers, and between casinos and check cashers.[17] In the Notice, FinCEN stated its view that as long as these currency transactions are conducted pursuant to a contractual or other arrangement with a casino covering those services in sections 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H), these currency transactions should not be subject to a casino's currency transaction reporting requirements. Requiring a casino to file Currency Transaction Reports for these transactions, which do not pose a significant money laundering risk, would result in duplicative reports, since currency dealers or exchangers and check cashers are already required to file Currency Transaction Reports on them.[18] Accordingly, we believe that Currency Transaction Reports filed by casinos on these transactions do not have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

Commenters generally supported the proposed amendment,[19] and we are adopting it without change. Thus, the final rule amends 103.22(b)(2) by exempting certain transactions with currency dealers or exchangers and check cashers as reportable transactions for currency transaction reporting purposes.

C. Other Amendments

1. *Purchases of chips, tokens, and other gaming instruments—103.22(b)(2)(i)(A).* We proposed to amend 103.22(b)(2)(i)(A) by removing the reference to ''plaques,'' another name for a high value chip, and including a reference to ''other gaming instruments.'' A ''gaming instrument'' would include any casino-issued financial product that is used to facilitate a gaming transaction (*e.g.*, high dollar denomination plaques used in playing baccarat games and cheques used in playing roulette), including those associated with a particular customer.

Fewer than half of the commenters addressed this proposal, but they agreed generally with broadening the category of casino-issued financial products that facilitate gaming transactions. One commenter asked for clarification about whether the purchase of a casino ''smart card'' would represent the purchase of a gaming instrument. If the customer must establish a personal identification number (PIN) and an account number prior to receiving a casino smart card, it is FinCEN's view that the casino should treat the transaction as a form of ''front money deposit,'' and not the purchase of a gaming instrument.[20] FinCEN is adopting the proposed amendment without change.

2. *Bets of currency, including money plays—103.22(b)(2)(i)(E).* Under the existing regulations, a bet of currency is listed as an example of a cash in transaction.[21] Our Notice included an explicit reference to money plays as bets of currency. In a money play, a customer places currency on the table prior to the beginning of play. The dealer does not exchange the currency for chips, and the currency is not placed in a table ''drop-box'' unless the customer loses the wager. Our Notice stated that a money play is a transaction in currency involving cash in regardless of whether the customer wins or loses the wager.[22] Under current non-federal regulations, money plays are only permitted in Mississippi, Nevada, and certain gaming tribal jurisdictions. Within those few jurisdictions, money plays represent a comparatively small number of bets.

Most of the comments on this proposed amendment disagreed with including money plays as an example of bets of currency that are reportable as cash in transactions. Commenters argued that a money play is a transaction in currency only to the extent the customer loses the wager and the dealer places the currency in a drop-box. Commenters contended that when a customer wins a money play there occurs no physical transfer of currency—from the customer to the casino, or from the casino to the customer. Commenters also argued that a money play in which the customer wins the wager involves no conversion of funds and therefore poses no risk of money laundering.

Commenters also noted that treating money plays as bets of currency could result in Currency Transaction Reports that they believe are misleading. For example, if a customer wins a money play, the currency wagered would be returned to the customer and also

[16] See 31 CFR 103.64(b)(3).

[17] Since July 1997, the instructions to FinCEN Form 103 have included language excluding transactions with currency dealers or exchangers, as well as transactions with check checkers. The language will be revised to reflect the language in 103.22(b)(2)(iii)(A).

[18] This amendment does not affect the obligations of currency dealers or exchangers and check cashers under the rule requiring these businesses to file Currency Transaction Reports. See 31 CFR 103.22(b)(2).

[19] One commenter suggested that FinCEN consider additional exclusions for transactions between casinos and other entities that also may result in duplicative filings. Such transactions are not addressed in the final rule.

[20] See 31 CFR 103.22(b)(2)(i)(B).

[21] See 31 CFR 103.22(b)(2)(i)(E).

[22] We reached the same conclusion in FinCEN Ruling FIN–2006–R002—A Cash Wager on Table Game Play Represents a ''Bet of Currency,'' (March 24, 2006).

treated as a cash out transaction even though the transaction involved the same currency the customer used to make the money play. Similarly, if a customer wins a money play at a table and re-bets the same currency at the table, two cash in transactions that may need to be aggregated would occur, with the result that the customer would appear to have brought more money into the casino than in fact is the case.

FinCEN continues to maintain that money plays at a table game are bets of currency, regardless of whether the customer wins, and that these are cash in transactions under Bank Secrecy Act regulations once the customer can no longer retrieve the bet.[23] We are, however, exempting money plays to the extent the customer wagers the same physical currency that the customer wagered on a prior money play on the same table game, and the customer has not departed from the table. We have also concluded that when a customer wins a money play wager, the currency won would be a cash out transaction. However, since the currency used to place the wager is the same physical currency received when the customer wins the bet, we are exempting such cash out transactions from the currency transaction reporting requirements.

Therefore, the final rule amends 103.22(b)(2)(i)(E), as proposed, to include money plays as bets of currency. Further, the final rule amends proposed 103.22(b)(2)(iii) by excluding from cash out transactions the currency won in a money play when that currency is the same as the currency wagered in the money play. In addition, the final rule excludes from cash in transactions, currency wagered in a money play to the extent it is the same physical currency the customer previously wagered in a money play on the same table game without leaving the table.[24]

3. *Bills inserted into electronic gaming devices—103.22(b)(2)(i)(I).* In the Notice, we proposed to amend 103.22(b)(2)(i)(I) by including bills inserted into electronic gaming devices as an example of a cash in transaction. ''Electronic gaming devices'' would include slot machines and video lottery terminals.

This proposal generated the most comments. All commenters on this proposal, except for one, asserted that slot machines and other electronic gaming devices pose a low risk for money laundering activity and that FinCEN's proposal to include bills inserted into electronic gaming devices as a type of reportable cash in transaction should be rejected.

Most commenters observed that, contrary to FinCEN's assertion, existing business practices and records would not adequately report bills inserted into electronic devices, in part because most systems capture play only for customers who are using a club card.[25] According to the commenters, it is not the industry norm to require customers to be cardholders in order to play slot machines. In fact, several commenters indicated that uncarded play represents between 40–50 percent of all play. The majority of commenters also pointed out that the data gathered by tracking the play of cardholders may be misleading, incomplete and inaccurate for several reasons. First, there is no way for casinos to ensure that a patron is actually the person using his or her card, since patrons may share cards with friends and family, or inadvertently leave a card in a machine resulting in the next player's bills being attributed incorrectly to the previous patron.[26] According to the commenters, this situation may result in flawed per-customer totals and lead to the filing of erroneous Currency Transaction Reports. Second, even for those casinos that have systems in place to track slot play, commenters indicate that the industry standard is to capture a total amount of cash in per player, which includes not just bills inserted but also any credits earned. The commenters as a group (including a company that designs, produces, programs, installs, services and operates gaming machines in the United States) asserted that the development of a system to capture the data sought would take significant time and resources. In addition, the commenters observed that such a system would deter money laundering by cardholders only, a group unlikely to engage in money laundering activity given that they must provide identification as a prerequisite to obtaining a card.

Several commenters noted that, while electronic gaming devices generally present low risk for money laundering activity to begin with (given the relatively labor-intensive process of inserting bills one at a time), potential safeguards already exist to prevent such activity. For example, according to the commenters, casino personnel are already trained to file a Suspicious Activity Report in such situations or in situations where a customer appears to be ''fast-feeding'' a machine.

Several commenters also expressed concern that the proposal would generate confusion when compared with guidance issued by FinCEN in February 2005 regarding the ''knowledge'' requirement.[27] One commenter requested clarification from FinCEN regarding the knowledge requirement and suggested that FinCEN limit the knowledge of transactions to ''contemporaneous knowledge,'' with the result that a transaction would be reportable if an employee is aware of the activity as it is happening. Other commenters observed that even casinos that are able to track data associated with electronic gaming devices still will not have ''knowledge'' that a player has inserted currency into a machine because casino data systems do not generate a record of player identity and the amount of currency inserted.

We note that the amendment would not have changed the existing obligations of casinos to report currency transactions. Under our existing rules, customers inserting currency into electronic gaming devices are conducting ''cash in'' transactions. Further, the amendment would not have

[23] Even though a money play may not involve the conversion of funds and therefore poses no risk of money laundering, information about large amounts of currency wagered in money plays can be highly useful in other criminal investigations or in tax investigations.

[24] Thus, for example, if a customer wagers $4,000 in currency on a table game, wins, and immediately rebets the currency, there is no aggregation of those bets. The exemption is not, however, intended to exclude from currency transaction reporting an amount over $10,000 simply because the customer previously bet the currency. Therefore, if a customer bets $4,000 in currency on a table game, wins, and immediately re-bets the $4,000 together with an additional $7,000 in currency, for a total wager of $11,000, the customer would be treated as making a single transaction involving more than $10,000. This means that when a customer increases a subsequent cash bet, at the same table game without departing, the increase in the amount of the currency bet would represent a new bet of currency and a transaction in currency.

[25] A club card (also called ''player card'') is a card issued by a casino to customers who wish to establish an account with and become members of that casino's ''player club.'' Such cards, aside from serving as marketing devices, allow casinos to track the play associated with the card in exchange for which the cardholder is eligible for certain privileges and/or rewards. To become a member of a player club, a customer must provide or present identification. The customer's computerized slot account record typically contains the customer's name, permanent address, date of birth, and sometimes additional identification information.

[26] While casinos may not be able to ensure that customers do not deliberately or intentionally share slot or club cards, casinos may have strong reasons independent of the Bank Secrecy Act to prevent such sharing. Casinos often rely on slot or club cards as internal marketing tools to identify customers who engage in frequent or substantial gaming activity, and to encourage continued patronage through the awarding of ''complimentaries.'' It is FinCEN's understanding that many casinos, in fact, have policies that prohibit the sharing of slot or club cards.

[27] *See* FinCEN Ruling 2005–1—Currency Transaction Reporting: Aggregation by Casinos at Slot Machines, (Feb. 7, 2005) (''FinCEN Ruling 2005–1'').

created any new recordkeeping or aggregation requirements.[28] For purposes of determining whether to aggregate multiple transactions involving the insertion of currency into slot machines and other electronic gaming devices and file Currency Transaction Reports, the existing knowledge standard continues to apply. Under 31 CFR 103.22(c)(3) multiple transactions are treated as a single transaction if the casino has knowledge that the transactions are by or on behalf of any person and result in cash in totaling more than $10,000 during any gaming day. A casino has knowledge if its officers, directors, or employees have knowledge that multiple currency transactions have occurred, including knowledge from examining records which contain information that such multiple currency transactions have occurred. As explained in FinCEN Ruling 2005–1, the mere existence of information in the records would not represent knowledge of the information by the casino; rather an officer, director, or employee must have knowledge of the information, which could be obtained by observation of a patron's activity or by examination of the casino's records.[29]

Accordingly, the final rule retains the specific reference to ''bills inserted into electronic gaming devices'' as an example of cash in transactions. However, the final rule expressly exempts from reporting requirements with respect to multiple transactions the insertion of currency into an electronic gaming device unless the casino has knowledge that this activity gives rise to a reportable currency transaction, in which case this exemption would not apply.

4. *Redemptions of chips, tokens, tickets and other gaming instruments—103.22(b)(2)(ii)(A).* We proposed to amend 103.22(b)(2)(ii)(A) by removing the reference to plaques and including a reference to ''tickets and other gaming instruments.'' A ''ticket'' is a document issued by a slot machine, video lottery terminal, or a pari-mutuel clerk to a customer as a record of either a wager or the insertion or transfer of funds.[30] A customer can wager a ticket at a machine or terminal that accepts tickets, or redeem a ticket for currency at a cage, slot booth, redemption kiosk, or pari-mutuel window. A gaming instrument would encompass any casino-issued financial product that is used to facilitate a gaming transaction.

We received six comments on the proposal. Only one commenter opposed the proposal. The commenter opposing the proposal raised concerns relating to the identification of patrons that redeem tickets at kiosks or terminals.[31] The commenter's concerns notwithstanding, the amendment would not have changed the obligations of casinos under our rules, and we are adopting the amendment as proposed.

5. *Payments by a casino to a customer based on receipt of funds through wire transfers—103.22(b)(2)(ii)(F).* We proposed to amend 103.22(b)(2)(ii)(F) pertaining to payments in currency by a casino to a customer based on receipt of funds through a wire transfer. Specifically, we proposed to delete the phrase ''for credit to a customer'' because the reference to credit for this type of cash transaction has been confusing for some casinos. We received one comment to this amendment, which agreed with the revision. We are, therefore, adopting the amendment as proposed.

6. *Travel and complimentary expenses and gaming incentives—103.22(b)(2)(ii)(I).* In the Notice, we proposed to amend 103.22(b)(2)(ii)(I) by replacing the term ''entertainment'' with the term ''complimentary,''[32] and by adding the phrase ''gaming incentives.''

Most of the comments on this amendment agreed with the revision.[33] One commenter, however, argued that the revision was unnecessary because travel and complimentary expenses, which according to the commenter are already regulated by state and tribal authorities, present little opportunity for money laundering, tax evasion, or terrorist financing. While it is true that these expenses also are regulated at the state and tribal level, many transactions involving casinos that we regulate are regulated by other governmental authorities. In addition, we disagree that the risks associated with travel and complimentary expenses are as minimal as the commenter asserts. FinCEN is, therefore, adopting the amendment as it was proposed in keeping with our stated intention to update and clarify the categories of reportable cash out transactions.

7. *Payments for tournaments, contests, and other promotions—103.22(b)(2)(ii)(J).* In the Notice, we proposed to amend 103.22(b)(2)(ii)(J) by adding ''payments for tournaments, contests, or other promotions'' as examples of cash out transactions.

Most of the comments on this amendment also agreed with the revision. One commenter, however, argued that the addition of this example was unjustified. According to the commenter, there is a small likelihood that tournaments, contests, or promotions would factor into any scheme to launder money, evade taxes, or finance terrorism. FinCEN was not persuaded by these arguments and is adopting the proposed amendment in keeping with its stated intention to update and clarify the categories of reportable cash out transactions.

V. Revision of FinCEN Form 103

To assist casinos and card clubs in completing FinCEN Form 103, Currency Transaction Report by Casinos, FinCEN is providing the following guidance for items affected by this final rule. Slot jackpots are no longer required to be reported in item 31d (or elsewhere on the form). Money play bets are reported as cash in transactions in item 30d (''currency wager(s)''). Bills inserted into electronic gaming devices are reported as cash in transactions in item

[28] Thus, for example, the proposal would not have required casinos to create multiple transaction logs or develop or upgrade systems for processing or capturing information.

[29] Moreover, as we described in FinCEN Ruling 2005–1, a casino could gain knowledge for currency transaction reporting purposes in the course of complying with its other obligations under the Bank Secrecy Act. (''[K]nowledge for purposes of 31 CFR 103.22(c)(3) includes knowledge acquired in complying with other requirements under the Bank Secrecy Act—including the requirement to report suspicious transactions, and requirements that related to Bank Secrecy Act compliance or anti-money laundering programs.'')

[30] Tickets are voucher slips printed with the name and the address of the gaming establishment, the stated monetary value of the ticket, date and time, number or other information identifying the machine or terminal, ticket number, and a unique bar code. Tickets are a casino bearer ''IOU'' instrument. Slot machines or video lottery terminals that print tickets are commonly known as ''ticket in/ticket out'' or ''TITO.''

[31] Many casinos offer multi-function customer kiosk machines, connected to a gateway or kiosk server, that can perform a variety of financial transactions, such as redeeming slot machine/video lottery tickets for currency, exchanging U.S. currency for U.S. currency (*i.e.*, breaking bills or paper money), redeeming player slot club points, and initiating electronic transfers of money to or from a wagering account including currency withdrawals on automated teller machines. It is also known as a ''redemption kiosk.'' The redemption of tickets at kiosks or terminals is a cash out transaction to the extent funds are redeemed in the form of currency. While the tickets redeemed at kiosks or terminals do not contain the customer's name or any account number, it is FinCEN's understanding that customers usually are limited to redeeming tickets valued at no more than $3,000 at a kiosk or terminal.

[32] Although complimentary items typically are goods or services that a casino gives to a customer, at reduced or no cost, based on significant play, they can also be in the form of currency.

[33] One commenter asked for a clarification of the exclusion of complimentary player meals, coupons, and redemption of club points for merchandise. As long as a casino does not provide currency to customers that have player rating or slot club accounts for purchasing meals or merchandise, or redeeming coupons, then these redemptions are exempted from currency transaction reporting requirements.

30h (''other (specify)''), with the words ''bills inserted in EGDs'' in the space immediately following ''(specify)''. The redemptions of tickets are reported as cash out transactions in item 31a (''redemptions of casino chips, tokens and other gaming instruments''). Casinos may continue to use the current version of Form 103 if they complete it in accordance with this guidance. However, FinCEN is posting on its website a revised copy of Form 103 with minor editorial changes to reflect this guidance along with updated instructions to reflect the exemptions contained in § 103.22(b)(2)(iii) in this final rule.

VI. Executive Order 12866

The Department of the Treasury has determined that this rule is not a significant regulatory action under Executive Order 12866.

VII. Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities, since the regulatory reporting threshold excludes casinos whose gross annual gaming revenues do not exceed $1 million. In addition, the final rule exempts previously reportable transactions, such as jackpots from slot machines and video lottery terminals, as well as cash out transactions involving certain money plays, from the final rule's reporting obligations.

VIII. Effective Date

This rule is being made effective without a delayed effective date in accordance with 5 U.S.C. 553(d)(1).

List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Banks and banking, Currency, Gambling, Indian gaming, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is hereby amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Section 103.22 is amended by:

■ A. Revising paragraphs (b)(2)(i)(A), (E), (G), and (H), and adding a new paragraph (b)(2)(i)(I);

■ B. Revising paragraphs (b)(2)(ii)(A), (E), (F), (H), and (I), and adding a new paragraph (b)(2)(ii)(J); and

■ C. Adding a new paragraph (b)(2)(iii).

The revisions and additions read as follows:

§ 103.22 Reports of transactions in currency.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(A) Purchases of chips, tokens, and other gaming instruments; * * *

(E) Bets of currency, including money plays; * * *

(G) Purchases of a casino's check;

(H) Exchanges of currency for currency, including foreign currency; and

(I) Bills inserted into electronic gaming devices.

(ii) * * *

(A) Redemptions of chips, tokens, tickets, and other gaming instruments; * * *

(E) Payments on bets;

(F) Payments by a casino to a customer based on receipt of funds through wire transfers; * * *

(H) Exchanges of currency for currency, including foreign currency;

(I) Travel and complimentary expenses and gaming incentives; and

(J) Payment for tournament, contests, and other promotions.

(iii) Other provisions of this part notwithstanding, casinos are exempted from the reporting obligations found in §§ 103.22(b)(2) and (c)(3) for the following transactions in currency or currency transactions:

(A) Transactions between a casino and a currency dealer or exchanger, or between a casino and a check casher, as those terms are defined in § 103.11(uu), so long as such transactions are conducted pursuant to a contractual or other arrangement with a casino covering the financial services in §§ 103.22(b)(2)(i)(H), 103.22(b)(2)(ii)(G), and 103.22(b)(2)(ii)(H);

(B) Cash out transactions to the extent the currency is won in a money play and is the same currency the customer wagered in the money play, or cash in transactions to the extent the currency is the same currency the customer previously wagered in a money play on the same table game without leaving the table;

(C) Bills inserted into electronic gaming devices in multiple transactions (unless a casino has knowledge pursuant to § 103.22(c)(3) in which case this exemption would not apply); and

(D) Jackpots from slot machines or video lottery terminals.

* * * * *

Dated: June 20, 2007.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E7–12332 Filed 6–25–07; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–07–079]

RIN 1625–AA00

Safety Zone; Fundation Amistad Fireworks, East Hampton, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Fundation Amistad Fireworks in East Hampton, NY. The safety zone is necessary to protect the life and property of the maritime community from the hazards posed by the fireworks display. Entry into or movement within this safety zone during the enforcement period is prohibited without approval of the Captain of the Port, Long Island Sound.

DATES: This rule is effective from 8:30 p.m. on July 14, 2007 until 10:30 p.m. on July 15, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–07–079 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant D. Miller, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4596.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard did not receive an Application for Approval of Marine Event for this

event with sufficient time to implement a NPRM, thereby making an NPRM impracticable. A delay or cancellation of the fireworks display in order to accommodate a full notice and comment period would be contrary to the pubic interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay encountered in this regulation's effective date would be impracticable and contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Three Mile Harbor off East Hampton, NY and to protect the maritime public from the hazards associated with this fireworks event.

The temporary zone should have minimal negative impact on the public and navigation because it will only be enforced for a two hour period on only one of two specified days. In addition, the area closed by the safety zone is minimal, allowing vessels to transit around the zone in Three Mile Harbor off East Hampton, NY.

Background and Purpose

The Fundation Amistad Fireworks display will be taking place in Three Mile Harbor off East Hampton, NY from 8:30 p.m. to 11:30 p.m. on July 14, 2007. If the fireworks display is cancelled due to inclement weather on July 14, 2007, it will take place during the same hours on July 15, 2007. This safety zone is necessary to protect the life and property of the maritime public from the hazards posed by the fireworks display. It will protect the maritime public by prohibiting entry into or movement within this portion of Three Mile Harbor one hour prior to, during and one hour after the stated event.

Discussion of Rule

This regulation establishes a temporary safety zone on the navigable waters of Three Mile Harbor off East Hampton, NY within an 800–foot radius of the fireworks barge located at approximate position 41°1′5″ N, 072°11′55″ W. The temporary safety zone will be outlined by temporary marker buoys installed by the event organizers.

This action is intended to prohibit vessel traffic in a portion of Three Mile Harbor off East Hampton, NY to provide for the protection of life and property of the maritime public. The safety zone will be enforced from 8:30 p.m. until 11:30 p.m. on July 14, 2007. Marine traffic may transit safely outside of the safety zone during the event thereby allowing navigation of the rest of Three Mile Harbor except for the portion delineated by this rule.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to this event due to the limited area and duration covered by this safety zone. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This regulation may have some impact on the public, but the potential impact will be minimized for the following reasons: Vessels will only be excluded from the area of the safety zone for 3 hours; and vessels will be able to operate in other areas of Three Mile Harbor off East Hampton, NY during the enforcement period.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in those portions of Three Mile Harbor off East Hampton, NY covered by the safety zone. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant D. Miller, Chief, Waterways Management Division, Sector Long Island Sound, at (203) 468–4596.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and will not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule falls under the provisions of paragraph (34)(g) because the rule establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226 and 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T01–079 to read as follows:

§ 165.T01–079 Safety Zone: Fundation Amistad Fireworks, East Hampton, NY.

(a) *Location.* The following area is a safety zone: All navigable waters of Three Mile Harbor off of East Hampton, NY within an 800-foot radius of the fireworks barge located in approximate position 41°1′5″ N, 072°11′55″ W.

(b) *Definitions.* The following definitions apply to this section: *Designated on-scene patrol personnel,* means any commissioned, warrant and petty officers of the U.S. Coast Guard operating Coast Guard vessels in the enforcement of this safety zone.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, Long Island Sound or his designated on-scene patrol personnel.

(3) All persons and vessels shall comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel.

(4) Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed.

(5) Persons and vessels may request permission to enter the zone on VHF–16 or via phone at (203) 468–4401.

(d) *Enforcement period.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on Saturday, July 14, 2007 and if the fireworks display is postponed, from 8:30 p.m. to 10:30 p.m. on Sunday, July 15, 2007.

Dated: June 15, 2007.

D.A. Ronan,

Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.

[FR Doc. E7–12289 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2007–0110; FRL–8330–9]

Approval and Promulgation of Implementation Plans; Idaho and Washington; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the actions of the Idaho Department of Environmental Quality (IDEQ) and the Washington State Department of Ecology (Ecology) to address the provisions of Clean Air Act section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). These provisions require each state to submit a State Implementation Plan (SIP) revision that prohibits emissions that adversely affect another state's air quality through

interstate transport. IDEQ and Ecology have each adequately addressed the four distinct elements related to the impact of interstate transport of air pollutants for their states. These include prohibiting emissions that contribute significantly to nonattainment of the NAAQS in another state, interfere with maintenance of the NAAQS by another state, interfere with plans in another state to prevent significant deterioration of air quality, or interfere with efforts of another state to protect visibility.

DATES: This direct final rule will be effective August 27, 2007, without further notice, unless EPA receives adverse comment by July 26, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2007–0110, by one of the following methods:

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

2. *Mail:* Dana Warn, Office of Air, Waste and Toxics, AWT–107, EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.

3. *Hand Delivery or Courier:* EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Dana Warn, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2007–0110. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Dana Warn at telephone number: (206) 553–6390 or Donna Deneen at (206) 553–6706, e-mail address: *deneen.donna@epa.gov*, fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. Information is organized as follows:

Table of Contents

I. Background of Submittal
II. How Idaho's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)
III. How Washington's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)
IV. Statutory and Executive Order Reviews

I. Background of Submittal

EPA is approving IDEQ's and Ecology's SIP revisions to address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i). This CAA section requires each state to submit a SIP that prohibits emissions that could adversely affect another state, addressing four key elements. The SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in another state, (2) interfere with maintenance of the NAAQS by another state, (3) interfere with plans in another state to prevent significant deterioration of air quality, or (4) interfere with efforts of another state to protect visibility.

EPA issued guidance on August 15, 2006, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' relating to SIP submissions to meet the requirements of CAA section 110(a)(2)(D)(i). As discussed below, Idaho's and Washington's analyses of their respective SIPs with respect to the statutory requirements of CAA section 110(a)(2)(D)(i) are consistent with the guidance. The discussion below covers how Idaho and Washington have addressed the four key requirements of CAA section 110(a)(2)(D)(i).

II. How Idaho's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)

IDEQ addressed the first two elements of CAA section 110(a)(2)(D)(i) by submitting a technical demonstration supporting the conclusion that emissions from Idaho do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone and $PM_{2.5}$ NAAQS in another state. IDEQ relied on analysis by EPA that determined that it was reasonable to exclude the western United States, including Idaho, from the Clean Air Interstate Rule (CAIR), 70 FR 25162 (May 12, 2005). In the proposal for CAIR, EPA determined that because of geographical, meteorological, and topological factors, $PM_{2.5}$ and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these state's boundaries. See 69 FR 4566, 4581 (January 30, 2004).

IDEQ also relied on information on the nearest nonattainment areas. For $PM_{2.5}$, the closest nonattainment area is 25 miles away in Libby, Montana. 70 FR 944, 986 (January 5, 2005). IDEQ noted that the Technical Support Document (TSD) for the $PM_{2.5}$ designation of the Libby area contains a description of the nonattainment area and sources. The Libby TSD states that $PM_{2.5}$ levels in the Libby, Montana area are localized due to topography and meteorological factors.

For ozone, the closest nonattainment area to Idaho is Las Vegas, Nevada. Las Vegas is over 400 miles away. See 69 FR 23858, 23919 (April 30, 2004). IDEQ noted that the supporting documentation for the designation of this nonattainment area demonstrates

that the Las Vegas, Nevada area is geologically and topologically separate from surrounding areas. Based on this and other information provided by IDEQ in its SIP submittal, EPA believes the state has sufficiently demonstrated that emissions from Idaho do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Additional supporting information can be found in IDEQ's submittal included in the docket.

The third element IDEQ addressed is prevention of significant deterioration (PSD). For 8-hour ozone, the state has met the obligation by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard and that the state is working on adopting any relevant requirements of the Phase II ozone implementation rule. For $PM_{2.5}$, IDEQ confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD review.

The fourth element IDEQ addressed is protection of visibility. EPA's regional haze regulations, 64 FR 35714 (July 1, 1999), require states to submit regional haze SIPS to EPA by December 17, 2007. Since Idaho has not yet completed or submitted its regional haze SIP, it is not possible at this time for the State of Idaho to determine whether Idaho interferes with measures to protect visibility in the applicable SIP of another state.

III. How Washington's Submittal Addresses the Provisions of Clean Air Act Section 110(a)(2)(D)(i)

Ecology addressed the first two elements of CAA section 110(a)(2(D)(i) by submitting a technical demonstration supporting the conclusion that emissions from Washington do not significantly contribute to nonattainment or interfere with maintenance of the 8-hour ozone and $PM_{2.5}$ NAAQS in another state. Ecology relied on analysis by EPA that determined that it was reasonable to exclude the western United States, including Washington, from CAIR. As discussed in the proposal for CAIR, EPA determined that because of geographical, meteorological, and topological factors, $PM_{2.5}$ and 8-hour ozone nonattainment problems are not likely to be affected significantly by pollution transported across these State's boundaries. See 69 FR at 4581.

Ecology also relied on information on the nearest nonattainment areas. For $PM_{2.5}$, the closest nonattainment area is Libby, Montana. 70 FR at 986. Libby is over 150 miles away from Spokane, the nearest major city in Washington. Ecology noted that the TSD for the $PM_{2.5}$ designation of the Libby area contains a description of the nonattainment area and sources. The Libby TSD states that $PM_{2.5}$ levels in the Libby, Montana area are localized due to topography and meteorological factors.

For ozone, the closest nonattainment area to Washington is the San Francisco Bay area in California. See 69 FR at 23887. San Francisco is over 600 miles away from Vancouver, the closest major urban area in Washington. Ecology noted that the supporting documentation for the designation of the San Francisco Bay nonattainment area contains information showing that the San Francisco airshed is separate from areas to the north.

Ecology also discussed the Portland-Vancouver Interstate Ozone area. The Portland-Vancouver Interstate Ozone area comprises Portland, Oregon and Vancouver, Washington. The area was a maintenance area for the 1-hour ozone standard. It has been meeting the 8-hour ozone NAAQS since the standard was promulgated in 1997. Ecology explains that the Southwest Clean Air Agency (SWCAA), the local CAA planning agency for the Vancouver area, and the Oregon Department of Environmental Quality (ODEQ) worked together on modeling that demonstrates that the Portland-Vancouver area will continue to attain the 8-hour ozone NAAQS through 2015. Both SWCAA and Oregon have developed 110(a)(1) maintenance plans for the 8-hour ozone NAAQS based on the modeling to meet EPA implementation requirements. The modeling also demonstrates as part of the 110 (a)(l) plan that the Salem-Keizer area to the south of Portland will continue to maintain the 8-hour ozone NAAQS through 2015. Ecology notes that both Washington and Oregon will submit the plans to EPA for approval this year. The draft plans are available on the SWCAA and ODEQ websites.

Based on this and other information provided by Washington in its SIP submittal, EPA believes the state has sufficiently demonstrated that emissions from Washington do not significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state. Additional supporting information can be found in the state's SIP submittal included in the docket.

The third element Ecology addressed is PSD. For 8-hour ozone, the state has met the obligation by confirming that major sources in the state are currently subject to PSD programs that implement the 8-hour ozone standard and that the state is working on adopting any relevant requirements of the Phase II ozone implementation rule. For $PM_{2.5}$, Ecology confirmed that the state's PSD program is being implemented in accordance with EPA's interim guidance calling for the use of PM_{10} as a surrogate for $PM_{2.5}$ for the purposes of PSD review.

The fourth element Ecology addressed is protection of visibility. EPA's regional haze regulations require states to submit regional haze SIPS to EPA by December 17, 2007. Since Washington has not yet completed or submitted its regional haze SIP, it is not possible at this time for the State of Washington to determine whether Washington interferes with measures to protect visibility in the applicable SIP of another state.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 14, 2007.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart N—Idaho

■ 2. In § 52.670(e) the table is amended by adding an entry at the end of the table to read as follows:

§ 52.670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
CAA 110(a)(2)(D)(i) SIP—Interstate Transport.	Statewide	1/30/07	6/26/07, [*insert FR page number where the document begins*].	

Subpart WW—Washington

■ 3. Section 52.2470 is amended by adding paragraph (c)(89) to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(c) * * *

(89) On January 17, 2007, the Washington State Department of Ecology submitted a SIP revision to meet the requirements of Clean Air Act section 110(a)(2)(D)(i). EPA is approving this submittal.

[FR Doc. E7–12234 Filed 6–25–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0457; FRL–8330–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Iowa State Implementation Plan (SIP). The purpose of this revision is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules.

DATES: This direct final rule will be effective August 27, 2007, without further notice, unless EPA receives adverse comment by July 26, 2007. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0457, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: Hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901

North 5th Street, Kansas City, Kansas 66101.

4. *Hand Delivery or Courier:* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2007–0457. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m. excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *Hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does a Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What is a SIP?

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

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

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

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

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

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

What is being addressed in this document?

EPA is approving revisions to the Iowa SIP which include updates to the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. This revision was initially submitted by Iowa on December 21, 2006. The approval request was modified by letter dated May 3, 2007, in which Iowa requested that we take no action on changes to Article X, section 5–28, relating to preconstruction waivers. Pursuant to Iowa's request, EPA is not acting on the revision to section 5–28 and is retaining the version of section 5–28 in the current approved SIP. Polk County intends to revise the waiver provision in section 5–28 in the near future. Polk County routinely revises its local program to be consistent with the federally-approved Iowa rules. The 2006 revisions included updates to definitions of distillate oil, biodiesel fuel, diesel fuel, and painting and surface coating operations.

Polk County also included exemptions to permit requirements to be consistent with the Iowa SIP. These exemptions cover emissions points and activities which have low emissions, such as cafeteria facilities and janitorial services. EPA previously approved these same exemptions in a statewide rule after the state's technical justification for the exemptions was reviewed by

EPA. EPA previously determined that these exemptions would not cause a relaxation of the Iowa SIP.

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

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What action is EPA taking?

EPA is approving this revision which includes changes made to the Polk County SIP submitted by Iowa. These changes are consistent with the federally-approved Iowa SIP. We do not anticipate any adverse comments. Please note that if EPA receives adverse comments on part of this rule, and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This action also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This action also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing state submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a state submission, to use VCS in place of a state submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 27, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 8, 2007.

John B. Askew,

Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for ''Chapter V'' under the heading ''Polk County'' to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission [567]				
*	*	*	*	*
Polk County				
CHAPTER V	Polk County Board of Health Rules and Regulations Air Pollution Chapter V.	11/07/06	6/26/07 ..... [*insert FR page number where the document begins*].	Article I, Section 5–2, definition of ''variance''; Article VI, Sections 5–16(n), (o) and (p); Article VIII, Article IX, Sections 5–27(3) and (4), Article XIII and Article XVI, Sections 5–75(b) are not a part of the SIP. Article X, Section 5–28 has a state effective date of 08/24/2005.

* * * * *

[FR Doc. E7–12237 Filed 6–25–07; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 72, No. 122
Tuesday, June 26, 2007

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

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2007–0457; FRL–8330–6]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Iowa State Implementation Plan (SIP). The purpose of this revision is to update the Polk County Board of Health Rules and Regulations, Chapter V, Air Pollution. These revisions reflect updates to the Iowa statewide rules previously approved by EPA and will ensure consistency between the applicable local agency rules and Federally-approved rules.

DATES: Comments on this proposed action must be received in writing by July 26, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2007–0457 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Hamilton.heather@epa.gov.*
3. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.
4. *Hand Delivery or Courier:* Deliver your comments to: Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 4:30 p.m., excluding legal holidays.

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

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

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

Dated: June 8, 2007.

John B. Askew,

Regional Administrator, Region 7.

[FR Doc. E7–12238 Filed 6–25–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2007–0110; FRL–8330–8]

Approval and Promulgation of Implementation Plans; Idaho and Washington; Interstate Transport of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the actions of the Idaho Department of Environmental Quality (IDEQ) an the Washington State Department of Ecology (Ecology) to address the provisions of Clean Air Act section 110(a)(2)(D)(i) for the 8-hour ozone and $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). These provisions require each state to submit a State Implementation Plan (SIP) revision that prohibits emissions that adversely affect another state's air quality through interstate transport. EPA is proposing to approve IDEQ's and Ecology's SIP revisions because they adequately address the four distinct elements related to the impact of interstate transport of air pollutants for their states. These include prohibiting emissions that contribute significantly to nonattainment of the NAAQS in another state, interfere with maintenance of the NAAQS by another state, interfere with plans in another state to prevent significant deterioration of air quality, or interfere with efforts of another state to protect visibility.

DATES: Comments must be received on or before July 26, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2006–0110, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Dana Warn, Office of Air, Waste and Toxics, AWT–107 EPA, Region 10, 1200 Sixth Ave., Seattle, Washington 98101.
- *Hand Delivery or Courier:* EPA, Region 10 Mail Room, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Attention: Dana Warn, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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

FOR FURTHER INFORMATION CONTACT: Dana Warn at telephone number: (206) 553–6390 or Donna Deneen at (206) 553–6706, e-mail address: *deneen.donna@epa.gov,* fax number: (206) 553–0110, or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the

direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: June 14, 2007.

Michael F. Gearheard,

Acting Regional Administrator, Region 10.

[FR Doc. E7–12235 Filed 6–25–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF STATE

48 CFR Parts 639 and 652

[Public Notice 5836]

RIN 1400–AC31

Department of State Acquisition Regulation

AGENCY: State Department.

ACTION: Proposed rule.

SUMMARY: This proposed rule will add a new solicitation provision and contract clause to implement Department of State requirements regarding security issues for information technology systems, as required by the Federal Information Security Management Act of 2002 (FISMA).

DATES: The Department will accept comments from the public up to 60 days from June 26, 2007.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *E-mail: ginesgg@state.gov*. You must include the RIN in the subject line of your message.
- *Mail (paper, disk, or CD–ROM submissions):* Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602.
- *Fax:* 703–875–6155.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street, NW., Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: *ginesgg@state.gov.*

SUPPLEMENTARY INFORMATION: On September 30, 2005, the Federal Acquisition Regulation (FAR) was revised to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)). (See 70 FR 57447, September 30, 2005). While the FAR provided some guidance to Government contracting officials and other members of the acquisition team, it recognized that Federal agencies would need to customize IT security policies and implementations to meet mission needs. Therefore, the FAR did not provide specific contract language for inclusion in affected contracts, but required that agencies ''include the appropriate information technology security policies and requirements'' when acquiring information technology.

This proposed rule will add a new solicitation provision and contract clause to the Department of State Acquisition Regulation (DOSAR) to implement the Department's requirements regarding security issues for information technology systems. The clause and provision will apply to contracts that include information technology resources to services in which the contractor has physical or electronic access to Department information that directly supports the mission of the Department of State. This will include contracts to acquire personal services from organizations. It does not include personal services contracts that the Department executes directly with specific individuals. Such individuals are considered to be employees of the Department and as such are under its direct supervision and control for purposes of ensuring compliance with applicable information security laws and regulations.

The clause requires that the contractor be responsible for IT security, based on agency risk assessments, for all systems connected to a Department of State (DOS) network or operated by a contractor for DOS. It requires the development of an IT security plan and IT security certification and accreditation in accordance with NIST Special Publication 800–37, Guide for the Security Certification and Accreditation of Federal Information Technology Systems, as well as all related policies and guidance promulgated by the Office of Management and Budget under FISMA and the Privacy Act. This would include related testing and continuous monitoring, incident reporting, and DOS oversight activities. The solicitation provision requires that, as part of their bid/offer, vendors address the approach for completing the security plan, testing, reporting, and certification and accreditation requirements.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

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

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of the Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

Information collection requirements have been approved under the Paperwork Reduction Act of 1980 by OMB, and have been assigned OMB control number 1405–0050.

List of Subjects in 48 CFR Parts 639 and 652

Government procurement.

Accordingly, for reasons set forth in the preamble, title 48, chapter 6 of the Code of Federal Regulations is proposed to be amended as follows:

Subchapter F—Special Categories of Contracting

1. The authority citation for 48 CFR parts 639 and 652 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

PART 639—ACQUISITION OF INFORMATION TECHNOLOGY

2. A new Part 639, consisting of subpart 639.1, sections 639.107 and 639.107–70, is added to subchapter F as follows:

PART 639—ACQUISITION OF INFORMATION TECHNOLOGY

Subpart 639.1—General

639.107 Contract clause.

639.107–70 DOSAR solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 652.239–70, Information Technology Security Plan and Accreditation, in solicitations that include information technology resources or services in which the contractor will have physical or electronic access to Department information that directly supports the mission of the Department.

(b) The contracting officer shall insert the clause at 652.239–71, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts containing the provision at 652.239–70. The provision and clause shall not be inserted in solicitations and contracts for personal services with individuals.

Subchapter H—Clauses and Forms

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 652.239–70 is added to read as follows:

652.239–70 Information Technology Security Plan and Accreditation.

As prescribed in 639.107–70(a), insert the following provision:

Information Technology Security Plan and Accreditation (DATE)

All offers/bids submitted in response to this solicitation must address the approach for completing the security plan and certification and accreditation requirements as required by the clause at 652.239–71, Security Requirements for Unclassified Information Technology Resources.

(End of provision)

4. Section 652.239–71 is added to read as follows:

652.239–71 Security Requirements for Unclassified Information Technology Resources.

As prescribed in 639.107–70(b), insert the following clause:

Security Requirements for Unclassified Information Technology Resources (DATE)

(a) *General.* The Contractor shall be responsible for information technology (IT) security, based on Department of State (DOS) risk assessments, for all systems connected to a Department of State (DOS) network or operated by the Contractor for DOS, regardless of location. This clause is applicable to all or any part of the contract that includes information technology resources or services in which the Contractor has physical or electronic access to DOS's information that directly supports the mission of DOS. The term ''information technology'', as used in this clause, means any equipment, including telecommunications equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. This includes both major applications and general support systems as defined by OMB Circular A–130. Examples of tasks that require security provisions include:

(1) Hosting of DOS e-Government sites or other IT operations;

(2) Acquisition, transmission or analysis of data owned by DOS with significant replacement cost should the Contractor's copy be corrupted; and

(3) Access to DOS general support systems/major applications at a level beyond that granted the general public; e.g., bypassing a firewall.

(b) *IT Security Plan.* The Contractor shall develop, provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract. The plan shall describe those parts of the contract to which this clause applies. The Contractor's IT Security Plan shall comply with applicable Federal laws that include, but are not limited to, 40 U.S.C. 11331, the Federal Information Security Management Act (FISMA) of 2002, and the E-Government Act of 2002. The plan shall meet IT security requirements in accordance with Federal and DOS policies and procedures, as they may be amended from time to time during the term of this contract that include, but are not limited to:

(1) OMB Circular A–130, Management of Federal Information Resources, Appendix III, Security of Federal Automated Information Resources;

(2) National Institute of Standards and Technology (NIST) Guidelines (see NIST Special Publication 800–37, Guide for the Security Certification and Accreditation of Federal Information Technology System *(http://csrc.nist.gov/publications/nistpubs/800–37/SP800–37–final.pdf));* and

(3) Department of State information security sections of the Foreign Affairs Manual (FAM) and Foreign Affairs Handbook (FAH) (*http://foia.state.gov/Regs/Search.asp),* specifically:

(i) 12 FAM 230, Personnel Security;

(ii) 12 FAM 500, Information Security (sections 540, 570, and 590);

(iii) 12 FAM 600, Information Security Technology (section 620, and portions of 650);

(iv) 5 FAM 1060, Information Assurance Management; and

(v) 5 FAH 11, Information Assurance Handbook.

(c) *Submittal of IT Security Plan.* Within 30 days after contract award, the Contractor shall submit the IT Security Plan to the Contracting Officer and Contracting Officer's Representative (COR) for acceptance. This plan shall be consistent with and further detail the approach contained in the contractor's proposal or sealed bid that resulted in the award of this contract and in compliance with the requirements stated in this clause. The plan, as accepted by the Contracting Officer and COR, shall be incorporated into the contract as a compliance document. The Contractor shall comply with the accepted plan.

(d) *Accreditation.* Within six (6) months after contract award, the Contractor shall submit written proof of IT security accreditation for acceptance by the Contracting Officer. Such written proof may be furnished either by the Contractor or by a third party. Accreditation must be in accordance with NIST Special Publication 800–37. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document, and shall include a final security plan, a risk

assessment, security test and evaluation, and disaster recovery/continuity of operations plan. The Contractor shall comply with the accepted accreditation documentation.

(e) *Annual verification.* On an annual basis, the Contractor shall submit verification to the Contracting Officer that the IT Security Plan remains valid.

(f) *Warning notices.* The Contractor shall ensure that the following banners are displayed on all DOS systems (both public and private) operated by the Contractor prior to allowing anyone access to the system:

Government Warning

WARNINGWARNING**WARNING**

Unauthorized access is a violation of U.S. law and Department of State policy, and may result in criminal or administrative penalties. Users shall not access other user's or system files without proper authority. Absence of access controls IS NOT authorization for access! DOS information systems and related equipment are intended for communication, transmission, processing and storage of U.S. Government information. These systems and equipment are subject to monitoring by law enforcement and authorized Department officials. Monitoring may result in the acquisition, recording, and analysis of all data being communicated, transmitted, processed or stored in this system by law enforcement and authorized Department officials. Use of this system constitutes consent to such monitoring.

WARNINGWARNING**WARNING**

(g) *Privacy Act notification.* The Contractor shall ensure that the following banner is displayed on all DOS systems that contain Privacy Act information operated by the Contractor prior to allowing anyone access to the system:

This system contains information protected under the provisions of the Privacy Act of 1974 (Pub. L. 93–579). Any privacy information displayed on the screen or printed shall be protected from unauthorized disclosure. Employees who violate privacy safeguards may be subject to disciplinary actions, a fine of up to $5,000, or both.

(h) *Privileged or limited privileged access.* Contractor personnel requiring privileged access or limited privileged access to systems operated by the Contractor for DOS or interconnected to a DOS network shall adhere to the specific contract security requirements contained within this contract and/or the Contract Security Classification Specification (DD Form 254).

(i) *Training.* The Contractor shall ensure that its employees performing under this contract receive annual IT security training in accordance with OMB circular A–130, FISMA, and NIST requirements, as they may be amended from time to time during the term of this contract, with a specific emphasis on rules of behavior.

(j) *Government access.* The Contractor shall afford the Government access to the Contractor's and subcontractor's facilities, installations, operations, documentation, databases and personnel used in performance of the contract. Access shall be provided to the extent required to carry out a program of IT inspection (to include vulnerability testing), investigation and audit to safeguard against threats and hazards to the integrity, availability and confidentiality of DOS data or to the function of information technology systems operated on behalf of DOS, and to preserve evidence of computer crime.

(k) *Subcontracts.* The Contractor shall incorporate the substance of this clause in all subcontracts that meet the conditions in paragraph (a) of this clause.

(l) *Notification regarding employees.* The Contractor shall immediately notify the Contracting Officer when an employee either begins or terminates employment when that employee has access to DOS information systems or data.

(m) *Termination.* Failure on the part of the Contractor to comply with the terms of this clause may result in termination of this contract.

(End of clause)

Dated: June 13, 2007.

Corey M. Rindner,

Procurement Executive, Department of State.

[FR Doc. 07–3116 Filed 6–25–07; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Marbled Murrelet (Brachyramphus marmoratus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis for the proposed critical habitat designation and amended required determinations for the proposal. The draft economic analysis estimates the post-designation impacts associated with marbled murrelet conservation efforts in areas proposed for final critical habitat designation to range from $69.4 million to $1.42 billion at present value over a 20-year period in undiscounted dollars, $38.1 million to $535 million ($2.22 million to $16.8 million annualized) assuming a 3 percent discount rate, or $24.2 million to $251 million ($2.18 million to $12 million annualized) assuming a 7 percent discount rate. We are reopening the comment period to allow all interested parties the opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they are already part of the public record and will be fully considered in preparation of the final rule.

DATES: We will accept public comments until July 26, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. Submit written comments and information by mail or hand deliver to Ken Berg, Field Supervisor, U.S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office, 510 Desmond Drive, SE., Suite 101, Lacey, WA 98503–1273.

2. Send comments by electronic mail (e-mail) to *MurreletCH@fws.gov.* Please see the Public Comments Solicited section below for information about electronic filing.

3. Fax your comments to 360–753–9405.

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

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Western Washington Fish and Wildlife Office, at the address listed in the **ADDRESSES** section (telephone 360–753–9440; facsimile 360–753–9405).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation published in the **Federal Register** on September 12, 2006 (71 FR 53838), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of marbled murrelet habitat, what areas should be

included in the designations that were occupied at the time of listing that contain features essential to the conservation of the species and why, and what areas that were not occupied at the time of listing that are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(6) The extent to which the description of economic impacts in the draft economic analysis is complete and accurate;

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation;

(8) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act; and

(9) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

If you wish to submit comments electronically, please include ''Attn: RIN 1018-AU91'' in the e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by calling our Western Washington Fish and Wildlife Office at 360–753–9440. Please note that the e-mail address *MurreletCH@fws.gov* will be closed at the termination of the public comment period.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the Western Washington Fish and Wildlife Office (see **ADDRESSES** section). Copies of the proposed critical habitat rule for the marbled murrelet and the draft economic analysis are available on the Internet at *http://www.fws.gov/westwafwo/* or by request to the Field Supervisor (see **FOR FURTHER INFORMATION CONTACT** section).

Background

On September 12, 2006, we published a proposed rule to revise critical habitat for the marbled murrelet in Washington, Oregon, and California (71 FR 53838). For a description of Federal actions concerning the marbled murrelet that occurred prior to our September 12, 2006, proposed rule, please refer to that proposed rule and the original final critical habitat rule for the marbled murrelet (61 FR 26256; May 24, 1996).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the September 12, 2006, proposed rule to revise critical habitat for the marbled murrelet (71 FR 53838), we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the marbled murrelet; some of these costs will likely be inrurred regardless of whether critical habitat is designated. The analysis quantifies economic impacts of murrelet conservation efforts associated with the following land uses: (1) Timber management, (2) development, (3) recreation, (4) other land use activities including transportation and mining, and (5) administrative costs associated with Endangered Species Act section 7 consultations.

The draft economic analysis estimates the post-designation impacts associated with murrelet conservation efforts in areas proposed for final critical habitat designation to range from $69.4 million to $1.42 billion at present value over a 20-year period in undiscounted dollars, $38.1 million to $535 million ($2.22 million to $16.8 million annualized) assuming a 3 percent discount rate, or $24.2 million to $251 million ($2.18 million to $12 million annualized) assuming a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the marbled murrelet, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the marbled murrelet in areas containing features essential to the conservation of the species. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been

incurred since the date the marbled murrelet was listed as threatened (57 FR 45328; October 1, 1992), and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting documents to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our September 12, 2006, proposed rule (71 FR 53838), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. However, on the basis of our draft economic analysis, we do not anticipate that the designation of critical habitat for the marbled murrelet would have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying draft economic analysis.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, and then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in our designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the marbled murrelet would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., timber management activities). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small entities resulting from the protection of the marbled murrelet and its habitat related to the listing of the species and the proposed designation of its critical habitat. Small timber management interests were identified as entities that could be affected by the proposed rule. Impacts described in Section 4 and Appendix B of the draft economic analysis are predominantly decreased land values associated with precluding timber harvest in areas proposed for final critical habitat for the marbled murrelet. These impacts would be expected to be born by the current landowners at the time of final critical habitat designation. The potentially affected timber acres are

few relative to the total timberland area in the counties containing areas proposed for critical habitat. As a result, regional businesses that support or are supported by the timber companies (e.g., sawmills and logging operations) are not expected to be measurably affected by murrelet conservation. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, and Use

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. This proposed designation of critical habitat for the marbled murrelet is considered a significant regulatory action under E.O. 12866 due to its potential raising of novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on the information in the draft economic analysis, energy-related impacts associated with the marbled murrelet conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7 of the Act. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of large Federal entitlement programs on to State governments.

(b) We do not believe that the proposed designation will significantly or uniquely affect small governments, because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the marbled murrelet. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the marbled murrelet does not pose significant takings implications.

Authors

The authors of this notice are the staff of the Division of Endangered Species, Pacific Region, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 12, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–3134 Filed 6–21–07; 4:37 pm]

BILLING CODE 4310–55–P

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Leeward Biotechnology, Inc. of Hartland, Wisconsin, an exclusive license to U.S. Patent No. 5,451,400, ''Mucosal Competitive Exclusion Flora'', issued on September 19, 1995.

DATES: Comments must be received by July 26, 2007.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: the Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Leeward Biotechnology, Inc. of Hartland, Wisconsin has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard J. Brenner,

Assistant Administrator.

[FR Doc. 07–3132 Filed 6–25–07; 8:45 am]

BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Forest Service

Medford Aspen Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service, Chequamegon-Nicolet National Forest, Medford-Park Falls Ranger District intends to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental effects of proposed land management activities, and corresponding alternatives within the Medford Aspen project area. The primary purpose of this proposal is to implement activities consistent with direction in the Chequamegon-Nicolet National Forests Land and Resource Management Plan (Forest Plan) and respond to specific needs identified in the project area.

The project area is located on National Forest System land in the northern portion of the Medford landbase of the Medford-Park Falls Ranger District, approximately 10 miles northwest of Medford, Wisconsin. The legal description for the area is: Township 32 North, Range 3 West, sections 1,12–13, 24; Township 32 North, Range 2 West, sections 3–10, 16–19; Township 32 North, Range 1 West, sections 1–6, 9–10, 12–14; Township 32 North, Range 1 East, sections 4–9, 16–18; Township 33 North, Range 2 West, sections 2–5, 8–11, 13–16, 21–28, 34–35; Township 33 North, Range 1 West, sections 1–3, 10–12, 13, 18–19, 28–35; and Township 33 North, Range 1 East, sections 6–7, 31–32; Fourth Principal Meridian.

DATES: Comments concerning the scope of the analysis must be received within 30 days of publication of this notice to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments to Jeanne Higgins, c/o Jane Darnell, Medford-Park Falls Ranger District, 850 N. 8th St., Medford, Wisconsin 54451. Send electronic comments to: *jdarnell01@fs.fed.us* with a subject line that reads ''Medford Aspen Project''.

FOR FURTHER INFORMATION CONTACT: Jane Darnell, Environmental Coordinator, Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, USDA Forest Service: telephone 715–748–4875 (or TTY: 711, National Relay System), e-mail *jdarnell01@fs.fed.us*. To mail correspondence to Jane Darnell, see information in **ADDRESSES**. Copies of documents may be obtained at the same address. Another means of obtaining information is to visit the Forest Web site at: *http://www.fs.fed.us/r9/cnnf/natres/index.html*.

SUPPLEMENTARY INFORMATION: The information presented in this notice is included to help the reviewer determine if they are interested in or potentially affected by this proposed project. The information presented in this notice is summarized. Those who wish to comment on this proposal or are otherwise interested in or potentially affected by it are encouraged to review more detailed documents such as the Proposed Action for the Medford Aspen Project (currently available for review) and the draft EIS. See the preceding section of this notice for the person to contact for more detailed information about this project.

Project Background

The Medford Aspen project falls within the area defined in the Chequamegon-Nicolet National Forests 2004 Land and Resource Management Plan (Forest Plan) as Management Area (MA) 1A. Guidance in the Forest Plan identifies this area to be managed for early successional forest communities such as aspen, balsam fir, and paper birch. Forest Plan guidance recommends certain percentages of the aspen be within certain age categories in order to maintain the aspen type and provide a variety of wildlife habitat. Within the project area, about 23 percent of the aspen is 45 years old or older. The Forest Plan recommended percentage of aspen in this age class is between 5 and 15 percent. Aspen is a fairly short lived tree species and as aspen surpasses the age of 45, growth and vigor of the trees start to decline. By 60 years of age, aspen is declining to the point where it looses the ability to regenerate itself. By harvesting aspen

before it reaches this stage, the aspen forest type can be maintained.

Purpose and Need for Action

The primary purpose of the Medford Aspen proposal is to implement activities consistent with direction in the Forest Plan and to respond to specific needs identified in the project area. The primary project-specific need is to address the older declining aspen, much of which is approaching 60 years of age and losing the ability to regenerate itself back into productive aspen forest. This need will be met through timber harvest. An associated need is to provide a safe and efficient transportation system near and within the areas being proposed for harvest.

Proposed Action

The proposed land management activities (proposed actions), include the following, with approximate acreage and mileage values:

(1) The following activity addresses the need arising from an abundance of mature, declining aspen in the project area:

Clearcut regeneration harvest on about 1660 acres of aspen in MA 1A has been identified in the proposed action. This even-aged method of harvest removes most trees in the area, which encourages natural regeneration of aspen and other early successional forest species.

(2) The following projects address transportation needs for timber harvest and for providing a safe and efficient transportation system:

About 5 miles of temporary road construction and about 1 mile of permanent road construction is needed to accomplish harvest activities. Temporary logging roads are roads that would be decommissioned and revegetated following project completion.

About 3 miles of existing road would be utilized for the harvest activity and then be decomissioned and revegetated. These roads are not Forest system roads. They were probably utilized for past harvest activity, but since they would not be needed again for many years (20–40), they will be dropped from our road inventory following decommissioning activity.

About 14 miles of existing road would be used and added to the Forest's transportation system. These roads would be maintained to meet future access needs.

Preliminary Issues

Preliminary issues are as follows: Potential effects on some federally threatened or endangered species and Regional Forester Sensitive Species (RFSS); potential effects on heritage resources; potential effects on forest age structure as it relates to forest health and wildlife species; potential effects on water, wetlands, and soils; and some potential economic and social impacts (such as visual quality, recreation).

Possible Alternatives

Alternatives to the proposed action that are currently being considered for display in the draft EIS are as follows: The required No Action alternative and an alternative that harvests more or less of the mature aspen than the proposal.

Nature of the Decision To Be Made

The primary decision will be whether or not to implement the proposed projects or alternatives of the projects within the project area that respond to the purpose and need. The decision may also include additional resource protection measures, monitoring, and whether Forest Plan amendments are needed to implement the decision.

Responsible Official

Jeanne Higgins, Forest Supervisor, Chequamegon-Nicolet National Forest, 1170 4th Avenue South, Park Falls, WI 54552.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the EIS. Comments in response to this solicitation for information should focus on (1) the proposal; (2) issues or impacts from the proposal; and (3) possible alternatives for addressing issues associated with the proposal. We are especially interested in information that might identify a specific undesired result of implementing the proposed actions.

Comments received in response to this solicitation and subsequent solicitations, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. See the section titled **ADDRESSES** in this notice for location of where to send comments.

Estimated Dates for Filing

The draft EIS is expected to be filed with the Environmental Protection Agency and be available for public review in December 2007. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. Comments received on the draft EIS will be used in preparation of a final EIS. We expect to file the notice of the availability of the final EIS and Record of Decision (ROD) in the **Federal Register** in April 2008.

Early Notice of the Importance of Public Participation in Subsequent

Environmental Review

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of the draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the draft EIS. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: June 18, 2007.

Jeanne Higgins,

Forest Supervisor.

[FR Doc. E7–12314 Filed 6–25–07; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Mississippi Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Meeting notice for the Southwest Mississippi Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Southwest Mississippi Resource Advisory Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393. Topics to be discussed include: general information, possible Title II projects, and next meeting dates and agendas.

DATES: The meeting will be held on July 12, 2007, from 6 p.m. and end at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Franklin County Library, 106 First Street, Meadville, MS 39653.

FOR FURTHER INFORMATION CONTACT: Mary Bell Lunsford, Committee Coordinator, USDA, Homochitto National Forest, 1200 Highway 184 East, Meadville, MS 39653 (601–384–5876 ex. 154).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. A public input session will be provided and individuals who made written requests by July 6, 2007, will have the opportunity to address the committee at that session. Individuals wishing to speak or propose agenda items must send their names and proposals to Tim Reed, DFO, Homochitto National Forest, 1200 Highway 184 East, Meadville, MS 39653.

Dated: June 14, 2007.

Timothy O. Reed,

Designated Federal Officer.

[FR Doc. 07–3106 Filed 6–25–07; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

East Kentucky Power Cooperative: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment for Public Review.

SUMMARY: The Rural Utilities Service (RUS), an Agency delivering the United States Department of Agriculture (USDA) Rural Development Utilities Programs, hereinafter referred to as Rural Development and/or Agency, has prepared an Environmental Assessment (EA) related to possible financial assistance to East Kentucky Power Cooperative (EKPC) for the construction of two new combustion turbine electric generating units (CTs) at its existing J.K. Smith Electric Generating Station in southern Clark County, Kentucky. The proposed new units would utilize natural gas as a fuel source and would each have a net electrical output of between 82 and 98 megawatts. The proposed new units are needed to provide additional electric generating capacity that would allow EKPC to meet its projected electrical peaking demand in the 2009–2011 period. EKPC is also proposing to construct two new electric switching stations, one at its existing J.K. Smith Generating Station and one in western Garrard County, Kentucky; and a 36 mile, 345 kilovolt electric transmission line that would extend through Clark, Madison, and Garrard Counties, Kentucky, between the proposed new switching stations. The proposed new transmission facilities are needed to provide an outlet for the additional electric power that would be generated at the J.K. Smith Station as a result of the installation of the proposed new CTs. EKPC is requesting USDA Rural Development to provide financial assistance for the proposed project.

DATES: Written comments on this Notice must be received on or before July 26, 2007.

ADDRESSES: To obtain copies of the EA, or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, Rural Development, Utilities Programs, 1400 Independence Avenue, SW., Stop 1571, Washington, DC 20250–1571, phone (202) 720–0468 (e-mail *stephanie.strength@wdc.usda.gov*). A copy of the EA may be viewed online at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm* and at EKPC's headquarters office located at 4775 Lexington Road, Winchester, Kentucky 40391, or the following:

Julie Maruskin, Director, Clark County Library, 370 South Burns Avenue, Winchester, Kentucky 40391, (859) 744–5661.

Sue Hays, Director, Madison County Library, 507 West Main Street, Richmond, Kentucky 40475, (859) 623–6704.

Joan Tussey, Director, Garrard County Public Library, 101 Lexington Street, Lancaster, Kentucky 40444, (859) 792–3424.

SUPPLEMENTARY INFORMATION: Originally five CT units were considered in the EA. Due to the cancellation of Warren Rural Electric Cooperative Corporation's (Warren) wholesale power contract with EKPC, the need for the additional peaking power has been partially delayed. Three of the originally proposed units have been removed from consideration in the EA, and removed from the current application for RUS financing, as the need for the units is not projected to occur until between 2012 and 2014. Therefore, the federal action limited to this proposal is the two CT Units 9 & 10. The Smith to West Garrard 345 kV transmission line will be combined with the Smith CT Units 9 & 10 in the EA. The purpose of the proposed action is to provide additional electric generating capacity to allow EKPC to meet projected peaking demand in the 2009–2011 period and to construct necessary transmission facilities to allow EKPC to deliver the additional electric power required during that period plus additional planned generation.

The proposed CTs would be either model 7EA or model LMS100, both manufactured by GE Energy. Each 7EA would have a net electrical output of 82.2 MW at 59°F. Each LMS100 would have a net electrical output of 97.8 MW at 30°F. The CTs would be operated on natural gas as a fuel source approximately 2,000 hours per year. Very short electric transmission connections consisting of approximately one span of overhead line would be constructed on-site to connect each of the proposed new CT units to the existing electric switching station servicing existing CT units currently located at the site.

The proposed Smith to West Garrard Electric Transmission Line would be designed for 345 kilovolt (kV) operation and would be approximately 36 miles in length, involving roughly 12 miles of transmission line rebuild, 15 miles of co-location, and nine miles of new build. The new transmission line would

be supported by vertical H-frame steel pole structures that would range in height from 90 to 130 feet aboveground. Angles, or changes in direction in the transmission line, would require larger structures and/or steel guy cables to act as a counter-force to maintain the integrity of the support structures.

The proposed new transmission line would require a 150-foot wide right-of-way (ROW). The width of the ROW where the proposed line would be co-located with, or parallel to, existing electric transmission lines would also be 150 feet; however, a portion of the existing ROW would be utilized by locating the proposed line as close as possible to the existing facilities. A 75-foot buffer would be maintained to each side of the centerline of the transmission line. EKPC is also proposing to rebuild a portion of an existing 69 kV transmission line as part of the proposed project. Within the proposed rebuild section, the existing electric transmission line ROW is currently 100 feet in width and would require 50 additional feet in ROW width to accommodate the proposed new line.

The J.K. Smith 345 kV Switching Station would be a 345 kV breaker-and-a-half configuration. It would be constructed within EKPC's existing J.K. Smith Generating Station's fenced boundary near an existing electric switchyard. The proposed site for the new switching station has been previously graded in association with other construction activity at the generating station and would not require extensive grading or earth moving activities. The structure heights in the switching station would be between 80 and 90 feet aboveground. The amount of land that would be affected by the proposed construction activity associated with the new switching station would be approximately eight acres.

The West Garrard Switching Station would be a 345 kV breaker-and-a-half configuration designed to accommodate 138 kV and 69 kV step down transformers sometime in the future. The structure heights in the switching station would be between 80 and 90 feet aboveground. The proposed construction activity would affect approximately five to ten acres of land. The construction of the proposed electric generation and transmission project is tentatively scheduled to begin in the fall of 2007 and the estimated duration of construction would be 2 years.

Alternatives considered by USDA Rural Development and EKPC included for the CTs were (a) no action, (b) alternate sources of power, (c) conservation and interruptible load service, (d) renewable energy sources, (e) non-renewable energy sources, (f) alternate sites. The alternatives considered for the transmission facilities were (a) no action, (b) placing the line underground, (c) electrical alternatives, (d) alternate routes, and (e) alternate switching station sites. An Environmental Report (ER) that describes the proposed project in detail and discusses its anticipated environmental impacts has been prepared by EKPC. The USDA Rural Development has reviewed and accepted the document as its EA of the proposed project. The EA is available for public review at addresses provided above in this Notice.

Questions and comments should be sent to USDA Rural Development at the mailing or e-mail addresses provided above in this Notice. USDA Rural Development should receive comments on the EA in writing by July 26, 2007 to ensure that they are considered in its environmental impact determination.

Should USDA Rural Development determine, based on the EA of the proposed project, that the impacts of the construction and operation of the project would not have a significant environmental impact, it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the project area.

Any final action by USDA Rural Development related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal, state and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in USDA Rural Development's Environmental Policies and Procedures (7 CFR part 1794).

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Development/Utilities Programs.

[FR Doc. E7–12294 Filed 6–25–07; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

List of Petitions Received by EDA for Certification of Eligibility To Apply for Trade Adjustment Assistance for the Period May 21, 2007 Through June 20, 2007

Firm	Address	Date petition accepted	Product
R&I Enterprises dba: Compulogic Design Co.	233 Paredes Line Rd., Brownville, TX 78521.	5/24/2007	Metal forming and mold dies material.
Shelby Industries, LLC	175 McDaniel Road, Shelbyville, KY 40065.	5/24/2007	Winches, couplers, jacks and accessory items such as trailer balls/chains/locks, etc. made of steel. Primary manufacturing processes are stamping, welding, zinc plating or painting and mainly manual assembly.

Firm	Address	Date petition accepted	Product
Mach Mold Incorporated	360 Urbandale, Benton Harbor, MI 49022.	5/24/2007	Injection type mold.
Heppner Molds, Inc	1420 E. Third Ave., Post Falls, Idaho 83854.	5/25/2007	Molded plastic products.
New Monarch Machine Tools, Inc	641 NYS Rt. 13 South Cortland, NY 13045–0749.	5/25/2007	Manufacture of CNC machining centers and parts.
J.R. Higgins Associates, LLC	898 Main Street, Action, Massachusetts 01720.	6/19/2007	Manufacture customized high quality machined and fabricated products and a line of specialty vehicle signs.
JRI, Inc. (Wire Processing Division)	31280 La Baya Dr., Westlake Village, CA 91362.	6/19/2007	Lead and wire harness manufacturing.
Electropac Company, Inc	252 Willow Street, Manchester, NH 03103.	6/20/2007	Single and double-sided printed circuit boards.
Creative Marketing Concepts, Corp	96 Audubon Road, Wakefield, Massachusetts.	6/19/2007	Vertical tanning machines.
R&M Apparel, Inc	721 Donoughe Street, Gallitzin, PA 16641.	6/19/2007	Manufactures womens', misses' and girls' outerwear.
Enterprise Tool and Die, Inc	4270 White Street, SW, Grandville, MI 49418.	6/19/2007	Progressive stamping dies and transfer dies for the forming of sheet metal.
Marshall Metal Products, Inc	1006 E. Michigan Avenue, Marshall, MI 49068.	6/19/2007	Small to medium size metal stampings.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: June 20, 2007.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E7–12329 Filed 6–25–07; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on July 12, 2007, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

Public Session

1. Opening Remarks by the Chairman.
2. Presentation on Synthetic Genomics.
3. Synthetic Genomic Control Discussion.
4. Composite Working Group Update.
5. Export Control Classification Number Review Working Group Co-chairs Comments.
6. Pending Regulatory Changes from Australia Group Plenary.
7. Export Control Classification Number Review Evaluation, Follow up, and Assignments.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to Ms. Yvette Springer at *Yspringer@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on June 6, 2007, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with matters the premature disclosure of which would likely frustrate the implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Dated: June 20, 2007.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 07–3115 Filed 6–25–07; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar from India: Extension of Time Limit for the Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 26, 2007.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Brandon Farlander, AD/CVD Operations, Office 1, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279 or (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 2007, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on stainless steel bar from India covering the period February 1, 2005, through January 31, 2006. *See Notice of Notice of Preliminary Results of Antidumping Duty Administrative Review, Intent to Rescind and Partial Rescission of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 72 FR 10151 (March 7, 2007). The final results for this administrative review are currently due no later than July 5, 2007.

Extension of Time Limits for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an antidumping duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

In accordance with 782(i)(3) of the Act, the Department conducted on–site verification of responses submitted by two respondents in this review in May and June 2007. Accordingly, the Department must still issue the verification findings. Therefore, we find that it is not practicable to complete this review within the originally anticipated time limit (*i.e.*, by July 5, 2007). Thus, the Department is extending the time limit for completion of the final results to no later than September 6, 2007, in accordance with section 751(a)(3)(A) of the Act.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: June 19, 2007.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E7–12330 Filed 6–25–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Public Meeting of the National Conference on Weights and Measures

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notification of the 92nd Annual Meeting of the National Conference on Weights and Measures, July 2007.

SUMMARY: The Annual Meeting of the 92nd National Conference on Weights and Measures (NCWM) will be held July 8 to 12, 2007, in Snowbird, Utah. The meetings are open to the public, but registration with the NCWM is required. The NCWM is an organization of state, county, and city weights and measures officials and includes representatives of business, federal agencies, and members of the private sector which come together to develop standards related to weights and measures technology, administration, and enforcement. Pursuant to (15 U.S.C. 272(b)(6)), the Weights and Measures Division of the National Institute of Standards and Technology (NIST) supports the NCWM as one of the forums it uses to solicit comments and recommendations on revising or updating a variety of publications related to legal metrology. NIST promotes uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other practices used in trade and commerce. Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the publications of the NCWM mentioned below. Please see NCWM Publication 16 which contains meeting agendas and schedules, registration forms and hotel information at *http://www.ncwm.net.*

DATES: July 8–12, 2007.

ADDRESSES: The Snowbird Resort, Highway 210, Little Cottonwood Canyon, Snowbird, Utah 84092.

SUPPLEMENTARY INFORMATION: The following are brief descriptions of some of the items that will be considered at the meeting. All items are voting items unless specified otherwise. Comments will be taken on these and other issues during public hearings on July 8 and 9, 2007. At this stage, the items are proposals that will be considered for adoption at this meeting. The agenda also includes committee work sessions that will take place after the hearings during which the Committees will finalize the proposals for NCWM consideration at its voting sessions on July 11 and 12, 2007. The Committees may also withdraw or carryover items that need additional development.

The Specifications and Tolerances Committee will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial measurement applications, that is, devices that are normally used to buy from or sell to the general public or used for determining the quantity of product sold among businesses. Issues on the agenda of the NCWM Laws and Regulations Committee relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology, and engine fuel quality,'' which cover the method of sale of commodities regulations and engine fuel labeling. This notice contains information about significant items on the NCWM Committee agendas so many issues are not presented in this notice. As a result, the following items are not consecutively numbered.

NCWM Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

General Code

Item 310–1. G.S.2. Facilitation of Fraud. The proposal modifies the section to clarify that the prohibition against facilitating fraud applies to the electronically programmed and coded components of weighing and measuring devices to reduce electronic manipulation or alteration. Examples of fraud issues in the past few years have involved: (1) Users altering, manipulating, or interfering with software interfaced or installed in equipment; (2) microprocessor issues (*e.g.*, users hiding extra electronic pulsers in gas pumps and taximeters); and (3) users developing software programs that permit the manipulation of motor truck scale data used to generate weighmaster certificates. The Committee is proposing to update the requirement by adding terms to address

electronic and software-based technology that may be fraudulently used today.

Item 310–3. Multiple Weighing or Measuring Elements that Share a Common Provision for Sealing. This proposal would require new commercial weighing and measuring devices with multiple weighing or measuring elements to be equipped with one of several means to indicate when changes are made to individual elements that affect metrological parameters.

Scales Code

Item 320–6. Shift Tests (Off-Center Load Tests) for Bench or Counter and Other Scales. This proposal is intended to clarify the appropriate shift test pattern and test loads for scales currently designated as bench/counter scales and other platform-type scales. Currently, bench and counter scale shift tests are conducted with a one-half capacity test load centered successively at four points equidistant between the center and the front, left, back, and right edges of the load-receiving element. Shift tests for other platform scales are conducted with a one-half capacity test load centered, as nearly as possible, successively at the center of each quadrant. The proposal eliminates references to bench and counter scales and prescribes that the shift test load and test pattern used for those and other scales (except for livestock scales) be based on the scale's nominal capacity. For livestock scales the proposal clarifies, but does not change, the existing shift test requirements.

Item 320–7. Dynamic Monorail Systems. This proposal clarifies that the device should be tested while in normal use and that the two extra carcasses referenced in the current language are only for replacement purposes (*e.g.*, in cases where carcass weight loss occurs as a result of influences other than from the device being tested) and are not intended to replace erroneous device readings found testing. The proposal also includes a requirement that certified weights be used for a static test of the reference scale.

Liquid-Measuring Device Code

Item 330–2. Display of Quantity and Total Price in Aviation Refueling Applications. This is a proposal to revise requirements related to the display of delivered quantity and total price for liquid measuring devices (typically those used at small or midsized airports) to fuel small aircraft.

Item 330–4. Temperature Compensation. This is an information item that is presented to solicit comments to the Committee regarding proposals to include requirements in Handbook 44 to permit liquid measuring devices to be equipped with the automatic means to allow them to deliver products on the basis of temperature compensated volume. (See also Item 232–1 below under the Laws and Regulations Committee.)

Vehicle Tank Meter Code

Item 331–1. Temperature Compensation. This is a proposal to add requirements to Handbook 44 to allow vehicle-mounted measuring devices to be equipped with the automatic means to allow them to deliver products on the basis of temperature compensated volume. (See also Item 232–1 below under the Laws and Regulations Committee.)

NCWM Laws and Regulations Committee

The following voting items are proposals to amend the Method of Sale of Commodities Regulation in NIST Handbook 130:

Item 232–1. Temperature Compensation for Refined Petroleum Products and Other Fuels. The proposal allows sellers the option of offering engine fuels for sale on the basis of automatic temperature compensation at all levels of distribution. Compensation is permitted in many states at the wholesale and other levels and is required in many states for some meters used to deliver Liquefied Petroleum Gas. This proposal defines the reference temperature for sales by the liter or gallon (or fractions thereof), and allows the state weights and measures directors to grant exceptions to the requirements for some devices. One provision requires full-disclosure of the method of sale on dispensers and street signs to ensure value comparison and fair competition among sellers.

Item 232–2. Fuel Ethanol Labeling. This item requires the identification and labeling of ethanol blends on engine fuel dispensers at retail service stations.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600, telephone (301) 975–5507, or at *Carol.Hockert@nist.gov.*

Dated: June 19, 2007.

James Turner,

Deputy Director.

[FR Doc. E7–12333 Filed 6–25–07; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Technology Administration

[Docket No.: 070208027–7028–01]

National Medal of Technology's Call for Nominations 2007; Extension of Nomination Period

AGENCY: Technology Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce's Technology Administration is extending the deadline for the solicitation period for nominations for its National Medal of Technology (NMT) 2007 program from May 31, 2007 to July 18, 2007 due to server problems encountered during the submission period.

Established by statute in 1980, the President of the United States awards the National Medal of Technology to our Nation's leading innovators. If you know of a candidate who has made an outstanding, lasting contribution to the economy through technology, you may obtain a nomination form from: *http://www.technology.gov/medal*.

DATES: The extended deadline for submission of a nomination is July 18, 2007.

ADDRESSES: The NMT Nomination form for the year 2007 may be obtained by visiting the Web site at *http://www.technology.gov/medal*. Please return the completed application to the National Medal of Technology Program at: *NMT@technology.gov* or by mail to: Technology Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4824, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: *NMT@technology.gov* or call Connie Chang, Research Director, Technology Administration at 202/482–1575.

SUPPLEMENTARY INFORMATION: The National Medal of Technology is the highest honor awarded by the President of the United States to America's leading innovators. Enacted by statute in 1980, the Medal of Technology was first awarded in 1985. The Medal is given to individuals, teams, or companies who have improved the American economy and quality of life by their outstanding contributions through technology.

The primary purpose of the National Medal of Technology is to recognize American innovators whose vision, creativity, and brilliance in moving ideas to market have had a profound and lasting impact on our economy and way of life. The Medal highlights the

national importance of fostering technological innovation based upon solid science, resulting in commercially successful products and services.

On March 2, 2007, the Technology Administration published a notice of solicitation for nominees for the 2007 National Medal of Technology. The original deadline for nominees was May 31, 2007. Due to server problems encountered during the submission period, which resulted in the inability for some nomination packages to be submitted before the deadline, the Technology Administration is extending the deadline from May 31, 2007, to July 18, 2007. Nomination packages submitted and received between May 31, 2007 and June 26, 2007 are deemed to be timely. All other program requirements and information published in the original solicitation remain unchanged.

Eligibility and Criteria: Information on eligibility and nomination criteria is provided on the Nominations Guidelines Form at *http://www.technology.gov/medal*. Applicants who do not have internet access should contact Connie Chang, Research Director, Technology Administration at the e-mail address or telephone number above to request this information.

Dated: June 15, 2007.

Robert C. Cresanti,

Under Secretary for Technology, U.S. Department of Commerce.

[FR Doc. E7–12327 Filed 6–25–07; 8:45 am]

BILLING CODE 3510–18–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Committee Meetings

AGENCY: Defense Science Board.

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board 2007 Summer Study on Challenges to Military Operations in Support of National Interests will meet in closed session on August 6–16, 2007; at the Beckman Center, Irvine, CA.

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 this meeting, the Board will review previous and ongoing studies regarding stressing wars; identify defining parameters for challenges to military operations; assess capability gaps; and identify possible solutions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2) and 41 CFR 102–3.155, the Department of Defense has determined that these Defense Science Board Summer Study meeting will be closed to the public. Specifically, the Under Secretary of Defense (Acquisition, Technology and Logistics), with the coordination of the DoD Office of General Counsel, has determined in writing that all sessions of these meetings will be closed to the public because they will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(1).

Interested persons may submit a written statement for consideration by the Defense Science Board, Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

FOR FURTHER INFORMATION CONTACT: Ms. Debra Rose, Executive Officer, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *debra.rose@osd.mil*, or via phone at (703) 571–0084.

Dated: June 20, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3111 Filed 6–25–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2007–OS–0066]

National Information Assurance Program

AGENCY: Department of Defense; National Security Agency.

ACTION: Notice of new fees.

SUMMARY: Section 933 of Pub. L. 109–364, the John Warner National Defense Authorization Act for Fiscal Year 2007, provides that the Director, National Security Agency, may collect charges for evaluating, certifying, or validating information assurance products under the National Information Assurance Program (NIAP) or successor program. Table A sets forth the Fee-For-Service rates that will be assessed to NIAP accredited commercial Common Criteria Testing Labs (CCTLs) for ''validation'' services performed by NIAP validator personnel on information technology (IT) security products being evaluated by the NIAP CCTLs pursuant to the Common Criteria Evaluation and Validation Scheme (CCEVS).

DATES: Comments must be received on or before August 27, 2007. Do not submit comments directly to the point of contact or mail your comments to any address other than what is shown below. Doing so will delay the posting of the submission.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Audrey M. Dale, 410–854–4458.

SUPPLEMENTARY INFORMATION: NSA and the National Institute of Standards and Technology (NIST) formed the NIAP in order to promote information security in various ways, including the evaluation of IT security products. Commercial IT security product vendors initiate the NIAP evaluation process through submission of their IT security product to a nationally accredited commercial CCTL for evaluation against the internationally recognized Common Criteria (CC) Standard for Information Technology Security Evaluation (ISO Standard 15408). NIAP evaluation is voluntary for IT security products that are acquired by United States Government (USG) civil agencies and non-USG entities, but as per National Security Telecommunications & Information Systems Security Policy (NSTISSP) No. 11, mandatory for IT

security products purchased for use on systems that process national security information. Additionally, per DoD Instruction 8500.2 the DoD mandates the use of CC or NIAP evaluated IT security products on all DoD networks.

Evaluations are conducted by NIAP accredited commercial CCTLs, with oversight provided by NIAP validator personnel who are NSA government employees, Federally Funded Research & Development Center (FFRDCs) personnel or contractors. Prior to the enactment of Sec 933, NSA paid for all validation costs. Sec 933 shifts the costs for this validation oversight from NSA to the commercial CCTLs (who may, in turn, will pass these fees onto the product vendors seeking NIAP evaluation of their IT security products). This change will ensure that NIAP can keep pace with the commercial demand for IT security product evaluations and will not be constrained by NSA's program budget for validation services.

Fee Schedule: TABLE A delineates the NIAP Validation Oversight Fee Schedule which will be assessed to CCTLs for validation services provided in support of their NIAP evaluations. Fees are predicated on a per hourly basis by validator skill type and are a function of the Evaluation Assurance Levels (EALs) along with the type and complexity of the product technology. The CC standard used for NIAP evaluations is broken down into increasingly more rigorous Evaluation Assurance Levels (EALs) beginning at EAL 1 and moving up to the highest possible assurance at EAL 7.

The two primary factors used in developing the Validation Fee Schedules were the EALs of the evaluations and the complexity (simple, moderately complex, and complex) of the product being evaluated. Higher EALs require more rigorous and thus more costly evaluations. More complex products typically take more time to analyze resulting in longer and more costly evaluations. The complexity factor takes into account size of the product in terms of lines of code but must also reflect the fact that new technologies will require additional analysis. Simple products would include basic routers, switches or file encryptors. Products of moderate complexity would include simple firewalls or general application software. Complex products would include standard operating systems and new/unique IA products or technologies.

While validation oversight occurs throughout the course of an evaluation, the majority of this oversight is focused on Validation Oversight Reviews (VORs). These reviews take place at critical points during the evaluation. Evaluations require Initial, Test and Final VORs. The VOR process typically consists of three phases: the preparation phase where validators review documents pertaining to that specific VOR, the actual VOR meeting (attended by the validators and lab personnel), and the Issue Resolution and Wrap-Up phase. During this final phase all relevant issues are addressed by the CCTL then the VOR report is finalized. At EAL 3s and above, witnessing of testing by validator personnel may also be required.

An additional factor that will affect the validation oversight costs is the length of the evaluation since monthly validation fees will be applied to cover validator coordination and guidance costs throughout the course of the evaluation.

The final section of the fee schedule depicts costs for assurance maintenance which is the process vendors use to maintain the currency of their product evaluations. Vendors submit rationale for why changes to their product did not impact their evaluated product's security. The vendor proposals are reviewed by a NIAP senior validator who determines if their rationale is sound and makes a recommendation to NIAP management who then renders a verdict on the vendor assurance maintenance proposal.

Dated June 19, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

BILLING CODE 5001–06–P

HOURLY RATES

Mid-Level Validator	$150
Technical Coordination (mix of mid-level & Senior)	$180
Senior / Expert Validator	$210

PROPOSED FEE-FOR-SERVICE SCHEDULE

EAL2 Validation Costs

	Simple Product				Moderately Complex Product				Complex Product			
Activity	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*
Initial VOR												
Preparation	10	6	16	$2,760	14	8	22	$3,780	26	14	40	$6,840
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issue Resolution & Wrap-Up	8	4	12	$2,040	12	6	18	$3,060	16	8	24	$4,080
Cost for Initial VOR			36	**$6,240**			50	**$8,640**			76	**$13,080**
Testing VOR												
Preparation	16	12	28	$4,920	20	16	36	$6,360	24	20	44	$7,800
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issue Resolution & Wrap-Up	8	8	16	$2,880	12	8	20	$3,480	16	8	24	$4,080
Cost for Testing VOR			52	**$9,240**	12		66	**$11,640**			80	**$14,040**
Witness Testing												
Travel Cost				$0				$0				$0
Witness Testing by Validator			0	$0			0	$0			0	$0
Final VOR												
Preparation	10	8	18	$3,180	16	12	28	$4,920	26	16	42	$7,260
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issues Resolution & Wrap-Up	10	10	20	$3,600	16	12	28	$4,920	24	16	40	$6,960
Cost for Final VOR			46	**$8,220**			66	**$11,640**			94	**$16,380**
Monthly Guidance/Coordination			1	$180			2	$360			3	$540
Review/Coord of NSA Penetration Testing			N/A	N/A			N/A	N/A			N/A	N/A
EAL2 TOTALS			134	**$23,700**			182	**$31,920**			250	**$43,500**

Note: EAL 2 TOTALS do not include monthly fees since those depend on the length of the projected evaluation

EAL3 Validation Costs

Simple Product	Moderately Complex Product	Complex Product

Activity	M	Sr	Hours	Costs	M	Sr	Hours	Costs	M	Sr	Hours	Costs
Initial VOR												
Preparation	10	8	18	$3,180	14	10	24	$4,200	26	16	42	$7,260
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issue Resolution & Wrap-Up	12	8	20	$3,480	16	8	24	$4,080	20	8	28	$4,680
Cost for Initial VOR			46	**$8,100**			58	**$10,080**			82	**$14,100**
Testing VOR												
Preparation	20	12	32	$5,520	24	16	40	$6,960	28	24	52	$9,240
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issue Resolution & Wrap-Up	12	8	20	$3,480	16	8	24	$4,080	20	8	28	$4,680
Cost for Testing VOR			60	**$10,440**			74	**$12,840**			92	**$16,080**
Witness Testing												
Travel Cost				Gov't per diem				Gov't per diem				Gov't per diem
Witness Testing by Validators	16	16	32	**$5,760**	24	24	48	**$8,640**	24	24	48	**$8,640**
Final VOR												
Preparation	20	8	28	$4,680	26	12	38	$6,420	32	16	48	$8,160
VOR Meeting	4	4	8	$1,440	5	5	10	$1,800	6	6	12	$2,160
Issue Resolution & Wrap-Up	20	8	28	$4,680	26	12	38	$6,420	32	16	48	$8,160
Cost for Final VOR			64	**$10,800**			86	**$14,640**			108	**$18,480**
Monthly Guidance/Coordination			2	$360			3	$540			4	$720
Review/Coord of NSA Penetration Testing			N/A	N/A			N/A	N/A			N/A	N/A
EAL3 TOTALS			202	**$35,100**			266	**$46,200**			330	**$57,300**

Note: EAL 3 TOTALS do not include monthly fees since those dep depend on the length of the projected evaluation

EAL4 Validation Costs

	Simple Product				Moderately Complex Product				Complex Product			
Activity	M	Sr	Hours	Costs	M	Sr	Hours	Costs	M	Sr	Hours	Costs
Initial VOR												
Preparation	16	12	28	$4,920	20	16	36	$6,360	24	20	44	$7,800
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160
Issue Resolution & Wrap-Up	16	16	32	$5,760	16	16	32	$5,760	20	20	40	$7,200
Cost for Initial VOR			68	**$12,120**			80	**$14,280**			96	**$17,160**
Testing VOR												
Preparation	20	16	36	$6,360	26	18	44	$7,680	36	28	64	$11,280
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160

Issue Resolution & Wrap-Up	16	8	24	$4,080	20	10	30	$5,100	24	16	40	$6,960
Cost for Testing VOR			68	**$11,880**			86	**$14,940**			116	**$20,400**
Witness Testing												
Travel Cost				Gov't per diem				Gov't per diem				Gov't per diem
Witness Testing by Validators	24	24	48	**$8,640**	32	32	64	**$11,520**	40	40	80	**$14,400**
Final VOR												
Preparation	24	12	36	$6,120	32	16	48	$8,160	40	24	64	$11,040
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160
Issue Resolution & Wrap-Up	20	10	30	$5,100	32	16	48	$8,160	40	24	64	$11,040
Cost for Final VOR			74	**$12,660**			108	**$18,480**			140	**$24,240**
Monthly Guidance/Coordination			2	$360			3	$540			4	$720
Review/Coord of NSA Penetration Testing			N/A	N/A			N/A	N/A			N/A	N/A
EAL 4 TOTALS			258	**$45,300**			338	**$59,220**			432	**$76,200**

Note: EAL4 TOTALS do not include monthly fees since those depend on the length of the projected evaluation

EAL4+ (AVA_VLA.3/4) Validation Costs

	Simple Product				Moderately Complex Product				Complex Product			
Activity	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*
Initial VOR												
Preparation	16	12	28	$4,920	20	16	36	$6,360	24	20	44	$7,800
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160
Issue Resolution & Wrap-Up	16	16	32	$5,760	16	16	32	$5,760	20	20	40	$7,200
Cost for Initial VOR			68	**$12,120**			80	**$14,280**			96	**$17,160**
Testing VOR												
Preparation	20	16	36	$6,360	26	18	44	$7,680	36	28	64	$11,280
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160
Issue Resolution & Wrap-Up	16	8	24	$4,080	20	10	30	$5,100	24	16	40	$6,960
Cost for Testing VOR			68	**$11,880**			86	**$14,940**			116	**$20,400**
Witness Testing												
Travel Cost				Gov't per diem				Gov't per diem				Gov't per diem
Witness Testing by Validators	24	24	48	**$8,640**	32	32	64	**$11,520**	40	40	80	**$14,400**
Final VOR												
Preparation	24	12	36	$6,120	32	16	48	$8,160	40	24	64	$11,040
VOR Meeting	4	4	8	$1,440	6	6	12	$2,160	6	6	12	$2,160
Issue Resolution & Wrap-Up	20	10	30	$5,100	32	12	44	$7,320	40	24	64	$11,040

Cost for Final VOR		74	**$12,660**		104	**$17,640**		140	**$24,240**
Monthly Guidance/Coordination		2	$360		3	$540		4	$720
Review/Coord of NSA Penetration Testing		8	**$1,440**		8	**$1,440**		8	**$1,440**
EAL 4+ (AVA_VLA.3/4) TOTALS		266	**$46,740**		342	**$59,820**		440	**$77,640**

Note: EAL4+ TOTALS do not include travel/per diem costs or monthly fees since those depend on the location of the testing and length of the projected evaluation

EAL5 to EAL7 Validation Costs

	Simple Product				Moderately Complex Product				Complex Product			
Activity	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*	*M*	*Sr*	*Hours*	*Costs*
Initial VOR												
Preparation	16	24	40	$7,440	24	32	56	$10,320	32	40	72	$13,200
VOR Meeting	4	8	12	$2,280	6	12	18	$3,420	6	12	18	$3,420
Issue Resolution & Wrap-Up	16	16	32	$5,760	20	24	44	$8,040	32	32	64	$11,520
Cost for Initial VOR			84	**$15,480**			118	**$21,780**			154	**$28,140**
Testing VOR												
Preparation	20	24	44	$8,040	24	32	56	$10,320	24	40	64	$12,000
VOR Meeting	4	8	12	$2,280	6	12	18	$3,420	6	12	18	$3,420
Issue Resolution & Wrap-Up	16	24	40	$7,440	16	24	40	$7,440	24	40	64	$12,000
Cost for Testing VOR			96	**$17,760**			114	**$21,180**			146	**$27,420**
Witness Testing												
Travel Cost				Gov't per diem				Gov't per diem				Gov't per diem
Witness Testing by Validators	32	32	64	**$11,520**	40	40	80	**$14,400**	60	60	120	**$21,600**
Final VOR												
Preparation	24	24	48	$8,640	32	32	64	$11,520	40	40	80	$14,400
VOR Meeting	4	8	12	$2,280	6	12	18	$3,420	6	12	18	$3,420
Issue Resolution & Wrap-Up	24	16	40	$6,960	32	32	64	$11,520	40	40	80	$14,400
Cost for Final VOR			100	**$17,880**			146	**$26,460**			178	**$32,220**
Monthly Guidance/Coordination			6	$1,080			8	$1,440			10	$1,800
Review/Coord of NSA Penetration Testing Results			8	**$1,440**			8	**$1,440**			8	**$1,440**
EAL 5 and EAL 7 TOTALS			352	**$64,080**			466	**$85,260**			606	**$110,820**

Note: EAL5-7 TOTALS do not include travel/per diem costs or monthly fees since those depend on the location of the testing and length of the projected evaluation

Note: for EAL5s and above, Sr hours include at least 2 Senior Validators

Assurance Continuity Validation Costs

Cost Description	*Cost / Hour*
Validator Costs	
Mid-level Validator	$150
Technical Coordination (mix of mid-level & Senior)	$180
Senior / Expert Validator	$210

Assurance Continuity Validation Costs (EAL 2 through EAL 4)

Major Activity	*Average Hours*	*Average Costs*
Assurance Continuity with Minor Changes (1 Senior)	8	$1,680
Assurance Continuity with Major Changes (1 Senior)	40	$8,400

[FR Doc. 07–3114 Filed 6–25–07; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, July 16, 2007, 8:30 a.m. to 6 p.m. and Friday, July 17, 2007, 8:30 a.m. to noon.

ADDRESSES: The Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland 20878, USA.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The major purposes of the meeting are for the Fusion Energy Sciences Advisory Committee (FESAC) members to hear (1) from DOE about the status of the FY 2008 Budget, (2) a report on the results from the Workshop on the Fusion Simulation Project, (3) a report on the National Academy of Sciences Decadal Study on Plasma Physics, (4) a report from the High Energy Density Laser Physics workshop, and (5) an update on the ITER Project in the U.S.

Tentative Agenda:

Monday, July 16, 2007

- Office of Science Perspective
- Report from the Workshop on the Fusion Simulation Project
- Report on the National Academy of Sciences decadal assessment on the field of plasma science and engineering
- Discussion of the new charge
- Public Comments

Tuesday, July 17, 2007

- Status of U.S. ITER Project
- High Energy Density Physics: Report from the Workshop
- Fusion Simulation Project: Report from the Workshop

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: We will make the minutes of this meeting available for public review and copying within 30 days at the Freedom of Information Public Reading Room, IE–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on June 21, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer .

[FR Doc. E7–12322 Filed 6–25–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, July 18, 2007, 9 a.m.

ADDRESSES: J.W. Marriott, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: James Slutz, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–5600.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

Tentative Agenda:

- Call to Order and Introductory Remarks.
- Remarks by the Honorable Samuel W. Bodman, Secretary of Energy.
- Consideration of the Proposed Final Report of the NPC's Committee on Global Oil and Gas.
- Administrative Matters.
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council.
- Adjournment.

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James Slutz at the address or telephone number listed above. Request must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued at Washington, DC, on June 21, 2007.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. E7–12321 Filed 6–25–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–481–001]

ANR Storage Company; Notice of Negotiated Rate Filing

June 19, 2007.

Take notice that on June 13, 2007, ANR Storage Company (ANR Storage) tendered for filing and approval a negotiated rate agreement between ANR Storage and Tenaska Gas Storage LLC. The service agreement is being filed as a negotiated rate because the parties have agreed to fixed rates for the term of the contract.

ANR Storage requests that the Commission accept and approve the subject filing to be effective April 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12302 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–481–002]

ANR Storage Company; Notice of Negotiated Rate Filing

June 19, 2007.

Take notice that on June 13, 2007, ANR Storage Company (ANR Storage) tendered for filing and approval a negotiated rate agreement between ANR Storage and United Energy Trading Canada ULC. The service agreement is being filed as a negotiated rate because the parties have agreed to fixed rates for the term of the contract.

ANR Storage requests that the Commission accept and approve the subject filing to be effective April 1, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12310 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–769–000]

Cedar Rapids Transmission Company; Notice of Issuance of Order

June 19, 2007.

Cedar Rapids Transmission Company (Cedar Rapids) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. Cedar Rapids also requested waivers of various Commission regulations. In particular, Cedar Rapids requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Cedar Rapids.

On June 15, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Cedar Rapids should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 16, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Cedar Rapids is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Cedar Rapids, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Cedar Rapids' issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12308 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–810–000]

Grays Harbor Energy, LLC; Notice of Issuance of Order

June 19, 2007.

Grays Harbor Energy, LLC (Grays Harbor) filed an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of energy, capacity and ancillary services at market-based rates. CMT also requested waivers of various Commission regulations. In particular, Grays Harbor requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Grays Harbor.

On June 15, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by Grays Harbor should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 16, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, Grays Harbor is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Grays Harbor, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of Grays Harbor's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12307 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER07–705–000, and ER07–705–001]

GSG, LLC; Notice of Issuance of Order

June 19, 2007.

GSG, LLC (GSG) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy and capacity at market-based rates. GSG also requested waivers of various Commission regulations. In particular, GSG requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by GSG.

On June 15, 2007, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—West, granted the requests for blanket approval under Part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by GSG should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 16, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, GSG is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of GSG, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of GSG's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12309 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–911–000]

RPL Holdings, Inc.; Notice of Issuance of Order

June 19, 2007.

RPL Holding, Inc. (RPL) filed an application for market-based rate authority, with an accompanying rate schedule. The proposed market-based rate schedule provides for the sale of energy, capacity and ancillary services at market-based rates. RPL also requested waivers of various Commission regulations. In particular, RPL requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by RPL.

On June 7, 2007, pursuant to delegated authority, the Director,

Division of Tariffs and Market Development—West, granted the requests for blanket approval under part 34 (Director's Order). The Director's Order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard concerning the blanket approvals of issuances of securities or assumptions of liability by RPL should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing protests is July 9, 2007.

Absent a request to be heard in opposition to such blanket approvals by the deadline above, RPL is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of RPL, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approvals of RPL's issuance of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12306 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–72–000]

Midwest ISO Transmission Owners Complainant, v. Midwest independent Transmission System Operator, Inc. Respondent; Notice of Complaint

June 19, 2007.

Take notice that on June 14, 2007, the Midwest ISO Transmission Owners, pursuant to section 206 of the Federal Power Act, and section 206 of the Commission's Rules of Practice and Procedures, 18 CFR 385.206 (2006), filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) alleging that the Midwest ISO violated the terms of its Open Access transmission and Energy Markets Tariff in allocating construction work in progress and costs for plants not yet in service associated with new reliability facilities under Attachments FF and GG and Schedule 26 of the tariff.

The Midwest ISO Transmission Owners certify that a copy of the complaint has been served on the Midwest ISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on July 5, 2007.

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12304 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–51–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Availability of the Environmental Assessment for the Proposed Gulfstream Phase IV Project

June 19, 2007.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Gulfstream Natural Gas System, L.L.C. (Gulfstream) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of approximately 17.73 miles of 20-inch diameter offshore pipeline and 0.01 miles of 20-inch diameter onshore pipeline. Compression would be added at two locations within the existing Gulfstream System. One 15,000 horsepower (HP) turbine-driven compressor unit would be installed at Gulfstream's existing Compressor Station 410 in Mobile County, Alabama. A new 30,000 HP turbine-driven compressor station would be constructed at the existing pressure-reduction Station 420 site in Manatee County, Florida at MP 427.8 (Line 200).

Progress Energy Florida, Inc. (Progress Energy) is scheduled to re-power their Bartow Plant in Pinellas County, Florida. The 472-megawatt (MW) oil-fired plant is scheduled to be re-powered with three combined cycle gas turbines that will generate 1,100 MW of power. Natural gas consumption is

expected to be approximately 155 thousand decatherms per day (Mdth/d). Gulfstream has executed an agreement to enter into a long-term service agreement with Progress Energy to provide 155 Mdth/d of firm natural gas transportation service to the Bartow Plant. In order to provide the requested transportation service, it is necessary for Gulfstream to expand its current system with the facilities listed in the preceding paragraph and described in the EA.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal; State; and local agencies; public interest groups; individuals who have requested the EA; libraries; newspapers; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 3;
- Reference Docket No. CP07–51–000; and
- Mail your comments so that they will be received in Washington, DC on or before July 19, 2007.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12305 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11841–002 Alaska]

Ketchikan Public Utilities; Notice of Availability of Environmental Assessment

June 19, 2007.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff has reviewed the application for a license for the proposed Whitman Lake Hydroelectric Project (FERC no. 11841–002) and has prepared an environmental assessment (EA) for the project. The project would be located on Whitman Creek, approximately 4 miles east of the City of Ketchikan, Alaska. The project would occupy 155.8 acres of lands of the United States, 155 acres administered by the U.S. Department of Agriculture, Forest Service (Forest Service) and 0.8 acres administered by the U.S. Bureau of Land Management (BLM).

The EA contains the staff's analysis of the potential environmental effects of the proposed project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA may also be viewed on the Commission's Internet Web site (*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. Additional information about the project is available from the Commission's Office of External Affairs, at (202) 502–6088, or on the Commission's website using the eLibrary link. For assistance with eLibrary, contact *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

Any comments on the EA should be filed within 30 days from the date of this notice and should be addressed to Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Whitman Lake Hydroelectric Project No. 11841–002'' to all comments. Comments may be filed electronically via 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 under the ''e-Filing'' link.

For further information, contact Kenneth Hogan at (202) 502–8434 or by e-mail at *kenneth.hogan@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E7–12303 Filed 6–25–07; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

EXPORT-IMPORT BANK

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to guarantee $15 million in commercial bank financing for the export of approximately $90 million in U.S. equipment and services for the construction of a new steel processing mill in Spain. This project is not associated with an increase in raw steel production capacity. The U.S. exports will enable the facility to produce approximately 750,000 metric tons of discrete steel plate and 250,000 metric tons of steel coil per year. Initial production at this facility is expected to commence in 2009.

Available information indicates that the steel plate will be consumed in France, Germany, Greece, Italy, Portugal and Spain while the steel coil will be consumed solely in Spain. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

[FR Doc. E7–12358 Filed 6–25–07; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; FCC To Hold Open Meeting Thursday, June 28, 2007 in Portland, ME

June 21, 2007.

The Federal Communications Commission will hold an Open Meeting on Thursday, June 28, 2007 from 4 p.m. to 11 p.m. The Commission will hold its meeting in Portland, Maine at: Portland High School, 284 Cumberland Ave., Portland, Maine.

Link to Portland High School: *http://portland.portlandschools.org*.

Link to Portland High School Directions: *http://portland.portlandschools.org/main/homeroom.htm*.

At this meeting, the Commission will consider one item. The Commission also will hear presentations on perspectives on localism from two panels and comments from public parties.

Item No.	Bureau	Subject
1	Media	*Title:* Implementation of Section 304 of the Telecommunications Act of 1996; Commercial Availability of Navigation Devices; and Compatibility Between Cable Systems and Consumer Electronics Equipment. (CS Docket No. 97–80, PP Docket No. 00–67). *Summary:* The Commission will consider a Third Further Notice of Proposed Rulemaking concerning proposed standards to ensure bidirectional compatibility of multichannel video programming distribution systems and consumer electronics equipment.

A live audio cast of the hearing will be available at the FCC's Web site at *www.fcc.gov* on a first-come, first-served basis. The FCC will provide sign language interpreters and open captioning for this event. Other reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation needed, and include a way we can contact you if we need more information. Please make your request as early as possible. Last minute requests will be accepted, but may be impossible to fill. Send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

For additional information about the meeting, please visit the FCC's Web site at *http://www.fcc.gov.* Direct all press inquiries to Mary Diamond at 202–418–2388 or David Fiske at 202–418–0513. If you are a member of the press and plan to attend the meeting in Portland, please contact Mary Diamond or David Fiske.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–3145 Filed 6–22–07; 12:28 pm]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2007–N–09]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) is submitting the information collection entitled ''Monthly Survey of Rates and Terms on Conventional, 1-Family, Nonfarm Loans,'' commonly known as the Monthly Interest Rate Survey or MIRS to the Office of Management and Budget (OMB) for review and approval of a 3-year extension of the OMB control number, 3069–0001, which is due to expire on July 31, 2007.

DATES: Interested persons may submit comments on or before July 26, 2007.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the Federal Housing Finance Board, Washington, DC 20503.

FOR FURTHER INFORMATION OR COPIES OF THE COLLECTION CONTACT: David Roderer, Senior Financial Analyst, Risk Monitoring Division, Office of Supervision, by e-mail at *rodererj@fhfb.gov,* by telephone at 202–408–2540, or by regular mail at the Federal Housing Finance Board, 1625 Eye Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

The Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), first provided data concerning a survey of mortgage interest rates in 1963. No statutory or regulatory provision explicitly required the FHLBB to conduct the MIRS although references to the MIRS did appear in several federal and state statutes. Responsibility for conducting the MIRS was transferred to the Finance Board upon dissolution of the FHLBB in 1989. See Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note, and tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433 (Aug. 9, 1989). In 1993, the Finance Board

promulgated a final rule describing the method by which it conducts the MIRS. See 58 FR 19195 (Apr. 13, 1993), codified at 12 CFR 906.3. Since its inception, the MIRS has provided the only consistent source of information on mortgage interest rates and terms and house prices for areas smaller than the entire country.

Statutory references to the MIRS include the following:

• Pursuant to their respective organic statutes, Fannie Mae and Freddie Mac use the MIRS results as the basis for the annual adjustments to the maximum dollar limits for their purchase of conventional mortgages. See 12 U.S.C. 1454(a)(2) and 1717(b)(2). The Fannie Mae and Freddie Mac limits were first tied to the MIRS by the Housing and Community Development Act of 1980. See Pub. L. 96–399, tit. III, sec. 313(a)–(b), 94 Stat. 1644–1645 (Oct. 8, 1980). At that time, the nearly identical statutes required Fannie Mae and Freddie Mac to base the dollar limit adjustments on ''the national average one-family house price in the monthly survey of all major lenders conducted by the [FHLBB].'' See 12 U.S.C. 1454(a)(2) and 1717(b)(2) (1989). When Congress abolished the FHLBB in 1989, it replaced the reference to the FHLBB in the Fannie Mae and Freddie Mac statutes with a reference to the Finance Board. See FIRREA, tit. VII, sec. 731(f)(1), (f)(2)(B), 103 Stat. 433.

• Also in 1989, Congress required the Chairperson of the Finance Board to take necessary actions to ensure that indices used to calculate the interest rate on adjustable rate mortgages (ARMs) remain available. See FIRREA, tit. IV, sec. 402(e)(3)–(4), 103 Stat. 183, codified at 12 U.S.C. 1437 note. At least one ARM index, known as the National Average Contract Mortgage Rate for the Purchase of Previously Occupied Homes by Combined Lenders, is derived from the MIRS data. The statute permits the Finance Board to substitute a substantially similar ARM index after notice and comment only if the new ARM index is based upon data substantially similar to that of the original ARM index and substitution of the new ARM index will result in an interest rate substantially similar to the rate in effect at the time the new ARM index replaces the existing ARM index. See 12 U.S.C. 1437 note.

• Congress indirectly connected the high cost area limits for mortgages insured by the Federal Housing Administration (FHA) of the Department of Housing and Urban Development to the MIRS in 1994 when it statutorily linked these FHA insurance limits to the purchase price limitations for Fannie Mae. See Pub. L. 103–327, 108 Stat. 2314 (Sept. 28, 1994), codified at 12 U.S.C. 1709(b)(2)(A)(ii).

• The Internal Revenue Service uses the MIRS data in establishing ''safe-harbor'' limitations for mortgages purchased with the proceeds of mortgage revenue bond issues. See 26 CFR 6a.103A–2(f)(5).

• Statutes in several states and U.S. territories, including California, Michigan, Minnesota, New Jersey, Wisconsin and the Virgin Islands, refer to, or rely upon, the MIRS. See, e.g., Cal. Civ. Code 1916.7 and 1916.8 (mortgage rates); Iowa Code 534.205 (1995) (real estate loan practices); Mich. Comp. Laws 445.1621(d) (mortgage index rates); Minn. Stat. 92.06 (payments for state land sales); N.J. Rev. Stat. 31:1–1 (interest rates); Wis. Stat. 138.056 (variable loan rates); V.I. Code Ann. tit. 11, sec. 951 (legal rate of interest).

The Finance Board uses the information collection to produce the MIRS and for general statistical purposes and program evaluation. Economic policy makers use the MIRS data to determine trends in the mortgage markets, including interest rates, down payments, terms to maturity, terms on ARMs and initial fees and charges on mortgage loans. Other federal banking agencies use the MIRS results for research purposes. Information concerning the MIRS is regularly published on the Finance Board's website (*www.fhfb.gov/mirs*) and in press releases, in the popular trade press, and in publications of other federal agencies.

The likely respondents include a sample of savings associations, mortgage companies, commercial banks, and savings banks. The information collection requires each respondent to complete FHFB Form 10–91 or a submission using the MIRS software on a monthly basis.

The OMB number for the information collection is 3069–0001. The OMB clearance for the information collection expires on July 31, 2007.

B. Burden Estimate

The Finance Board estimates the total annual number of respondents at 200, with 6 responses per respondent. The estimate for the average hours per response is 30 minutes. The estimate for the total annual hour burden is 600 hours (200 respondents × 6 responses × 0.5 hours).

C. Comment Request

In accordance with the requirements of 5 CFR 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the **Federal Register** on April 11, 2007. See 72 FR 18246 (April 11, 2007). The 60-day comment period closed on June 11, 2007. The Finance Board received no comments.

The Finance Board requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of Finance Board functions, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: June 19, 2007.

By the Federal Housing Finance Board.

Neil R. Crowley,

Acting General Counsel.

[FR Doc. E7–12279 Filed 6–25–07; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL TRADE COMMISSION

[Docket No. 9311]

South Carolina State Board of Dentistry; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 19, 2007.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''South Carolina State Board, Dkt. No. 9311,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be

filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC website, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Gary H. Schorr (202) 326-3063, Bureau of Competition, Room NJ-7264, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 3.25(f) of the Commission Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for June 20, 2007), on the World Wide Web, at *http://www.ftc.gov/os/2007/06/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before the date specified in the DATES section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission has accepted for public comment an agreement to a proposed consent order with the South Carolina State Board of Dentistry. The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order, or to modify their terms in any way. The proposed consent order has been placed on the public record for 30 days to receive comments by interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Respondent that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

The Challenged Conduct

The Commission's complaint, issued September 12, 2003, charges the South Carolina State Board of Dentistry with unlawfully restraining competition in the provision of preventive dental care services in South Carolina, in violation of Section 5 of the Federal Trade Commission Act. The Board is a state regulatory agency that licenses and regulates dentists and dental hygienists. The nine-member Board includes seven practicing dentists, six of whom are elected by the dentists in their local area.

The complaint alleges that the Board illegally restricted the ability of dental hygienists to provide preventive dental services (cleanings, topical fluoride treatments, and application of dental sealants) in school settings. The South Carolina legislature in 2000 eliminated a statutory requirement that a dentist examine each child before a hygienist may perform preventive care in schools, in order to address concerns that many schoolchildren, particularly those in low-income families, were receiving no preventive dental services. In July 2001, however, the Board adopted an emergency regulation that re-imposed the dentist examination requirement that the legislature had eliminated. As a result of the Board's action, a hygienist-owned company known as Health Promotion Services, which had begun sending hygienists to schools to provide preventive services under written protocols from a supervising dentist, had to change its business model and was able to serve far fewer patients.

By operation of South Carolina law, the emergency regulation expired after six months, in January 2002. By that time, the Board had published a proposal to adopt the dentist examination requirement as a permanent regulation. However, after a state administrative law judge concluded that the Board's proposed regulation was unreasonable and contravened state policy, the Board did not proceed with the permanent regulation.

The South Carolina legislature subsequently enacted legislation in May 2003 that expressly provides that dentist examination requirements applicable in some settings do not apply to dental hygienists' provision of preventive care services delivered in public health settings under the direction of the state health department. The new statute also added a provision stating that a dentist billing for services provided by a dental hygienist under such an arrangement was ''clinically responsible'' for the delivery of those services. Because in South Carolina dental hygienists cannot bill the state Medicaid program directly, this new provision would plainly apply to school-based preventive dental care programs. Aside from the general concern that the Board might once again defy a legislative change, there was evidence in Board minutes suggesting that the Board might interpret the ''clinically responsible'' language in the new statute to require that a licensed dentist examine a patient and provide a treatment plan in all settings, whether private dental offices or public health locations.

Post-Complaint Proceedings

Shortly after the complaint issued, the Board moved to dismiss the case, asserting that its actions were exempt from the antitrust laws by virtue of the state action doctrine. That doctrine, first articulated by the Supreme Court in *Parker v. Brown*, 317 U.S. 341 (1943),

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

rests on the Court's holding that the Sherman Act was not intended to ''restrain a state or its officers or agents from activities directed by its legislature.'' The Board also argued that the 2003 statute made it legally impossible for it to resume its challenged conduct and therefore rendered the case moot.

In a July 2004 opinion, the Commission rejected the Board's state action arguments.[2] As the Commission's opinion explains, the Board's claim to automatic state action protection by virtue of its status as a state agency is contrary to well-established Supreme Court precedent.[3] Furthermore, the Board failed to establish an essential element of the state action defense, because it was unable to show that its challenged conduct was undertaken pursuant to a clearly articulated policy of the legislature to displace competition with regard to the delivery of preventive dental care in schools. Neither the Board's general authority to regulate, nor its claims about the meaning of the state legislature's 2000 statutory revisions, demonstrated the requisite clear articulation to bring the challenged conduct within the protection afforded by the state action doctrine. On the contrary, the policy expressed by the legislature's elimination in 2000 of the statutory requirement for a dentist examination before dental hygienists could provide preventive services in schools was one favoring such competition, in order to increase access to critically important oral health care. Finally, because the Board failed to make a threshold showing of a legislative policy to displace the type of competition that it is charged with suppressing, its final argument, that any conflict with the 2000 statute was merely an error of state law and of no federal antitrust significance, failed as well.

The Board filed an appeal with the United States Court of Appeals for the Fourth Circuit seeking an interlocutory review of the Commission's state action ruling. The Commission moved to dismiss the appeal, arguing that the ruling did not fall within the narrow class of ''collateral orders'' that fall outside the general rule that interlocutory orders are not immediately appealable court of appeals agreed and dismissed the appeal for lack of jurisdiction. In its May 2006 decision in *South Carolina State Board of Dentistry v. F.T.C.*, 455 F.3d 436 (4th Cir. 2006), the court of appeals rejected the position of some other circuits, which have upheld interlocutory appeals from the denial of a claim of state action protection on the theory that the state action exemption is an immunity from suit:

> [W]e cannot conclude that *Parker* creates an immunity from suit. The *Parker* doctrine did not arise from any concerns about special harms that would result from trial. Instead, *Parker* speaks only about the proper interpretation of the Sherman Act. 455 F.3d at 444.

With respect to the Board's arguments that the 2003 statute made it impossible for the Board to resume the challenged conduct, the Commission's July 2004 ruling rejected the Board's claim that the statute compelled dismissal of the complaint as a matter of law. Instead, it held the Board's motion to dismiss in abeyance pending discovery on factual issues relating to the risk of recurrence of the challenged conduct.[4] As noted in the Commission's decision, the very premise of the alleged violation in this case is that the Board flouted a statutory directive designed to promote competition and increase access to preventive dental services. Moreover, the complaint also alleges particular facts with regard to the Board's interpretation of language added by the 2003 statute that raise a significant risk of recurrence.

During the pendency of the Board's appeal on state action, the Commission stayed discovery in the case. The stay expired in January 2007, after the Supreme Court denied the Board's petition for certiorari seeking review of the appellate court's dismissal of the appeal, thereby clearing the way for discovery on the issues delegated to an FTC administrative law judge.

The Proposed Order

The proposed order has two central features:

• First, to eliminate the alleged anticompetitive effects of the challenged conduct, the proposed order requires the Board to affirm and publicize its support for the state legislative policy, now embodied in the 2003 amendments to the Dental Practice Act, that prevents the Board from requiring a dentist examination as a condition of dental hygienists providing preventive dental care in public health settings.

• Second, to prevent similar anticompetitive restraints in the future, the proposed order requires the Board to give the Commission advance notice before adopting rules or taking other actions that relate to dental hygienists' provision of preventive dental services in a public health setting.

The Board announcement is set forth in Appendix A of the proposed order. That announcement: (1) Expresses the Board's view that the 2003 statute prevents it from requiring a dentist examination when patients receive preventive services from dental hygienists working under arrangements with the state health department; and (2) states that the Board fully supports this legislative policy.

In addition to publication on the Board's website and in its newsletter, Paragraph III of the proposed order requires the Board to distribute this announcement, along with a copy of the Commission's complaint and order, to every dentist and dental hygienist holding a license to practice in South Carolina (and, for a period of three years, to new licensees), and to the superintendent of every school district in South Carolina. Widespread publication of this announcement is designed to remedy potentially significant chilling effects from the Board's past conduct on market participants who might otherwise be interested in participating in public health preventive dental care programs involving dental hygienists.

The proposed order's prior notice provision is contained in Paragraph II. It requires the Board to give the Commission written notice 30 days in advance of adopting proposed or final rules, policies, disciplinary and other actions, that relate to the provision by dental hygienists of preventive dental services in a public health setting pursuant to S.C. Code Ann. § 40-15-110(A)(10), a provision that governs dental hygienist practice in public health settings. The scope of the notice provision includes actions that concern dentists' authorizing, supervising, or billing for the provision by dental hygienists of preventive dental services in a public health setting. This prior notice requirement, which extends beyond the re-institution of the restraint contained in the Board's 2001 emergency regulation, will enhance the Commission's ability to monitor the Board's future conduct and take prompt action where warranted.

[2] In the Matter of South Carolina State Board of Dentistry, 138 F.T.C. 229, 230 (2004), available at *http://www.ftc.gov/os/adjpro/d9311/040728commissionopinion.pdf* and *http://www.ftc.gov/os/decisions/docs/Volume138.pdf.*

[3] *See, e.g.,* Southern Motor Carriers Rate Conf., Inc. v. United States, 471 U.S. 48, at 57, 60-61 (1985).

[4] Administrative agencies are not subject to the constitutional requirement of a ''case or controversy'' that limits the jurisdiction of Article III courts, but instead exercise discretion in deciding whether to hear cases that might be considered moot. *See, e.g.,* R.T. Communications, Inc. v. FCC, 201 F.3d 1264, 1276 (10th Cir. 2001); Tenn. Gas Pipeline Co. v. Fed. Power Comm'n, 606 F.2d 1373, 1380 (D.C. Cir 1979).

The Commission has determined that it is not necessary to include a ''cease and desist'' provision that directly prohibits the Board from resuming the conduct challenged in the complaint. This conclusion rests on various factors particular to this case. A key factor is the experience in South Carolina since the 2003 changes to the South Carolina Dental Practice Act. The new statutory scheme has now been in place for nearly four years. Throughout this period, dental hygienists have been providing preventive services in schools under an agreement with the health department—without an initial examination by a dentist—and the Board has not reimposed its previous dentist examination requirement. Thus, although the 2003 amendments have not eliminated the need for relief in this case, they are a relevant consideration in determining the nature and scope of that relief.

Accordingly, the proposed order takes the statutory change into account. First, requiring the Board to distribute the announcement set forth in Appendix A to all dentists, dental hygienists, and school districts will ensure that interested parties know that the Board has formally acknowledged that it is legally barred from resuming the conduct challenged in the Commission's complaint. Second, the notice requirement of Paragraph II addresses the possibility that the Board might attempt to restrain competition in the provision of dental hygienist services in public health settings in ways not addressed by the 2003 amendments. This notice provision will increase the Commission's ability to monitor the Board's future conduct and is likely to help deter the Board from imposing restraints on public health preventive dental care that are not grounded in the policies articulated by the South Carolina legislature.

As is standard in Commission orders, the proposed order contains certain reporting and other provisions that are designed to assist the Commission in monitoring compliance with the order.

The proposed order would expire in ten years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E7–12323 Filed 6–21–07: 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Preparedness & Response, Office of Preparedness & Emergency Operations; Privacy Act of 1974; Report of a New System of Records

AGENCY: Department of Health and Human Services (HHS), Office of the Assistant Secretary for Preparedness and Response (ASPR), Office of Preparedness and Emergency (OPEO).

ACTION: Notice of a new System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system titled, ''The National Disaster Medical System (NDMS) Patient Treatment and Tracking Records System,'' System Number 09–90–0040. The primary purpose of the NDMS Patient Treatment and Tracking Records System is to collect data from individuals using the medical care capabilities provided by NDMS.

EFFECTIVE DATES: NDMS filed a new SOR report with the Chair of the House Committee on Oversight and Government Reform; the Chair of the Senate Committee on Homeland Security and Governmental Affairs; and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June 18, 2007. The proposed SOR will be effective 30 days from the publication of the notice or 40 days from the date mailed to ensure that all parties have adequate time in which to comment. However, a request has been submitted to the OMB to grant HHS a 10 day waiver of the review period due to the impending start of the hurricane season. We may defer implementation of this system and retrieve the request for waiver should we receive comments that are contrary and requires the document to be altered.

ADDRESSES: You may submit comments, identified by *one* of the following methods: The Federal e-Rulemaking Portal at *http://www.regulations.gov* and following the instructions for submitting comments, or send to the NDMS Chief Medical Officer, National Disaster Medical System, 330 Independence Avenue, SW., Room G–644, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: CAPT Ana Marie Balingit-Wines, Chief Nurse, NDMS Electronic Medical Records Project Officer, ASPR/OPEO/NDMS, 330 Independence Avenue, SW., Room G–644, Washington, DC 20201. CAPT Balingit-Wines can be contacted by telephone at 202–205–8088, or e-mail at *anamarie.balingit-wines@hhs.gov* for issues related to the SOR.

SUPPLEMENTARY INFORMATION: NDMS operates pursuant to Section 2812 of the Public Health Service Act (42 U.S.C. 300hh–11), and currently resides in HHS under ASPR in accordance with the Pandemic and All Hazards Preparedness Act (PAHPA), Public Law 109–417. With the passage of PAHPA, ASPR has been designated as the agency responsible for medical response to include the deployment of NDMS and Field Medical Station assets as well as the management of the officers of the Public Health Service Commissioned Corps deployed during a response. ASPR medical components, in particular NDMS, function in a coordinated effort with DHS, DoD, and the VA. In a disaster situation, NDMS and other ASPR components will augment the public health and health care activities of State and local governments.

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a SOR, which is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular, such as property address, mailing address, assigned to the individual. As a component of Emergency Support Function (ESF) #8, NDMS has shared medical records with the other agencies and departments that comprise ESF #8, due to the Function's shared statutory authority over the collection of medical information. NDMS has three key functions to which each of the ESF partners contribute and require the collection of medical information: medical response, patient evacuation, and definitive medical care.

The medical response function of NDMS is related to the activation and deployment of NDMS response teams, comprised of medical and logistical personnel, to assess the health and medical needs of disaster victims. In response to the overall needs of the patients, NDMS teams are activated to provide physical and mental health, as well as evacuation during a public health emergency as cause for activation as defined in 42 U.S.C. 300hh–11(a)(3)(A).

The patient evacuation function of NDMS relates to the establishment of communications, transportation, and a medical regulating system to evacuate and move patients from a staging center near a disaster site to patient reception sites known as Federal Coordinating Centers (FCCs). The DoD and VA have the prime responsibility for activating and managing the FCCs. In turn, upon receiving the patients, the FCCs have the authority to arrange for necessary referrals and admissions or NDMS evacuated patients.

CMS is responsible for establishing and administering the reimbursement process for health care rendered to patients provided under the umbrella of NDMS in accordance with Section 2812 of the Public Health Service Act, 42 U.S.C. 300hh–11, for ''definitive care.'' The SOR for the collection of information for the purpose of reimbursement has been filed separately and was published on November 23, 2005, under 70 FR 70849. NDMS health care providers, in the course of providing health care, collect data that identifies the patient's name, address, contact information, gender, insurance information, prior medical history, and all treatment information to include, but not limited to, symptoms, vital signs, diagnosis, and medications prescribed through the health care continuum. NDMS veterinary providers, in the course of providing care to animals, may collect contact information from the animal's owner. The medical records could also include x-rays, lab results, and providers' comments relative to their observations about the patient. NDMS has a need for the collection of information for health care, patient movement, and tracking, as well as for reimbursement of health care rendered.

The collection of the data as a result of illness or injury from a disaster or other event mandating the deployment of NDMS medical personnel is accomplished through a combination of paper and electronic records. The patient data collected will also be used for tracking the patient through the continuum. The collection of information during an event such as a patient evacuation will assist NDMS in quickly tracking and sending the patient and the medical information from the casualty collection site to the designated FCC. The system will also allow NDMS to track how many patients are sent to each FCC along with their discharge and location status. The information will include but not be limited to name, address, phone numbers, ethnic background, and other contact and/or identifying information as well as medical information including laboratory tests performed, diagnosis, treatment provided, medications prescribed, referrals, and any treatment advice provided by the medical professional to the patient. Pursuant to 5 U.S.C. 552a(b)(1), information collected would be disclosed to other Department of Health and Human Services (HHS) agencies such as the Centers for Disease Control and Prevention (CDC), the Centers for Medicare and Medicaid Services (CMS), and the Agency for Health Care Research and Quality (AHRQ), for the purpose of research, evaluation or epidemiologic and longitudinal surveillance studies related to health care, which may impact the care provided to disaster victims.

Information in this system will be disclosed as ''routine uses'' to the following entities:

1. Emergency Support Function #8 (ESF #8) is a coordinated effort between the Department of Health and Human Service (HHS), the Department of Homeland Security (DHS), the Department of Defense (DoD), and the Department of Veterans Affairs (VA). As such, the medical treatment and evacuation of patients is a shared responsibility between these agencies and disclosure of health related information is necessary to adequately manage the overall care of the patient.
2. Disclosure to a member of Congress on behalf of a constituent's inquiry.
3. Disclosure to the Department of Justice (DOJ), court or adjudicatory body when the agency is involved in litigation or has an interest in litigation.
4. Disclosure to agency contractors, consultants, or grantees engaged in the performance of service related to this collection and who may need to have access to the records in order to perform the activity.
5. To assist another Federal or State agency, agency of a state government, an agency established by State law, or its fiscal agent to assess the location or the status of their beneficiary.
6. Disclosure to family members of a patient about the location or the status of the patient.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is annotated, and to assist individuals to easily find such files within the agency. NDMS, as a component of the OPEO, which resides within ASPR, intends to create a separate and distinct system of records. Below is the description of the NDMS Patient Treatment and Tracking Records System.

Dated: June 14, 2007.

Kevin Yeskey,

Deputy Assistant Secretary, Office of Preparedness and Emergency Operations.

SYSTEM NO. 09–90–0040

SYSTEM NAME:

''National Disaster Medical System (NDMS) Patient Treatment and Tracking,'' HHS/ASPR/OPEO.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

For a specified period and in accordance with the archiving rules, the paper records will be resident at NDMS headquarters, located at 409 3rd Street SW., Suite 330, Washington, DC 20024. The electronic copy of the record will be resident at the data center at the Unisys Corporation, 11720 Plaza America Drive, Reston, VA 20190.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals covered by the system are all persons and owners of animals treated by NDMS medical personnel when the NDMS Disaster Medical Assistance Teams (DMATs) and Veterinary Medical Assistance Teams (VMATs) are activated to respond to emergency situations, or as a response to any other situation for which they are activated.

CATEGORIES OF RECORDS IN THE SYSTEM:

All records pertaining to treatment and movement of patients to include the following (both in hard copy and electronic format):

Category A: Completed Patient Treatment Record form that includes:

1. NDMS Team Identification.
2. Chart Number.
3. Time and Date Patient seeks treatment.
4. Triage Category and health status.
5. Location where Patient is seen and transferred.
6. Patient Identification—Name, Address, City, State, Zip, Date of Birth, Phone Number, Employment, Weight, Next of Kin.
7. Complaints/Symptoms.
8. Vital Signs/Treatment Recommended and/or Prescribed.
9. Discharge—Time, Date, Disposition, Recommendations.
10. Patient Authorization—Requires Patient Signature in Front of Witness and Witness Verification through Signature.

11. Any potential attachments such as X-rays and laboratory reports showing test results.

Category B: Veterinarian Treatment Records on animals:

1. Privacy Act Data such as the name, address and telephone contact information of owners of animals will be maintained to be associated with the animal patient. However, animal treatment records themselves are not subject to the Privacy Act protections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

NDMS Statute, 42 U.S.C. 300hh–11; Title VI of the Civil Rights Act of 1964; and Section 504 of the Rehabilitation Act of 1973. Records disposition of this medical SOR is determined under laws governing federal records through the National Archives, 44 U.S.C. 3303a.

PURPOSE(S):

Medical and demographic information is collected on all patients seen and/or treated by NDMS or ASPR personnel. This SOR will also provide the location, time, and date the patient was transported during an evacuation. The information collected will include but not be limited to the patient's (1) Medical treatment history, (2) their pre-existing conditions, (3) their described symptoms, (4) any medical opinion rendered by an attending medical professional(s), (5) medications that were prescribed, or (6) any other medical advice provided. The collection of data contained in medical records provides a mechanism by which teams can have the ability to conduct medical quality assurance and establish a quality improvement process (QIP). Through QIP, teams can analyze and judge their performance on a specific deployment and if necessary enable them to better plan for future deployments. These patient records are also important sources of information to be used for research projects related to the prevention of disease or disability as a result of a disaster. Most importantly, these patient records document medical treatment rendered, especially if questions of liability arise about the treatment or the subsequent condition of the patient while he/she is under the care of NDMS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTENM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside HHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. ESF #8 is a coordinated effort between HHS, DHS, DoD, and the VA. As such, the medical treatment and movement of patients is a shared responsibility between the ESF #8 partnership agencies. The medical and demographic information collected during the treatment of a patient is shared with the partners to ensure that patients treated through NDMS receive the maximum level of health care possible.

2. Disclosure to a member of Congress or a Congressional staff member in response to an inquiry from the Congressional office made at the behest of the constituent about whom the record is maintained.

3. Disclosure to the Department of Justice (DOJ), court, or adjudicatory body when the following situations arise:

a. The agency or any component thereof, or

b. Any employee of the agency whether in his/her official or individual capacity, where DOJ has agreed to represent the employee, or

c. The United States government is a party to litigation or has an interest in such litigation and after careful review, the agency deems that the records requested are relevant and necessary to the litigation and that the use of such records by DOJ, court, or adjudicatory body is compliant with the purpose for which the agency collected the records.

4. Disclosure to agency contractors, consultants, or grantees who have been engaged by the agency to assist in the performance of a service related to this collection and who need to have access to the records in order to perform the activity.

5. To assist another Federal and/or State agency, agency of a state government, an agency established by State law, or its fiscal agent:

a. To establish the benefit entitlement of the patient.

b. To establish the relationship between the existing state benefit and the benefit funded in whole or part with Federal funds, such as the one associated with the NDMS definitive care.

c. To collaborate with the state and state agencies on behalf of family members regarding the current location and placement of their evacuated family member or patient population.

6. Disclosure to family members of a patient about the location or the status of the patient.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Category A: *Patient Care Forms or other Medical Records:*

Records in this system will be retained in accordance with the records disposition authority approved by the National Archives and Records Administration (NARA) for the Office of Public Health and Emergency Preparedness (OPHEP) in compliance with N1–468–07–1. The Pandemic and All Hazards Preparedness Act (Pub. L. 109–417), established the ASPR to serve in a similar capacity as OPHEP for medical disaster response. The records disposition authority used for these records will N1–468–07–1.

Disposition authority:

Patient Care Forms or other Medical Records regulated under the Health Insurance Portability and Accountability Act (HIPAA), created by the Federal Medical Station(s) or by any component of HHS/ASPR during a response to an event while caring for victims of that event. Disposition: Cutoff is at the end of the response activity by the Federal Medical Station(s) for a particular event. Retire to the Washington National Records Center 2 years after cutoff. Destroy 75 years after cutoff. This disposition instruction is media neutral; it applies regardless of media or format of the records.

Category B—The information collected on animals and their owners will not be destroyed until NARA approves a disposition schedule for those records.

STORAGE:

Paper records from this system are stored in the NDMS headquarters at 409 3rd Street, SW., Suite 330, Washington, DC 20024. The electronic database or server where information is entered and stored is maintained at the HHS data center located at Unisys Corporation, 11720 Plaza America Drive, Reston, VA 20190. During deployments, NDMS stores the records securely in their deployed location, the electronic data is stored in a secured server, and all procedures required for protection of Privacy Act documents are implemented as identified in ''Safeguards'' section below.

RETRIEVABILITY:

NDMS Patient Treatment and Tracking Records in electronic and paper copy are organized by event, location, and date of treatment. Data from the records are stored in an electronic database enabling data from the records to be retrievable by name and other demographic information provided by the patient (or for veterinary records, by pet owner), as well as by location of treatment, diagnosis, and other data fields within the database.

SAFEGUARDS:

NDMS has safeguards in place for authorized users and monitors such users to ensure against unauthorized use. Personnel having access to the system have been trained in the Privacy Act and information security requirements for both paper copies and electronically stored information. Information in this system is safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook, all pertinent National Institutes of Standards and Technology publications and OMB Circular A–130, Management of Federal resources. All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include restricting access to authorized personnel who have a need-to-know, using physical locks in the office environment, and the process of authentication using user IDs and passwords function as protection identification features. HHS file areas are locked after normal duty hours and the facilities are protected from the outside by security personnel.

SYSTEM MANAGER AND ADDRESS:

The NDMS Chief Medical Officer located at 409 3rd Street, SW., Washington, DC 20024. Mailing address: 330 Independence Avenue, SW., Room G–644, Washington, DC 20201.

NOTIFICATION PROCEDURES:

Requests for Privacy Act protected information generally are governed by HHS regulations found at 45 CFR, Part 5b. They must be made in writing and clearly marked as a ''Privacy Act Request'' on the envelope and letter. Inquiries regarding this SOR should be addressed to the System Manager. Inquiries related to patient medical records should include the full name of the individual, the appropriate personal identification, and the current address, and should be sent to the Chief Medical Officer, NDMS, 330 Independence Avenue, SW., Room G–644, Washington, DC 20201. The name of the requester, the nature of the record sought, and the verification of identify must be clearly indicated, as required by HHS regulations at 45 CFR 5b.5. Requests may also be sent to: HHS Privacy Act Officer 200 Independence Avenue, SW., Washington, DC 20201.

RECORD ACCESS PROCEDURES:

Same as Notification Procedure above.

CONTESTING RECORD PROCEDURES:

Same as the Notification Procedure above. The letter should state clearly and concisely what information you are contesting, the reasons for contesting it, and the proposed amendment to the information that you seek pursuant to HHS Privacy Act regulations, 45 CFR 5b.7.

RECORD SOURCE CATEGORIES:

Sources for providing data for NDMS Patient Treatment Records will only be provided by patients, medical personnel treating the patients or by accessing their personal health records (PHR). In the case of minors or other individuals unable to explain symptoms, information may be sought from a parent or guardian. For animals, information will be gathered by NDMS veterinary personnel and/or owners or caretakers of animals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 07–3097 Filed 6–25–07; 8:45 am]

BILLING CODE 4150–37–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method for the Direct Detection and Quantitation of Asparagine Synthetase in Biological Samples

Description of Technology: Acute lymphoblastic leukemia (ALL) is a fast-growing cancer that targets immature cells of the blood and bone marrow. Clinical treatments of ALL use enzyme-based methods, such as L-asparaginase (ASNase), for depletion of cellular asparagine in combination with standard chemotherapeutic agents. Although ASNase can be used to treat both childhood and adult forms of ALL, its use is limited because patients can often develop resistance to ASNase therapy. Studies have shown a correlation between ASNase resistance and increased expression levels of asparaginase synthetase (ASNS) enzyme, which catalyzes the biosynthesis of cellular L-asparagine from L-aspartate in an ATP-dependent reaction. At present, measurement of ASNS expression levels are based on mRNA or antibody based assays; however, these methods are not suitable for direct quantitation of protein in biological samples. Thus, new and improved methods that directly measure ASNS protein levels are needed.

Researchers at the NCI have developed novel methods for quantitating ASNS protein in biological samples using isotope-labeled standard peptides and mass spectrometry. The current technology describes methods of identifying a patient with cancer or chemoresistant cancer, monitoring the treatment regimen of a patient with cancer, as well as methods for detecting modulators and their ability to affect ASNS expression levels. Further described are novel pharmaceutical compositions with potential use as chemotherapeutic agents.

Applications: Diagnostic assay for leukemia or chemoresistant cancer; Use in screening or identifying potential chemotherapeutic agents; Use in measuring a patient's sensitivity to ASNase therapy.

Market: Approximately 5,200 people are diagnosed with ALL each year in the United States; ALL is the most common type of cancer in children in developed countries.

Development Status: Early stage.

Inventors: Thomas P. Conrads (NCI/SAIC) et al.

Patent Status: International Application No. PCT/US06/28965 filed 25 Jul 2006 (HHS Reference No. E–189–2006/0–PCT–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Robert M. Joynes, J.D., M.S.; 301–594–6565; *joynesr@mail.nih.gov.*

Total Emission Detection System for Multi-Photon Microscopy

Description of Technology: Available for licensing and commercial development is a novel two-photon microscope system, which would allow improved fluorescent light collection, the use of less excitation power and deeper penetration of tissue and isolated cells. Multi-photon fluorescence microscopy (MPFM) is an imaging technique that can investigate biological processes to sub-cellular resolution at depths of hundreds of microns below the surface of biological tissues. MPFM provides higher resolution imaging of tissues than confocal imaging, but is currently limited by the use of inefficient light collection systems, which lead to detection of only a fraction of the light that is emitted from the sample. The new system consists of an array of mirrors, lenses, and reflecting surfaces designed to collectively maximize the probability of collecting all emitted fluorescent light to a detector, thereby providing enhanced brightness of light detected from the sample and an increase in signal-to-noise ratio (SNR). This increase in SNR can be used to improve time resolution, reduce laser power requirements and reduce photodynamic damage.

Applications: Three-dimensional imaging of biological tissues and cells; Three-dimensional imaging of semiconductor integrated circuits.

Market: Optical Imaging.

Development Status: Late-stage technology.

Inventors: Christian A. Combs, Robert S. Balaban, Jay R. Knutson (NHLBI).

Patent Status: U.S. Provisional Application No. 60/835,462 filed 04 Aug 2006 (HHS Reference No. E–257–2005/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Chekesha S. Clingman, Ph.D.; 301–435–5018; *clingmac@mail.nih.gov*

Collaborative Research Opportunity: The NHLBI Light Microscopy Core Facility is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize a total emission detection system for multi-photon imaging. Please contact Lili Portilla, Director of the NHLBI Office of Technology Transfer and Development at 301–402–5579 or via e-mail at *LILIP@nih.gov* for more information.

Dated: June 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–12335 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of Federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Novel Discriminatory Small Peptide Inhibitor of Hsp90 Targeting Oncogenic Kinases

Description of Technology: Heat shock protein 90 (Hsp90) is a molecular chaperone required for stability and function for many proteins (clients). Presently, there are clinical trials focusing on small molecule Hsp90 inhibitors; however, pharmacologic Hsp90 inhibition causes destabilization, ubiquitination and proteasome-degradation of all client proteins indiscriminately.

Hsp90 was found to be overexpressed in tumor cells; thereby making Hsp90 a promising molecular target for cancer therapy. Additionally, some Hsp90-dependent client proteins (non-kinases) were identified as putative tumor suppressors, suggesting that indiscriminate degradation of all Hsp90 client proteins is not ideal. Finding a molecular inhibitor that discriminately inhibits Hsp90 that would target only client kinase proteins would be an ideal therapeutic agent for cancer treatment.

The current invention is a short peptide that inhibits Hsp90 that prevents the recognition and function of client kinase proteins, and promotes the degradation of client kinase proteins, while not affecting other non-kinase client proteins.

Applications and Modality: Current applications include targeting client kinase proteins promoting degradation, and preventing recognition and function of the client kinase proteins; restriction of Hsp90 inhibition to client kinases that utilize similar Hsp90 recognition sequences to the oncogenic tyrosine kinase Hsp90 client ErbB2; and having kinase-specific chaperone inhibitors preferentially active as anti-cancer agents compared to indiscriminate pharmacologic inhibitors of Hsp90.

Market: 600,000 deaths from cancer related diseases were estimated in 2006; In 2006, cancer drug sales were estimated to be $25 billion; There is a burgeoning drug market for Hsp90 inhibitors for cancer treatment.

Development Status: The technology is currently in the preclinical stage of development.

Inventors: Leonard M. Neckers et al. (NCI).

Patent Status: U.S. Provisional Application No. 60/895,313 filed 16 Mar 2007 (HHS Reference No. E–121–2007/0–US–01); U.S. Provisional Application No. 60/909,834 filed 03 Apr 2007 (HHS Reference No. E–121–2007/1–US–01).

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Adaku Nwachukwu, J.D.; 301–435–5560; *madua@mail.nih.gov.*

Collaborative Research Opportunity: The NCI Urologic Oncology Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize peptide inhibitor of Hsp90. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Novel Treatment for Non-Small Cell Lung Cancer Using Mesothelin-Targeted Immunotoxins

Description of Technology: Mesothelin is a glycoprotein, whose expression has been largely restricted to mesothelial cells in normal tissues, although epithelial cells of the trachea, tonsil, fallopian tube, and kidney have shown immunoreactivity. Mesothelin has been shown to be expressed in several cancers including pancreatic carcinomas, gastric carcinomas and

ovarian carcinomas, and has the potential of being used as a tumor marker and a novel target for the development of new treatments.

The technology relates to the finding that some non-small cell lung cancers (NSCLC) express the antigen mesothelin. Targeting the tumors with antibodies or immunotoxins that specifically bind mesothelin can be a potential new treatment for non-small cell lung cancer. The SSIP immunotoxin and its variants that specifically bind to mesothelin can be used for the treatment of NSCLC.

Applications and Modality: NSCLC can be treated by targeting mesothelin.

Advantage: Anti-mesothelin antibodies and immunotoxins are already available and being tested for several cancers.

Development Status: The technology is in pre-clinical stage of development.

Inventors: Ira H. Pastan (NCI) et al.

Patent Status: U.S. Provisional Application No. 60/891,923 filed 27 Feb 2007 (HHS Reference No. E–120–2007/0–US–01), entitled ''Treatment of Non-Small Cell Lung Cancer with Mesothelin-Targeted Immunotoxins.''

Licensing Status: Available for exclusive and non-exclusive licensing.

Licensing Contact: Jesse S. Kindra, J.D.; 301–435–5559; *kindraj@mail.nih.gov*

Collaborative Research Opportunity: The National Cancer Institute's Laboratory of Molecular Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize anti-mesothelin antibodies and immunotoxins. Please contact John D. Hewes, Ph.D. at 301–435–3121 or *hewesj@mail.nih.gov* for more information.

A Gene Expression Profile That Predicts Ovarian Cancer Patient Response to Chemotherapy

Description of Technology: Ovarian cancer is a poor prognosis disease that remains the most lethal of all gynecologic malignancies. Warning symptoms do not occur until the tumor has already spread beyond the ovary, resulting in diagnosis at an advanced stage. As a result, there is a poor patient prognosis with only fifteen percent of women possessing advanced stage disease surviving for five years. Despite an initial clinical response of 80% to surgery and chemotherapy, most patients experience tumor recurrence within two years of treatment. The overwhelming majority of these patients will eventually develop chemoresistant disease and die.

Available for licensing are two gene signatures. One gene signature can predict whether a patient will initially respond to standard platinum-paclitaxel chemotherapy, but will relapse within six months of completing treatment. A second gene signature identifies patients who will show no response to therapy. This methodology may enable clinicians to identify patients who may be candidates for additional and/or novel chemotherapy drugs, and effectively choose appropriate cancer treatment. A unique feature of this signature is its derivation from pure, microdissected isolates of ovarian tumor cells, rather than undissected tissue. By utilizing this approach, the resulting gene list is specific to the cell type that causes the disease.

Applications: Method to detect if an ovarian cancer patient is sensitive to treatment with chemotherapeutic agents; Method to evaluate ovarian cancer patient chemoresponsiveness; Diagnostic tool to aid clinicians in determining appropriate cancer treatment; Methods to treat ovarian cancer identified by chemoresistant biomarkers compositions.

Market: Ovarian cancer is the fourth most common form of cancer in the U.S.; Ovarian cancer is three times more lethal than breast cancer; 15,310 deaths in the U.S. in 2006.

Development Status: The technology is currently in the pre-clinical stage of development.

Inventors: Michael J. Birrer (NCI) et al.

Publication: SC Mok et al. Biomarker discovery in epithelial ovarian cancer by genomic approaches. Adv Cancer Res. 2007;96:1–22.

Patent Status: U.S. Provisional Application No. 60/899,942 filed 06 Feb. 2007 (HHS Reference No. E–060–2007/0–US–01).

Licensing Status: Available for exclusive or non-exclusive licensing.

Licensing Contact: Jennifer Wong; 301/435–4633; *wongje@mail.nih.gov.*

Potent, Easy to Use Targeted Toxins as Anti-Tumor Agents

Description of Technology: The invention discloses synthesis and use of novel derivatives of 2-[2′-(2-aminoethyl)-2-methyl-ethyl]-1,2-dihydro-6-methoxy-3H-dibenz-[de,h]isoquinoline-1,3-dione as targeted anti-tumor agents. The use of targeted toxin conjugates with anti-cancer antibodies, such as herceptin, is increasing. Based on a comparison with the structurally complex toxins, such as DM1, available in the market, these novel toxins are more stable in circulation, thus making the toxin-conjugates more tumor-selective and less toxic. As such, these compounds are superior alternatives to the existing toxins.

The invention describes a potent and easy to synthesize toxin that can be used for generating a variety of prodrugs. These compounds can be attached to a ligand that recognizes a receptor on cancer cells, or to a peptide that is cleaved by tumor-specific proteases. The compounds are topoisomerase inhibitors and are mechanistically different from DM1 that targets tubulin.

The structure of the toxin allows it to be modified with a peptide linker that is stable, but rapidly cleaved in lysosomes after the compound is specifically taken up by cancer cells.

Applications: The compounds can be used for preparation of a variety of potent anti-cancer agents with low systemic toxicity.

Advantages: Easy to prepare; Structural features make these compounds more stable in circulation; Toxin conjugates are more tumor-selective and less toxic.

Benefits: 600,000 cancer deaths occurred in 2006 in spite of advances in cancer therapeutics. A major limitation of current therapeutics is their toxic side effects. This technology can effectively treat cancer with low systemic toxicity and thus improve overall survival and quality of life of patients suffering from cancer. The current cancer chemotherapeutic market is valued at $42 billion and expected to grow.

Inventors: Nadya I. Tarasova, Marcin D. Dyba, Christopher J. Michejda (NCI).

Development Status: In vitro studies are completed and *in vivo* animal model studies are ongoing.

Patent Status: U.S. Provisional Application No. 60/844,027 filed 12 Sep. 2006 (HHS Reference No. E–160–2006/0–US–01).

Licensing Contact: Mojdeh Bahar, J.D.; 301/435–2950; *baharm@mail.nih.gov.*

Dated: June 19, 2007.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E7–12337 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special Emphasis

Panel, July 18, 2007, 8 a.m. to July 18, 2007, 6 p.m., Hilton Crystal City, 2399 Jefferson Davis Hwy., Arlington, VA 22202 which was published in the **Federal Register** on June 15, 2007, FR 07–2972.

The meeting location was changed from Hilton Crystal City to State Plaza Hotel, Washington, DC. The rest of the information remains the same. The meeting is closed to the public.

Dated: June 20, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3118 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Institutional National Research Service Award (T32s).

Date: July 10, 2007.

Time: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Roy L. White, PhD, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7176, Bethesda, MD 20892-7924, 301–435–0310, *whiterl@nhlbi.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 20, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3121 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Fellowships SEP HH–92.

Date: July 31, 2007.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Doubletree, Bethesda, MD.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3043, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3122 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, MBRS Review Subcommittee B.

Date: July 16–17, 2007.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, Bethesda, MD 20892, 301–594–2771, *Johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3123 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Commission Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, In-House Review of R13 Grant (ISBRA).

Date: July 2, 2007.

Time: 11 a.m. to 11:45 p.m.

Agenda: To review and evaluate grant applications.

Place: NIAAA, 5635 Fishers Lane, Room 3146, Rockville, MD 20852.

Contact Person: Lorraine Gunzerath, PhD, MBA, Scientific Review Administrator, National Institute on Alcohol Abuse and Alcoholism, Office of Extramural Activities, Extramural Project Review Branch, 5635 Fishers Lane, Room 3403, Bethesda, MD 20892–9304, 301–443–2369, *lgunzera@mail.nih.gov.*

This notice is being published less than 15 days prior to the meting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Center Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3124 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, ''Gene Therapy for Urea Cycle Disorders.''

Date: July 18, 2007.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3125 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Innovative Therapies and Clinical Studies for Screenable Disorders.

Date: July 17, 2007.

Time: 12:01 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3126 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 12, 2007, 1 p.m. to July 12, 2007, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 13, 2007, 72 FR 32674–32675.

The meeting will be held July 11, 2007. The meeting time and location remains the same. The meeting is closed to the public.

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3119 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ONC–V (03) Member Conflict SEP.
Date: July 3, 2007.
Time: 11:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Steven B. Scholnick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–435–1719, *scholnis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Obesity, Nutrition, and Reproductive Biology.
Date: July 11, 2007.
Time: 8:30 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering.
Date: July 11, 2007.
Time: 2:30 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041, *krishnak@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Applications Responding to RFA AA07–020/21.
Date: July 13, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1775, *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell and Molecular Immunology—Member Conflicts.
Date: July 16–17, 2007.
Time: 12:01 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Members Conflict Review for HOP SBIR.
Date: July 17, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Elisabeth Koss, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, (301) 435–1721, *kosse@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Behavioral Science Special Emphasis Panel.
Date: July 17, 2007.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, (301) 435–2211, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Social Science and Population Studies.
Date: July 25, 2007,
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.
Date: July 26, 2007.
Time: 1 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2191C, MSC 7818, Bethesda, MD 20892, 301–435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes and Prostatic Hyperplasia.
Date: July 26, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electron Microscopy.
Date: July 31–August 1, 2007.
Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Alessandra M. Bini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–435–1024, *binia@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 19, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–3120 Filed 6–25–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–28307]

Great Lakes Pilotage Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) will meet

to discuss various issues relating to Pilotage on the Great Lakes. The meeting will be open to the public.

DATES: GLPAC will meet on Tuesday, July 24, 2007, from 8 a.m. to 2 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before July 9, 2007. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before July 9, 2007.

ADDRESSES: GLPAC will meet at Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001, Room 6303. Send written material and requests to make oral presentations to Mr. John Bobb, Commandant (CG–3PWM–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Bobb, Executive Secretary of GLPAC, telephone 202–372–1532, fax 202–372–1929 or e-mail at *john.k.bobb@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) KleinPilot—Pilot Dispatch and Billing Software.

(2) Rate Making Process.

(3) 7th Member.

(4) Report from the Director of Great Lakes Pilotage.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Secretary no later than July 9, 2007. Written material for distribution at the meeting should reach the Coast Guard no later than July 9, 2007. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 15 copies to the Executive Secretary no later than July 9, 2007.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Secretary as soon as possible.

Dated: June 20, 2007.

J.M. Sollosi,

Acting Director of Waterways Management.

[FR Doc. E7–12290 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–28]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

T*ermination of Origination Approval Agreement:* Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single-family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 30th review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single-family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA-insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA-insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of

the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Homeownership centers
AAA Worldwide Financial Co	15400 Knoll Trail Drive, Ste. 401, Dallas, TX 75248.	Dallas	3/21/2007	Denver.
First Alliance Mortgage Co	32100 Telegraph Road, Ste 205, Bingham Farms, MI 48025.	Detroit	2/6/2007	Philadelphia.
First Alternative Mortgage Corp	101 Cordell Road, Schenectady, NY 12304	Albany	4/2/2007	Philadelphia.
GSF Mortgage Corp	411 Hamilton Boulevard, Ste 1020, Peoria, IL 61602.	Springfield	3/20/2007	Atlanta.
Loanamerica Home Mortgage Inc	1327 Empire Central Drive, Ste 114, Dallas, TX 75247.	Houston	2/6/2007	Denver.
Northwood Credit Inc	12700 Hillcrest Road #230, Dallas, TX 75230.	Dallas	2/6/2007	Denver.
Pinnacle Mortgage Funding LLC	250 E 96th Street, Ste 125, Indianapolis, IN 46240.	Indianapolis	4/2/2007	Atlanta.
Union Federal Bank Indianapolis	45 N Pennsylvania Street, Indianapolis, IN 46204.	Greensboro	2/6/2007	Atlanta.

Dated: June 14, 2007.

Brian D. Montgomery

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E7–12291 Filed 6–25–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6695–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The Port Graham Corporation. The lands are in the vicinity of Port Graham, Alaska, and are located in:

Tract B, U.S. Survey No. 1630, Alaska. Containing 0.74 acres.

The subsurface estate in these lands will be conveyed to Chugach Alaska Corporation when the surface estate is conveyed to The Port Graham Corporation. Notice of the decision will also be published four times in the Homer Tribune.

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 July 26, 2007 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

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.

Jennifer L. Noe,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–12316 Filed 6–25–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–0777–XZ–241A]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held July 17, 2007 from 9 a.m. to 5 p.m. and will continue on July 18, 2007 from 9 a.m. to 3 p.m.

ADDRESSES: Great Sand Dunes Visitor Center, Mosca, Colorado.

FOR FURTHER INFORMATION CONTACT: Christie Achenbach, (719) 852–5941.

SUPPLEMENTARY INFORMATION: The 15 member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics on July 17 include: Manager updates on current

land management issues; Royal Gorge Field Office updates on the Arkansas River Travel Management Plan and the South Park Land Tenure Adjustment Plan; and San Luis Valley updates on Antelope Trickle Stewardship project, the Anderson Ditch, a tour of the proposed extreme jeep area and updates on other public land issues. On July 18, the Council will tour the Baca Mountain tract and discuss access issues. All meetings are open to the public. The public is encouraged to make oral comments to the Council at 9:15 a.m. on July 17 or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. The public is also welcome to attend the field tours on July 17 and 18, however they may need to provide their own transportation. Summary minutes for the Council Meeting will be maintained in the San Luis Valley Public Lands Center and the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting Minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: June 15, 2007.

Diane Chung,

Center Manager, San Luis Valley Public Lands Center.

[FR Doc. E7–12315 Filed 6–25–07; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WY–920–1050–ET; WYW 87233]

Public Land Order No. 7678; Extension of Public Land Order No. 6650; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 6650 for an additional 20-year period. This extension is necessary to continue the protection of the Sugarloaf Petroglyphs and Pine Spring Archeological Sites in Sweetwater County.

EFFECTIVE DATE: June 23, 2007.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 N. Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Public Land No. 6650 (52 FR 23549, June 23, 1987), which withdrew 20 acres of public lands from surface entry and mining to protect the Sugarloaf Petroglyphs and Pine Spring Archeological Sites, is hereby extended for an additional 20-year period.

2. Public Land Order No. 6650 will expire on June 22, 2007, unless, as a result of a review conducted prior to the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(2000), the Secretary determines that the withdrawal shall be extended.

Dated: June 7, 2007.

C. Stephen Allred,

Assistant Secretary of the Interior.

[FR Doc. 07–3135 Filed 6–21–07; 4:37 pm]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–1430–ES; CA–45985]

Notice of Realty Action; Recreation and Public Purposes Act (R&PP) Classification; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) has examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*), approximately 5 acres of public land in San Bernardino County, California. The Hesperia Recreation and Parks District, a local government entity has filed an application to lease with the request for conveyance of the above described public land for a public sports complex to include access roads, a nature trail and parking lot enclosed within a chain link fence, as specified in the District's development plan (henceforth, sports complex). The Hesperia Recreation and Parks District proposes to use the land in conjunction with adjacent non-Federal lands purchased by the District, for the establishment of a 24 acre public sports complex. The public land will be leased during the development stages. Upon substantial compliance with approval plans of development and management, the land will be conveyed.

DATES: For a period until August 10, 2007, interested parties may submit comments to the Field Manager, BLM Barstow Field Office, at the address below.

ADDRESSES: Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311.

FOR FURTHER INFORMATION CONTACT: Joan Patrovsky, Realty Specialist, BLM Barstow Field Office, (760) 252–6032.

SUPPLEMENTARY INFORMATION: The Hesperia Recreation and Parks District filed an R&PP application for the lease and subsequent conveyance of the following described 5 acres of public land to be developed and utilized for a public sports complex:

San Bernardino Base Meridian, California

T. 4 N., R. 5 W.

Sec. 13, N½SW¼SW¼NW¼.

The area described contains 5 acres, more or less, in San Bernardino County.

Leasing and subsequent conveyance of the land to the Hesperia Recreation and Parks District is consistent with current Bureau planning for this area and would be in the public interest. The land is not needed for any Federal purpose. The lease would be issued for a term of 5 years to allow sufficient time to develop and complete the parking lot, nature trail, interpretative signs, and enclosure fencing around the complex area. The land would be conveyed after recreational development activities have been completed. The lease and subsequent patent, if issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will be subject to the following terms, conditions, and reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals under applicable laws and such regulations as the Secretary of the Interior may prescribe. And will be subject to:

3. Those rights for an electric transmission line granted by right-of-way R 01725 to Southern California Edison Company.

4. Those rights for an electric transmission line granted by right-of-way R 06740 to Southern California Edison Company.

5. Those rights for an electric transmission line granted by right-of-way R 04180 to Southern California Edison Company.

6. Those rights for an electric transmission line granted by right-of-way CACA 21596 to Southern California Edison Company.

7. Any other valid rights-of-way that may exist at the time of lease or conveyance.

8. Provisions of the R&PP Act and all applicable regulations of the Secretary of the Interior.

9. The lessee or patentee, its successors or assigns, by accepting a lease or patent, agrees to indemnify, defend, and hold the United States, its officers, agents, representatives, and employees (hereinafter ''United States'') harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising out of or in connection with the lessee's or patentee's use, occupancy, or operations on the leased/patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts or omissions of the lessee or patentee and its employees, agents, contractors, lessees, or any third-party arising out of or in connection with the lessee's or patentee's use, occupancy, or operations on the leased or patented real property which cause or give rise to, in whole or in part: (1) Violations of Federal, state, and local laws and regulations that are now, or may in future become, applicable to the real property and/or applicable to the use, occupancy, and/or operations thereon; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substance(s); pollutant(s), or contaminant(s), and/or petroleum product or derivative of a petroleum product, as defined by Federal and State environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solid or hazardous substance(s) or waste(s), pollutant(s), or contaminant(s), or petroleum product or derivative of a petroleum product as defined by Federal and State environmental laws, are generated, stored, used, or otherwise disposed of on the leased or patented real property, and any cleanup response, remedial action, or other actions related in any manner to the said solid or hazardous substance(s) or waste(s), pollutant(s), or contaminant(s), or petroleum product or derivative of a petroleum product; (6) Natural resource damages as defined by Federal and State laws. Lessee or Patentee shall stipulate that it will be solely responsible for compliance with all applicable Federal, State, and local environmental laws and regulatory provisions throughout the life of the facility, including any closure and/or post-closure requirements that may be imposed with respect to any physical plant and/or facility upon the real property under any Federal, State, or local environmental laws or regulatory provisions. In the case of a patent being issued, this covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

10. Terms, covenants and conditions identified through the applicable environmental analysis or that the authorized officer determines appropriate to ensure public access and the proper use and management of the realty. Upon publication of this notice in the **Federal Register**, the public lands described above are segregated from all forms of appropriation under the public land laws, including the general mining laws and leasing under the mineral leasing laws, except for lease or conveyance under the Recreation and Public Purposes Act. Interested parties may submit comments regarding the proposed lease or conveyance or classification of the lands for a period of 45 days from the date of publication of this notice in the **Federal Register**.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a sports complex. Comments on the classification are restricted to whether the land is physically suited for the proposal or any other issues that would be pertinent to the environmental (National Environmental Policy Act of 1969) analysis for this action, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching its classification decision, or any other factor not directly related to the suitability of the land for R&PP use as a public sports complex.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

In the absence of any adverse comments, the classification of the land described in this notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be available for lease/conveyance until after the classification becomes effective.

(Authority: 43 CFR 2741.5)

Dated: April 4, 2007.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA–930).

[FR Doc. 07–3136 Filed 6–25–07; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–5853–ES; N–37108; 7–08807]

Notice of Realty Action: Recreation and Public Purposes Change of Use; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The City of Las Vegas (City) has filed an application with the Bureau of Land Management to change the use of Recreation and Public Purposes (R&PP) Act lease N–37056 from a fire station to a public park.

DATES: Interested parties may submit written comments regarding the proposed lease of the lands until August 10, 2007.

ADDRESSES: Send written comments to the Field Manager, Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130–2301.

FOR FURTHER INFORMATION CONTACT: Kim Liebhauser, Supervisory Realty Specialist, Bureau of Land Management, Las Vegas Field Office, at (702) 515–5088.

SUPPLEMENTARY INFORMATION: A Notice of Realty Action previously published classified the subject land for fire station purposes and segregated it under the R&PP Act as serial number N–37056. Subsequently, a lease was issued on June 1, 1984, to the City. The City has determined there is no longer a need for a fire station and wants to change the use of the subject land for a public park.

Mount Diablo Meridian

T. 19 S., R. 60 E.,
Sec. 13, N½NW¼NW¼NE¼.

The area described contains 5 acres, more or less, in Clark County.

The land is not required for any Federal purpose. The lease is consistent with the BLM Las Vegas Resource Management Plan dated October 5, 1998, and would be in the public interest. The lease or conveyance when issued, will be subject to the provisions of the R&PP Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945); and

2. All minerals, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The lease or conveyance will be subject to:

1. All valid existing rights;

2. Right-of-way N–65703 for underground telephone distribution line purposes granted to Central Telephone Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761);

3. Right-of-way N–75045 for underground water distribution line purposes granted to Las Vegas Valley Water District, their successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761); and

4. Right-of-way N–77002 for underground distribution line purposes granted to Nevada Power Co., its successors or assigns, pursuant to the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review in the office of the Bureau of Land Management, Las Vegas Field Office at the address listed above.

On June 26, 2007, the above described land is segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws.

Application Comments: Interested parties may submit written comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park. To be considered, comments must be received at the BLM Las Vegas Field Office on or before the date stated above in this notice for that purpose. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Only written comments submitted by postal service or overnight mail to the Field Manager—BLM Las Vegas Field Office will be considered properly filed. E-mail, facsimile or telephone comments will not be considered as properly filed. Any adverse comments will be reviewed by the BLM, Nevada State Director. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior on August 27, 2007.

(Authority: 43 CFR 2741)

Dated: April 19, 2007.

Mark R. Chatterton,

Assistant Field Manager, Non-Renewable Resources.

[FR Doc. E7–12363 Filed 6–25–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

30-Day Notice of Submission to the Office of Management and Budget; Opportunity for Public Comment

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice and request for comments.

SUMMARY: Under provisions of the Paperwork Reduction Act of 1994 (44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service (NPS) invites public comments on a revision of a currently approved collection of information (OMB No. 1024–0236).

DATES: Public Comments on the Information Collection Request (ICR) will be accepted on or before July 26, 2007.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB No. 1024–0236), Office of Information and Regulatory Affairs, OMB, by fax at 202/395–6566 or by electronic mail at *oria_docket@omb.eop.gov.* Please also send a copy of your comments to Dr. John Dennis, Natural Resources (Room 11160), NPS, 1201 Eye Street, NW., Washington, DC 20005; Phone: 202/513–7174; fax 202/371–2131: e-mail: *WASO_NRSS_researchcoll@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Bill Commins, NPS, Natural Resources (Room 25), 1201 Eye Street, NW., Washington, DC 20005. Phone: 202/513–7166; Fax: 202/371–2131; e-mail: *bill_commins@nps.gov.* You may obtain additional information about the application and annual reporting forms and existing guidance and explanatory material from the NPS Research Permit and Reporting System Web site at: *http://science.nature.nps.gov/research.* Your are entitled to a copy of the entire ICR package free of charge. Copies of the information collection request may be obtained by contacting Dr. John Dennis at the address above.

*Comments Received on the 60-Day **Federal Register** Notice:* On March 8, 2007, the NPS published a notice in the **Federal Register** to solicit comments on the proposed ICR to extend three existing NPS information collection instruments that are processed by the existing, Internet-based Research Permit and Reporting System (*see* 72 FR: 10553–10554). NPS also contacted by e-mail 3,588 non-Federal and Federal permittees and permit applicants who were active in calendar years 2006 and 2007, posted on the RPRS Web site notice of the availability of this review opportunity, and sent an internal memorandum to the NPS Natural Resource Advisory Group to solicit comments from the members of that group.

NPS received 13 responses from the public in response to the **Federal Register** notice and subsequent e-mail messages requesting comments. These responses provided a diversity of thoughts, which included (1) the requested information and time needed to fill out the forms are reasonable; (2) the on-line application process is efficient and straight forward; (3) the forms and the ability to access on-line and report on-line make the application and compliance process very easy; (4) the park review and decision process is difficult and onerous; (5) too much documentation is required; (6) having each park make its own permit decision is unnecessarily piecemeal, arbitrary, and burdensome; and (7) it is difficult to figure out how to submit ''things''. Five respondents specifically addressed the education application and permit, saying that it would have benefits or

offering ideas about what types of education activities should receive specific types of consideration, such as (a) simplifying the application process, (b) how to treat specimen collections, (c) allowing for different treatment for different types of activities, (d) offering the ability to change the program leader without reissuing a permit, and (e) offering a fee waiver for permitted education activities. Several respondents discussed matters outside this request for review, including (1) urging NPS to change its collection ownership procedure; and (2) requesting the NPS to issue permits on a Service, rather than park, basis.

Actual NPS and researcher use of the Internet-based system over the past three years has yielded few complaints and has earned a number of kudos. This use also has yielded suggestions from both respondents and government employees for making the information collection forms or software more efficient or more usable. These suggestions have been accumulated and some have been incorporated through ongoing software and technical support improvements. Such receipt of, and action on, user suggestions, constitutes ongoing consultation with people (applicants and permittees) from whom information is being collected and by whom collected information is being applied (NPS) personnel and users of the Investigator's Annual Report site). Should OMB approve the collection of information forms submitted in this extension request, additional software changes will be made to incorporate fully the improvements contained in these forms.

If you comment to NPS via electronic mail, please submit your comments as an attached ASCII or MSWord file and avoid the use of special characters and any form of encryption. Please also include ''Attn: NPS Research Permit and Reporting System'' and your name and return address in your e-mail message. If you would like, but do not receive, a confirmation from the system that we have received your e-mail message, contact us directly at the NPS phone number given here.

SUPPLEMENTARY INFORMATION:

Title: Research Permit and Reporting System Collection of Information (Application for a Scientific Research and Collecting Permit; Application for a Science Education Permit; Investigator's Annual Report) (re: 36 CFR 2.1 and 2.5).

Bureau Form Number(s): Application for a Scientific Research and Collecting Permit: 10–741a; Application for a Science Education Permit: 10–741b; Investigator's Annual Report: 10–226.

OMB Number: 1024–0236.

Expiration Date: June 30, 2007.

Type of Request: Revision of a currently approved collection of information.

Description of Need: The NPS regulates scientific research and collecting studies and science education activities inside park boundaries under regulations codified at 36 CFR Part 2, Section 2.5. The NPS issued these regulations pursuant to authority under the NPS Organic Act 1916 as amended (16 U.S.C. 1 *et seq.*). The NPS administers these regulations to provide for scientific research and collecting and scientific education uses of parks while also protecting park resources and other park uses from adverse impacts that could occur if inappropriate scientific research and collecting studies or science education activities were to be conducted within park boundaries.

Frequency of collection: On occasion.

Description of respondents: Individual scientific investigators or science educators from other governmental agencies, universities and colleges, schools, research organizations, and science education organizations who apply for a permit and any members of this group who receive a permit and then must submit the required annual report of accomplishment.

Estimated average number of respondents: 6,500 per year.

Estimated average number of responses: Two responses per year per respondent for an annual total of 13,000 responses. For each permit cycle, each respondent will respond usually once to prepare and submit the application for a permit and respondents who are successful in being issued a permit will respond a second time to submit the required investigator's Annual Report. Given that most applicants are successful in being issued a permit and that permit renewal usually occurs annually, the number of responses will approach a total that is two times the number of respondents.

Estimated average time burden per respondent: NPS estimates the reporting burden for this collection of information, including both the relevant application and the annual report, will average 1.625 hours per respondent per year.

Frequency of response: 2 per respondent per year.

Estimated total annual reporting burden: 10,560 hours. This number assumes 6,500 respondents each take about 0.75 hours to complete the automated application form (including reading the guidance material), up to 6,500 successful applicants each take 0.25 hours to sign the issued permit and return it to the park, and up to 6,500 permittees each take 0.25 hours to complete the automated Investigator's Annual Report form, including reading the instructions. In addition, this number includes 0.25 hours each for approximately 1,500 respondents to copy and process documents that cannot be submitted electronically, and 0.5 hours each for up to 1,500 respondents to prepare the portion of the Application for a Scientific Research and Collecting Permit that requires coordination with one or more non-NPS museums or other specimen repositories. Those few applicants who will be unable to process their applications and report forms electronically likely will spend a longer amount of time completing each form manually.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the validity and accuracy of the reporting burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 23, 2007.

Leonard E. Stowe,

NPS, Information Collection Clearance Officer.

[FR Doc. 07–3108 Filed 6–25–07; 8:45 am]

BILLING CODE 4310–EJ–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–413 and 731–TA–913–916 and 918 (Review)]

Stainless Steel Bar From France, Germany, Italy, Korea, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on stainless steel bar from Italy and antidumping duty orders on

stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on stainless steel bar from Italy and antidumping duty orders on stainless steel bar from France, Germany, Italy, Korea, and the United Kingdom would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: June 14, 2007.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On May 7, 2007, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (72 FR 28071, May 18, 2007). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on October 9, 2007, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on November 6, 2007, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 30, 2007. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 1, 2007, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is October 24, 2007. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is November 15, 2007; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before November 15, 2007. On December 14, 2007, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 18, 2007, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a

document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.
Issued: June 21, 2007.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E7–12312 Filed 6–25–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Privacy Act of 1974, as Amended; Revisions to Existing Systems of Records

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed addition of a new routine use and other changes to existing systems of records; request for comments on proposed revisions of systems of records.

SUMMARY: The U.S. International Trade Commission (''Commission'') previously published notices describing the systems of records it maintains pursuant to the Privacy Act of 1974. The Commission is issuing notice of its intent to revise the existing systems of records entitled ''Personnel Security Investigative Files,'' ''Library Circulation Records,'' ''Administrative Protective Order Breach and Related Records,'' and ''Emergency Notification Records.''

The Commission issues this notice to satisfy the Privacy Act's requirement to publish in the **Federal Register** notice of the existence and character of records systems maintained by the Commission and of any new use or intended use of information in the Commission's systems of records.

DATES: Written comments must be received by the Secretary no later than August 6, 2007. The proposed revisions to the Commission's systems of records will become effective on that date unless otherwise published in the **Federal Register.**

ADDRESSES: Comments should be directed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Patrick V. Gallagher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436 or tel. 202–205–3152. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4), (11)), the Commission proposes to revise the descriptions of four systems of records. The Commission previously published notice of these systems of records at 71 FR 35294 (June 19, 2006). The Commission invites interested persons to submit comments on the actions proposed in this notice.

The Commission proposes to revise the system of records designated as ITC–7 (Personnel Security Investigative Files) to include contractors, subcontractors, and consultants as individuals covered by the system and to delete ''Federal employee relatives'' as a category.

The Commission also proposes to revise the name of the location for the system of records designated as ITC–8 (Library Circulation Records) to ''Knowledge Resources (''Main Library'').'' This change is clerical and no other change to this system of records has been made by this notice.

In addition, the Commission proposes to revise two routine uses in the system of records designated as ITC–13 (Administrative Protective Order Breach and Related Records). This system of records reflects agency practice in the handling of investigations into alleged breaches of administrative protective orders (''APOs'') and alleged grounds for sanctions under § 201.15 of Commission's Rules of Practice and Procedure. The first revised routine use would allow for the public disclosure of any records necessary to facilitate the recovery of business proprietary information or confidential business information which had been submitted in a Commission proceeding and which had been disclosed. The second revision would permit limited disclosure of information necessary to facilitate participation of all parties in an APO breach investigation. This revised use would ensure that the Commission's rules governing participation in APO breach investigations and the Commission's Privacy Act policy were not inconsistent.

The Commission also proposes to revise the system of records designated as ITC–16 (Emergency Notification Records). This system of records assists the Commission in notifying and identifying employees or their designees in emergency situations. The revision would add the non-ITC electronic mail address of an employee or the employee's designee to the list of categories of records maintained in this system to better assist the Commission in notifying and identifying employees or their designees in emergency situations.

As required by subsection 552a(r) of the Privacy Act of 1974 (5 U.S.C. 552a(r)), the proposed revisions will be reported to the Office of Management and Budget, the Chair of the Committee on Oversight and Government Reform of the House of Representatives, and the Chair of the Committee on Homeland Security and Governmental Affairs of the Senate.

ITC–7

SYSTEM NAME:

Personnel Security Investigative Files.

SYSTEM LOCATION:

Office of Human Resources, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former employees; all applicants for employment; and contractors, subcontractors, and consultants.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to name, date of birth, place of birth, Social Security Number, citizenship, fingerprints, credit references, credit records, education, arrest records, dates and purposes of visits to foreign countries, passport number(s), names of spouse(s), names of relatives, names of references, date(s) of appointment, position title(s), grade, duty station(s), Office of Human Resources file folder location, type of clearance granted, clearance date, clearance termination date, suitability date, investigation basis, investigation completion date, background investigation update and upgrade information, Commission termination date, security briefing data, and security investigator's notes on information gathered during the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: Executive Order 10450; 19 U.S.C. 1331(a)(1)(A)(iii).

PURPOSE(S):

Records in this system are used to: determine whether to issue security

clearances; provide a current record of Commission employees with security clearance(s); and provide access cards and keys to Commission buildings and offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A–C and E–K apply to this system.

Relevant information in this system may be disclosed as necessary to other Federal agencies or Federal contractors with statutory authority to assist in the collection of Commission debts.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f) to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper in file folders.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

These records are maintained in a building with restricted public access. The records in this system are kept in locked file cabinets in a limited access area within the building. Access is limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

These records will be retained not later than five years after separation or transfer of employee in accordance with the NARA's General Records Schedule 18. Records will be disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable); and
4. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable); and
4. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable); and
4. Signature.

Individuals requesting amendment must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on whom record is maintained; Office of Personnel Management; and any contractor who has been retained by the Commission to conduct background investigations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(1), (k)(5) and (k)(6), this system of records is exempted from (c)(3), (d), (e)(1), (e)(4)(G)–(I) and (f) of the Privacy Act. These exemptions are established in the Commission rules at 19 CFR 201.32.

ITC–8

SYSTEM NAME:

Library Circulation Records.

SYSTEM LOCATION:

Knowledge Resources (''Main Library''), U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Commission employees who have borrowed materials from the Library.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to titles and other identifying data on materials borrowed from the Library, and agency, office, office telephone number, and office room number of borrower, and the scheduled return date for each item borrowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 40 U.S.C. 524(a); 19 U.S.C. 1331(a)(1)(A)(iii).

PURPOSE(S):

Records in this system are used to locate Library materials in circulation and to control and inventory Library materials loaned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses E, H, I, and L apply to this system.

Relevant information in this system may be disclosed as necessary to other Federal agencies or Federal contractors with statutory authority to assist in the collection of Commission debts.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e) to ''consumer reporting agencies'' as defined in 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on computer media on an internal Commission system and on paper in an index system.

RETRIEVABILITY:

These records are retrieved by name, by title of item borrowed, and by call number.

SAFEGUARDS:

These records are maintained in a building with restricted public access. The records in this system are in a limited access area within the building. The paper records are kept within the control of Library staff during working hours and in a locked area at other times. The computer files can only be accessed by authorized individuals.

RETENTION AND DISPOSAL:

These records are maintained until the borrowed material is returned or until an employee is no longer employed at the Commission. Records will be disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Library Services, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment; and
4. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment; and
4. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment; and
4. Signature.

Individuals requesting amendment must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information is obtained from the individual who borrows materials, from library records on materials borrowed, and from the Commission telephone directory.

ITC–13

SYSTEM NAME:

Administrative Protective Order Breach and Related Records.

SYSTEM LOCATION:

Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, and other Commission offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons subject to investigations of alleged breaches of administrative protective orders and/or investigations of whether there is good cause to sanction persons under section 201.15 of the Commission's Rules of Practice and Procedure (19 CFR 201.15).

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to a person's name, firm, address, the basis for the investigation, the Commission's determinations with respect to the facts of the investigation, and any sanctions or other actions taken in response to the agency's determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 19 U.S.C. 1337, 1677f, 2252, 2451, and 2451a.

PURPOSE(S):

Records in this system are used to determine whether a person has breached an administrative protective order and/or should be sanctioned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A–C and E–K apply to this system.

Relevant information in this system may be disclosed to the public as necessary where the Commission determines that a public sanction is warranted or where the Commission determines that such disclosure is necessary to facilitate the recovery of business proprietary information or confidential business information which has been disclosed to unauthorized persons.

Information from this system of records concerning one person may be disclosed to other persons subject to the same Administrative Protective Order (''APO'') breach investigation and to other parties participating in the underlying trade remedy proceeding.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on magnetic disk or other electronic data storage media.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

These records are maintained in a building with restricted public access. The records in this system are kept in computers equipped with access controls in limited access areas within the building. Access is limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

These records will be retained no later than ten years after an investigation is closed in accordance with the Commission's Records Disposition Schedule. Records will be disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish their full name and signature for their records to be located and identified.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish their full name and signature for their records to be located and identified.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish their full name and signature for their records to be located and identified.

Individuals requesting amendment must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information in this system comes from the individual on whom the record is maintained and investigative records compiled by Commission staff.

ITC–16

SYSTEM NAME:

Emergency Notification Records.

SYSTEM LOCATION:

The various offices within the U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to a person's name, title, office, Commission and non-Commission electronic mail addresses, and telephone number, as well as the name, address, non-Commission electronic mail address, and telephone number of the employee's designated emergency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 19 U.S.C. 1331(a)(1)(A)(iii); 44 U.S.C. 3101; and Presidential Decision Directive 67, Ensuring Constitutional Government and Continuity of Government Operations.

PURPOSE(S):

Records are maintained in this system for the purpose of notifying and identifying employees or their designees under emergency conditions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General Routine Uses A–C and E–L apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on paper in file folders in internal Commission offices and on computer media on an internal Commission system.

RETRIEVABILITY:

These records are retrieved by name.

SAFEGUARDS:

These records are maintained in a building with restricted public access. The records in this system are in a limited access area within the building. Access is limited to persons whose official duties require access.

RETENTION AND DISPOSAL:

Emergency Notification Records will be maintained for the duration of an individual's employment with the Commission. Records will be disposed of in a secure manner.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable);
4. Signature.

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable);
4. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

CONTESTING RECORD PROCEDURE:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Dates of employment (if applicable);
4. Signature.

Individuals requesting amendment must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR 201.25).

RECORD SOURCE CATEGORIES:

Information is obtained from the individual to whom the records pertain.

Issued: June 20, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–12318 Filed 6–25–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0002]

Agency Information Collection Activities: Proposed Collection, Comments Requested

ACTION: 60-day Notice of Information Collection Under Review: Revision of a currently approved collection; Supplementary Homicide Report.

The Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division (CJIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with established review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies.

Comments are encouraged and will be accepted until August 27, 2007. This process is conducted in accordance with 5 CFR 1320.10.

All comments, suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Gregory E. Scarbro, Unit Chief, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile to (304) 625–3566.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Supplementary Homicide Report.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form 1–704; CJIS Division, Federal Bureau of Investigation, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* City, county, State, Federal, and tribal law enforcement agencies. This report will gather data obtained from law enforcement agencies in which a criminal homicide, justifiable homicide, and/or manslaughter by negligence has occurred.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 17,523 law enforcement agency respondents; calculated estimates indicate 9 minutes per report.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There are approximately 20,465 hours, annual burden, associated with this information collection.

If additional information is required contact: Ms. Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 20, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–12328 Filed 6–25–07; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Hidden Orchard Health Resort, LLC/La Porte, Indiana.

Principal Product: The loan, guarantee, or grant application is for a new business venture to design, construct, and operate a 40-room destination spa including kitchen and dining area, meeting rooms, activity center, and related facilities. The NAICS industry codes for this enterprise are: 721199 All Other Traveler Accommodation; 713940 Fitness and Recreational Sports Centers; 812199 Other Personal Care Services; and, 621999 All Other Miscellaneous Ambulatory Health Care Services.

DATES: All interested parties may submit comments in writing no later than July 10, 2007. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210; or e-mail *Dais.Anthony@dol.gov;* or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC this 20th of June, 2007.

Gay M. Gilbert,

Administrator, Office of Workforce Investment, Employment and Training Administration.

[FR Doc. E7–12324 Filed 6–25–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Notice: Proposed Collection, Submission for OMB Review, State Library Agencies Survey

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the contact section below on or before July 26, 2007.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collocation of information including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Barbara G. Smith, E-Projects Officer, Institute of Museum and Library Services, 1800 M Street, NW., 9th Floor, Washington, DC. Ms. Smith can be reached by telephone: 202–653–4688; fax: 202–653–8625; or e-mail: *bsmith@imls.gov.*

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, 20 U.S.C. 9101, *et seq.* Section 210 of the Act supports IMLS' data collection and analysis role. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

The State Library Agencies Survey, conducted by the U.S. Department of Education, has OMB clearance number 1850–0705; it expires 7/31/2008.

Plans are underway for the transfer of the State Library Agencies Survey from the Dept. of Education to the Institute of Museum and Library Services beginning with Fiscal Year 2008. The responsibility for this data collection, and for the clearance process, will be transferred entirely to IMLS, provided funds are appropriated to the agency for this purpose in FY 2008.

Abstract: State Library Agencies are the official agencies of each state charged by state law with the extension and development of public library services throughout each state. The purpose of the State Library Agencies Survey is to provide state and federal policymakers with information about State Library Agencies, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, and direct services to the public.

Current Actions: This notice proposes clearance of the State Library Agencies Survey. The 60-day Notice for the ''State Library Agencies Survey'' was published in the **Federal Register** on February 5, 2007 (FR vol. 72, no. 23, pgs 5302–5303.) One comment was received.

OMB Number: n/a.

Agency Number: 3137.

Affected Public: Federal, state and local governments, state library agencies, libraries, general public.

Number of Respondents: 51.

Frequency: Annually.

Burden hours per respondent: 21.

Total burden hours: 1071.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: June 21, 2007.

Barbara G. Smith,

E-Projects Officer, Office of the Chief Information Officer.

[FR Doc. E7–12334 Filed 6–25–07; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Membership of National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Performance Review Board for the Office of Inspector General and the National Science Board Office Senior Executive Service positions.

SUMMARY: This announcement of the membership of the National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, Room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph F. Burt at the above address or (703) 292–8180.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Office of Inspector General and National Science Board Office Senior Executive Service Performance Review Board is as follows:

Dan E. Arvizu, Chairman, Audit and Oversight Committee, National Science Board, Chair.

Nathaniel Pitts, Director, Office of Integrative Activities.

Edward L. Blansitt, III, Assistant Inspector General for Investigations, Department of Commerce.

Dated: June 20, 2007.

Joseph F. Burt,

Director, Division of Human Resource Management.

[FR Doc. 07–3110 Filed 6–25–07; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[EA–07–159; Docket No. 52–010]

In the Matter of General Electric Company and All Other Persons Who Seek Or Obtain Access To Safeguards Information Described Herein; Order Imposing Safeguards Information Protection Requirements and Fingerprinting and Criminal History Records Check Requirements For Access To Safeguards Information (Effective Immediately)

I

General Electric Company (GE), has submitted an application for design certification for the Economic and Simplified Boiling Water Reactor design in accordance with the Atomic Energy Act (AEA) of 1954, as amended, and 10 CFR Part 52, which is currently being considered by the NRC staff.

The Commission has decided to require, through rulemaking, that nuclear power plant designers perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate the effects of an aircraft impact, while reducing or eliminating the need for operator actions, where practicable. In anticipation of this requirement, and to assist designers in completing this assessment, the Commission has decided to provide the beyond design basis, large commercial aircraft characteristics specified by the Commission to plant designers who have the need-to-know and who meet the NRC's requirements for the disclosure of such information. The specified aircraft characteristics that are the subject of this order are hereby designated as Safeguards Information (SGI),[1] in accordance with Section 147 of the AEA.

[1] Safeguards Information is a form of sensitive, unclassified, security-related information that the

Continued

In a letter dated June 26, 2004, GE requested authorization to possess certain information designated by the NRC as SGI and described GE's program for protecting that SGI against unauthorized disclosure in accordance with 10 CFR 73.21. In its May 10, 2005, response to that letter, the NRC agreed to provide GE with the requested SGI, and noted that, based on a review of GE's implementing procedures and observation of GE's facilities, it had determined that GE provided assurance that it will protect the SGI in accordance with the requirements of 10 CFR 73.21. Though the NRC recognizes that GE has continued to maintain that SGI protection program, and that implementation of that program is consistent with the requirements of 10 CFR 73.21, GE is not legally-bound by the May 10, 2005, letter to comply with those provisions. Therefore, in order to provide a legally enforceable requirement for GE's continued protection of SGI, as well as to impose the additional fingerprinting requirements that have become effective since GE implemented its SGI protection program in 2005, the NRC is issuing this Order to GE to impose requirements for the protection of SGI, as well as for the fingerprinting of all persons who have or seek access to this SGI.

On August 8, 2005, the Energy Policy Act of 2005 (EPAct) was enacted. Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and a Federal Bureau of Investigation (FBI) identification and criminal history records check of any person who is permitted to have access to SGI. The NRC's implementation of this requirement cannot await the completion of the SGI rulemaking, which is underway, because the EPAct fingerprinting and criminal history records check requirements for access to SGI were immediately effective upon enactment of the EPAct. Therefore, in accordance with Section 149 of the AEA, as amended by the EPAct, the Commission is imposing additional requirements for access to SGI, as set forth by this Order, so that General Electric can obtain and grant access to SGI. This Order also requires compliance with the safeguards protection measures set forth in 10 CFR 73.21 and imposes requirements for access to and protection of SGI by any person,[2] whether or not they are a licensee, applicant, or certificate holder of the Commission or an Agreement State.

In order to implement this Order, GE must nominate an individual who will review the results of the FBI criminal history records check to make SGI access determinations. This individual, referred to as the ''reviewing official,'' must be someone who seeks access to SGI. Based on the results of the FBI criminal history records check, the NRC staff will determine whether this individual may have access to SGI. If the NRC determines that the individual may not be granted access to SGI, the enclosed Order prohibits that individual from obtaining access to any SGI. Once the NRC approves a reviewing official, that reviewing official, and only that reviewing official, can make SGI access determinations for other individuals who have been identified by GE as having a need-to-know SGI, and who have been fingerprinted and have had a criminal history records check in accordance with this Order. The reviewing official can only make SGI access determinations for other individuals, but cannot approve other individuals to act as reviewing officials. Only the NRC can approve a reviewing official. Therefore, if GE wishes to have a new or additional reviewing official, the NRC must approve that individual before they can act in the capacity of a reviewing official.

Certain categories of individuals are relieved by rule from the fingerprinting requirements pursuant to 10 CFR 73.59. Those individuals include: Federal, State, and local law enforcement personnel; Agreement State inspectors who conduct security inspections on behalf of the NRC; members of Congress; certain employees of members of Congress or Congressional Committees who have undergone fingerprinting for a prior U.S. Government criminal history check; and representatives of the International Atomic Energy Agency or certain foreign government organizations. In addition, individuals who have had a favorably-decided U.S. Government criminal history check within the last 5 years, or individuals who have active Federal security clearances (provided in either case that they make available the appropriate documentation), have already been subjected to fingerprinting and criminal history checks, thus, have satisfied the EPAct fingerprinting requirement.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders, as necessary, to prohibit the unauthorized disclosure of SGI. Furthermore, as discussed above, Section 652 of the EPAct amended Section 149 of the AEA to require fingerprinting and an FBI identification and a criminal history records check of each individual who seeks access to SGI. In addition, no person may have access to SGI unless the person has an established need-to-know.

To provide assurance that GE is continuing to implement appropriate measures to a consistent level of protection to prohibit unauthorized disclosure of SGI, and to comply with the fingerprinting and criminal history check requirements for access to SGI, GE shall implement the requirements for the protection of SGI as set forth in 10 CFR 73.21 and of this Order. In addition, pursuant to 10 CFR 2.202, I find that in light of the common defense and security matters identified above, which warrant the issuance of this Order, the public health, safety and interest require that this Order be effective immediately.

III

Accordingly, pursuant to Sections 147, 149, 161b, 161i, 161o, 182 and 186 of the AEA of 1954 as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 73, *it is hereby ordered,* EFFECTIVE IMMEDIATELY, that GE And All other persons who seek or obtain access to safeguards information as described herein shall comply with the requirements set forth in 10 CFR 73.21 and this order.

A.1. No person may have access to SGI unless that person has a need-to-know the SGI, has been fingerprinted and undergone an FBI identification and criminal history records check, and satisfies all other applicable requirements for access to SGI. Fingerprinting and the FBI identification and criminal history records check are not required, however, for any person who is relieved from the requirement by 10 CFR 73.59 or who has had a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in the latter two (2) cases that

Commission has the authority to designate and protect under Section 147 of the AEA.

[2] Person means (1) any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, government agency other than the Commission or the Department of Energy, except that the Department of Energy shall be considered a person with respect to those facilities of the Department of Energy specified in Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), any State or any political subdivision of, or any political entity within a State, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and (2) any legal successor, representative, agent, or agency of the foregoing.

the appropriate documentation is made available to GE's NRC-approved reviewing official.

2. No person may have access to any SGI if the NRC, when making an SGI access determination for a nominated reviewing official, has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person nominated may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. GE shall comply with the following requirements:

1. GE shall, within 20 days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of 10 CFR 73.21 and the Attachment to this Order.

2. GE shall, within 20 days of the date of this Order, submit the fingerprints of one (1) individual who: (a) GE nominates as the ''reviewing official'' for determining access to SGI by other individuals; and (b) has an established need-to-know the information. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as GE's reviewing official.[3] GE may, at the same time or later, submit the fingerprints of other individuals to whom GE seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in the Attachment to this Order.

3. GE may allow any individual who currently has access to SGI to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting and an FBI criminal history records check) that the individual may continue to have access to SGI. GE shall make determinations on continued access to SGI within 90 days of the date of this Order, in part on the results of the fingerprinting and criminal history check, for those individuals who were previously granted access to SGI before the issuance of this Order.

4. GE shall, in writing, within 20 days of the date of this Order, notify the Commission: (1) If it is unable to comply with any of the requirements described in the Order, including the Attachment; or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide GE's justification for seeking relief from, or variation of, any specific requirement.

GE's responses to C.1, C.2, C.3, and C.4, above shall be submitted to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, GE responses shall be marked as ''Security-Related Information—Withhold Under 10 CFR 2.390.''

The Director, Office of New Reactors, may, in writing, relax or rescind any of the above conditions upon demonstration of good cause by GE.

IV

In accordance with 10 CFR 2.202, GE must, and any other person adversely affected by this Order may, submit an answer to this Order and may request a hearing with regard to this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time in which to submit an answer or request a hearing must be made in writing to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically set forth the matters of fact and law by which GE or other entities adversely affected rely, and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, Office of the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies shall also be sent to the Director, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to GE, if the answer or hearing request is by an entity other than GE. Because of possible delays in delivery of mail to United States Government offices, it is requested that answers and requests for hearing be transmitted to the Secretary of the Commission, either by means of facsimile transmission to (301) 415–1101, or via e-mail to *hearingdocket@nrc.gov,* and also to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725, or via e-mail to *OGCMailCenter@nrc.gov.* If an entity other than GE requests a hearing, that entity shall set forth, with particularity, the manner in which their interest is adversely affected by this Order, and shall address the criteria set forth in 10 CFR 2.309.

If a hearing is requested by GE, or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), GE may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the grounds that the Order, including the need for immediate effectiveness, is not based on adequate evidence, but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions as specified above in section III, shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions, as specified above in section III, shall be final when the extension expires, if a hearing request has not been received.

An answer or a request for hearing shall not stay the immediate effectiveness of this Order.

Dated this 15th day of June 2007.

For the Nuclear Regulatory Commission.

Gary M. Holahan,

Acting Director, Office of New Reactors.

Attachment—Requirements for Fingerprinting and Criminal History Records Checks of Individuals When a Reviewing Official Is Determining Access to Safeguards Information

General Requirements

Licensees and other persons who are required to conduct fingerprinting shall comply with the requirements of this attachment.[4]

A.1. Each licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The licensee shall review and use the information received from the Federal

[3] The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 [available through NRC's Agencywide Documents Access and Management System (ADAMS)] to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

[4] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting in accordance with these requirements.

Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the ''Right to Correct and Complete Information'' section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history records check within the last five (5) years, or has an active Federal security clearance. Written confirmation from the Agency/employer which granted the Federal security clearance or reviewed the criminal history records check must be provided. The licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the licensee's activities.

4. All fingerprints obtained by the licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthiness and reliability requirements included in Attachment 2 to this Order, in making a determination whether to grant access to SGI to individuals who have a need-to-know the SGI.

6. The licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to SGI.

7. The licensee shall document the basis for its determination whether to grant access to SGI.

B. The licensee shall notify the NRC of any desired change in reviewing officials, in compliance with C.2 of the subject Order. The NRC will determine whether the individual nominated as the new reviewing official may have access to SGI based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the licensee's reviewing official.

Prohibitions

A licensee shall not base a final determination to deny an individual access to SGI solely on the basis of information received from the FBI involving: An arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, licensees shall, using an appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T–6E46, one completed, legible standard fingerprint card (Form FD–258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to SGI, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by calling (301) 415–5877, or by e-mail to *forms@nrc.gov.* Practicable alternative formats are set forth in 10 CFR 73.4. The licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD–258 fingerprint record containing omissions or evident errors will be returned to the licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to ''U.S. NRC.'' [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415–7404]. Combined payment for multiple applications is acceptable. The application fee (currently $27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of licensee fingerprint submissions. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the

record is made available for his/her review. The licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and procedures for protecting the record and the personal information from unauthorized disclosure.

2. The licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another licensee if the licensee holding the criminal history record check receives the individual's written request to re-disseminate the information contained in his/her file, and the current licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI (whether access was approved or denied). After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

Enclosure 2—Guidance for Evaluation of Access to Safeguards Information With the Inclusion of Criminal History Records (Fingerprint) Checks

When a licensee or other person [5] submits fingerprints to the Nuclear Regulatory Commission (NRC) pursuant to an NRC Order, it will receive a criminal history summary of information, provided in federal records, since the individual's eighteenth birthday. Individuals retain the right to correct and complete information and to initiate challenge procedures described in Enclosure 3. The licensee will receive the information from the criminal history records check for those individuals requiring access to Safeguards Information (SGI), and the reviewing official will evaluate that information using the guidance below. Furthermore, the requirements of all Orders, which apply to the information and material to which access is being granted, must be met.

The licensee's reviewing official is required to evaluate all pertinent and available information in making a determination of access to SGI, including the criminal history information pertaining to the individual as required by the NRC Order. The criminal history records check is used when determining whether an individual has a record of criminal activity that indicates that the individual should not have access to SGI. Each determination of access to SGI, which includes a review of criminal history information, must be documented to include the basis for the decision that is made.

(i) If negative information is discovered that was not provided by the individual, or which is different in any material respect from the information provided by the individual, this information should be considered, and decisions made based on these findings, must be documented.

(ii) Any record containing a pattern of behaviors which indicates that the behaviors could be expected to recur or continue, or recent behaviors which cast questions on whether an individual should have access to SGI, should be carefully evaluated prior to any authorization of access to SGI.

It is necessary for a licensee to resubmit fingerprints only under two conditions:

(1) the FBI has determined that the fingerprints cannot be classified due to poor quality in the mechanics of taking the initial impressions; or

(2) the initial submission has been lost.

If the FBI advises that six sets of fingerprints are unclassifiable based on conditions other than poor quality, the licensee may submit a request to the NRC for alternatives. When those search results are received from the FBI, no further search is necessary.

Enclosure 3—Process to Challenge NRC Denials or Revocations of Access to Safeguards Information

1. Policy

This policy establishes a process for individuals whom the Nuclear Regulatory Commission (NRC) licensees or other person [6] nominate as reviewing officials to challenge and appeal NRC denials or revocations of access to Safeguards Information (SGI). Any individual nominated as a licensee reviewing official whom the NRC has determined may not have access to SGI shall, to the extent provided below, be afforded an opportunity to challenge and appeal the NRC's determination. This policy shall not be construed to require the disclosure of SGI to any person, nor shall it be construed to create a liberty or property interest of any kind in the access of any individual to SGI.

2. Applicability

This policy applies solely to those employees of licensees who are nominated as a reviewing official, and who are thus considered, by the NRC, for initial or continued access to SGI in that position.

3. SGI Access Determination Criteria

Determinations for granting a nominated reviewing official access to SGI will be made by the NRC staff. Access to SGI shall be denied or revoked whenever it is determined that an individual does not meet the applicable standards. Any doubt about an individual's eligibility for initial or continued access to SGI shall be resolved in favor of the national security and access will be denied or revoked.

4. Procedures To Challenge the Contents of Records Obtained From the FBI

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

[5] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

[6] As used herein, ''licensee'' means any licensee or other person who is required to conduct fingerprinting.

(i) Be provided the contents of records obtained from the FBI for the purpose of assuring correct and complete information. If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation, Identification Division, Washington, DC 20537–9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI will forward the challenge to the agency that submitted the data and request that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any necessary changes in accordance with the information supplied by that agency.

(ii) Be afforded ten (10) days to initiate an action challenging the results of an FBI criminal history records check (described in (i), above) after the record is made available for the individual's review. If such a challenge is initiated, the NRC Facilities Security Branch Chief may make a determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record.

5. Procedures To Provide Additional Information

a. Prior to a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall:

(i) Be afforded an opportunity to submit information relevant to the individual's trustworthiness and reliability. The NRC Facilities Security Branch Chief shall, in writing, notify the individual of this opportunity, and any deadlines for submitting this information. The NRC Facilities Security Branch Chief may make a determination of access to SGI only upon receipt of the additional information submitted by the individual, or, if no such information is submitted, when the deadline to submit such information has passed.

6. Procedures To Notify an Individual of the NRC Facilities Security Branch Chief Determination To Deny or Revoke Access to SGI

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be provided a written explanation of the basis for this determination.

7. Procedures To Appeal an NRC Determination To Deny or Revoke Access to SGI

a. Upon a determination by the NRC Facilities Security Branch Chief that an individual nominated as a reviewing official is denied or revoked access to SGI, the individual shall be afforded an opportunity to appeal this determination to the Director, Division of Facilities and Security. The determination must be appealed within twenty (20) days of receipt of the written notice of the determination by the Facilities Security Branch Chief, and may either be in writing or in person. Any appeal made in person shall take place at the NRC's headquarters, and shall be at the individual's own expense. The determination by the Director, Division of Facilities and Security, shall be rendered within sixty (60) days after receipt of the appeal.

8. Procedures To Notify an Individual of the Determination by the Director, Division of Facilities and Security, Upon an Appeal

a. A determination by the Director, Division of Facilities and Security, shall be provided to the individual in writing, and include an explanation of the basis for this determination. A determination by the Director, Division of Facilities and Security, to affirm the Facilities Branch Chief's determination to deny or revoke an individual's access to SGI is final and not subject to further administrative appeals.

[FR Doc. E7–12347 Filed 6–25–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of June 25, July 2, 9, 16, 23, 30, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 25, 2007

Thursday, June 28, 2007

12:55 p.m.

Affirmation Session (Public Meeting) (Tentative);

a. Consumers Energy Co. (Big Rock Point ISFSI); License Transfer Application; Petition for Reconsideration of CLI–07–19 (Tentative).

b. Consumers Energy Company, *et al.* (Palisades Nuclear Plant); License Transfer Application; Petition for Reconsideration (Tentative).

Week of July 2, 2007—Tentative

There are no meetings scheduled for the Week of July 2, 2007.

Week of July 9, 2007—Tentative

There are no meetings scheduled for the Week of July 9, 2007.

Week of July 16, 2007—Tentative

Wednesday, July 18, 2007

1 p.m.

Briefing on Digital Instrumentation and Control (Public Meeting) (*Contact:* William Kemper, 301–415–7585).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of July 23, 2007—Tentative

Tuesday, July 24, 2007

2 p.m.

Briefing on Palo Verde, Unit 3 (Public Meeting) (Contact: Michael Markley, 301–415–5723).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, July 25, 2007

2 p.m.

Discussion of Management Issues (Closed-Ex. 2).

Week of July 30, 2007

There are no meetings scheduled for the Week of July 30, 2007.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or

need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 21, 2007.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 07–3144 Filed 6–22–07; 11:31 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Regulatory Guide: Issuance, Availability.

FOR FURTHER INFORMATION CONTACT: William D. Reckley, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–8668 or via e-mail to *wdr@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a new guide in the agency's Regulatory Guide series. This series has been developed to describe and make available to the public such information as (1) methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, (2) techniques that the staff uses in evaluating specific problems or postulated accidents, and (3) data that the staff needs in its review of applications for permits and licenses.

The NRC is now issuing Regulatory Guide 1.206, ''Combined License Applications for Nuclear Power Plants (LWR Edition),'' which provides guidance for use in submitting combined license (COL) applications pursuant to the Commission regulations in Title 10, Part 52, of the Code of Federal Regulations (10 CFR), ''Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Plants.'' Specifically, 10 CFR part 52 governs the issuance of early site permits, standard design certifications, combined licenses, standard design approvals, and manufacturing licenses for nuclear power plants. A draft of the final rule was made available to the public electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov* on May 21, 2007. Regulatory Guide 1.206 implements the requirements contained in the draft final rule. A final rule amending 10 CFR part 52 is expected to be published in the **Federal Register** later this year. Following issuance of the final rule, conforming changes will be made to the regulatory guide, as necessary. The regulatory positions in Section C of Regulatory Guide 1.206 are divided into the following parts:

(1) Part I addresses the information requirements specified in 10 CFR 52.79, ''Contents of applications; technical information.'' Part I provides a COL applicant with guidance regarding the information that the NRC needs to resolve all safety issues related to the proposed COL. This part is intended for use by the COL applicants who are not referencing certified designs or early site permits.

(2) Part II addresses the information requirements specified in 10 CFR 52.80, ''Contents of applications; additional information.'' The information requirements include the inspections, tests, analyses, and acceptance criteria; and the environmental report.

(3) Part III is intended for use by COL applicants who reference either a certified design or both a certified design and an early site permit.

(4) Part IV addresses a series of miscellaneous topics of interest to COL applicants, and includes, but is not limited to, a checklist for acceptance review of a COL application, and guidance and recommendations on COL application format.

II. Further Information

The NRC previously solicited public comment on this guide by publishing a **Federal Register** notice (71 FR 52826) concerning Draft Regulatory Guide DG–1145 on September 1, 2006. Following the closure of the public comment period on October 21, 2006, the NRC staff considered all stakeholder comments in preparing Regulatory Guide 1.206. The NRC staff's responses to stakeholder comments received for DG–1145 are documented in a report that can be found on NRC's Agencywide Documents Access and Management System (ADAMS) at Accession No. ML071490067.

The NRC staff encourages and welcomes comments and suggestions in connection with improvements to published regulatory guides, as well as items for inclusion in regulatory guides that are currently being developed. Comments may be submitted by any of the following methods.

1. Mail comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

2. Hand-deliver comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

3. Fax comments to: Rulemaking, Directives, and Editing Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Requests for technical information about Regulatory Guide 1.206 may be directed to William D. Reckley at (301) 415–8668 or via e-mail to *wdr@nrc.gov.*

Regulatory guides are available for inspection or downloading through the NRC's public Web site in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections.* Electronic copies of Regulatory Guide 1.206 are available in ADAMS at *http://www.nrc.gov/reading-rm/adams.html,* under Accession No. ML070720184.

Regulatory Guide 1.206 and other related publicly available documents can also be viewed electronically on computers in the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland. The PDR's reproduction contractor will make copies of documents for a fee. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *PDR@nrc.gov.*

Please note that the NRC does not intend to distribute printed copies of Regulatory Guide 1.206, unless specifically requested on an individual basis with adequate justification. Such requests should be made (1) in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; (2) by e-mail to *DISTRIBUTION@nrc.gov;* or (3) by fax to (301) 415–2289. Telephone requests cannot be accommodated.

Regulatory Guides are not copyrighted, and Commission approval is not required to reproduce them (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 20th day of June, 2007.

For the U.S. Nuclear Regulatory Commission.

Brian W. Sheron,

Director, Office of Nuclear Regulatory Research.

[FR Doc. E7–12346 Filed 6–25–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Revisions to OMB Circular A–133.

SUMMARY: This Notice revises Office of Management and Budget (OMB) Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' by (1) Updating the internal control terminology and related definitions used in the Circular; and (2) simplifying the auditee reporting package submission requirement to the Federal Audit Clearinghouse (FAC).

DATES: All comments on this revision should be in writing, and must be received by August 27, 2007. The revisions shall apply to audits of fiscal years ending on or after December 15, 2006.

ADDRESSES: Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *Hai_M._Tran@omb.eop.gov.* Please include ''A–133 Comments'' in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–4915.

Comments may be mailed to Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

A copy of the current Circular A–133 published in the **Federal Register** on June 27, 2003 is available on the Internet at *http://www.whitehouse.gov/omb/circulars/a133/a133.pdf.*

FOR FURTHER INFORMATION CONTACT: Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3052 (direct) or 202–395–3993 (main office) and e-mail: *Hai_M._Tran@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

A. Revisions of Internal Control Definitions and Related Matters

OMB Circular A–133 includes guidelines for the reporting of ''reportable conditions'' and ''material weaknesses'' in internal control in several places. These terms and/or their related definitions have become outdated and need updating due to recently issued standards by both the American Institute of Certified Public Accountants (AICPA) and the Government Accountability Office (GAO). The AICPA issued Statement on Auditing Standards (SAS) No. 112, *Communicating Internal Control Related Matters Identified in an Audit* (AICPA, *Professional Standards,* vol. 1, AU 325), which became effective for audits of periods ending on or after December 15, 2006. With regard to internal control over financial reporting, the SAS introduced and defined the term ''control deficiency;'' replaced the term ''reportable condition'' with ''significant deficiency'' and redefined that term; and also revised the definition of the term ''material weakness.'' Recently, the GAO issued a revision to *Government Auditing Standards* (GAS) and posted a related notice to its Web site that requires the new internal control terminology and definitions to be used in all financial audits performed under GAS as of the effective date of SAS 112. Therefore, to be consistent with the recent revisions to professional auditing standards, references to ''reportable condition'' and ''material weakness'' in internal control over financial reporting related to the audit of the financial statements in Circular A–133 are replaced by the terms ''significant deficiency'' and ''material weakness'' as those terms are defined in SAS 112 and GAS. This change is effective for single audits of periods ending on or after December 15, 2006.

As noted above, SAS 112 and GAS define control deficiencies in internal control over financial reporting. Because Circular A–133 also requires the auditor to report on internal control over compliance related to major federal programs, similar definitions had to be developed for control deficiencies in internal control over compliance. The AICPA, working with OMB and other federal agency staff, is issuing AICPA Auditing Interpretation No. 1, ''Communicating Deficiencies in Internal Control Over Compliance in an Office of Management and Budget Circular A–133 Audit'' of SAS No. 112 (AICPA, *Professional Standards,* vol. 1, AU 9325.01–.02), which can be found at the following link (*http://www.aicpa.org/Professional+Resources/Accounting+and+Auditing/Audit+and+Attest+Standards/Authoritative+Standards+and+Related+Guidance+for+Non-Issuers/Recently+Issued+Audit+and+Attestation+Interpretations.htm).* That interpretation includes the following definitions which should be used in single audits of periods ending on or after December 15, 2006:

A *control deficiency* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect on a timely basis noncompliance with a type of compliance requirement of a Federal program.[1]

A *significant deficiency*[2] is a control deficiency, or combination of control deficiencies, that adversely affects the entity's ability to administer a Federal program such that there is more than a remote likelihood[3] that noncompliance with a type of compliance requirement[4] of a Federal program that is more than inconsequential[5] will not be prevented or detected.

[1] This reference to ''type of compliance requirement'' refers to the first 13 types of compliance requirements (that is, types of compliance requirements identified as ''A'' through ''M'') described in Part 3 of the *OMB Circular A–133 Compliance Supplement* (the *Compliance Supplement*) and each individual special test and provision identified in Part 4 of the *Compliance Supplement* for each federal program. When a federal program is not included in the *Compliance Supplement,* the identification of types of compliance requirements that apply and are material to a federal program (including special tests and provisions) is made through a review of the program's contract and grant agreements and referenced laws and regulations.

[2] The term *significant deficiency* replaces the term *reportable condition* currently used in Circular A–133.

[3] The term *remote likelihood* as used in the definitions of the terms *significant deficiency* and material weakness has the same meaning as the term remote as used in Financial Accounting Standards Board Statement of Financial Accounting Standards No. 5, *Accounting for Contingencies,* found at the following link (*http://www.aicpa.org/download/members/div/auditstd/AU–00325.PDF*). Therefore, the likelihood of an event is ''more than remote'' when it is at least reasonably possible.

[4] See footnote 1.

[5] Noncompliance with a type of compliance requirement is inconsequential if a reasonable person would conclude, after considering the

A *material weakness* is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that material noncompliance with a type of compliance requirement[6] of a Federal program will not be prevented or detected.

In addition to the Interpretation, the AICPA has issued updated illustrative Circular A–133 audit reports that can be accessed on the AICPA Governmental Audit Quality Center Web site at the following link (*http://gaqc.aicpa.org/Resources/Illustrative+Auditors+Reports/)*. Further, updated illustrative reporting for financial statement audits performed under GAS can also be found at the same Web site link.

This change in terminology and related definitions may result in the reporting of additional internal control matters than had been reported using the previous terminology and definitions. The reporting of such additional matters may affect the scope of single audits, particularly as it relates to the determination of major programs and the auditee's low-risk status.

Auditees submitting single audits of periods ending between December 15, 2006 and December 31, 2006, should use the approved Data Collection Form (Form SF–SAC) for fiscal years ending 2004, 2005 and 2006 when filing with the Federal Audit Clearinghouse. Since this Form SF–SAC has not yet been updated for the new internal control terminology, any ''significant deficiency'' should be recorded under the term ''reportable condition'' on the following items: Part II—items 3 and 4, Part III—items 4 and 5, and Part 3, item 10(a). The Form SF–SAC terminology will be updated in the next SF–SAC form scheduled for January 1, 2008.

The Form SF–SAC approved for audits with fiscal period end dates in 2004, 2005, and 2006, is extended to apply to audits with fiscal period end dates in 2007. All submissions with fiscal period end dates in 2007 must use the 2004–2006 version of Form SF–SAC.

B. Streamlined Submission of Reporting Package to the Federal Audit Clearinghouse (FAC)

We are also streamlining the auditee's submission of the reporting package to the FAC. Due to technology advances, starting January 1, 2007, the auditee is no longer required to submit multiple copies of the reporting package to the FAC, in accordance with section 320(d) of Circular A–133. Instead, only one copy of the reporting package is necessary. However, Part III, item 8, of the Form SF–SAC should continue to be completed noting all agencies required to receive a copy of the reporting package.

Rob Portman,

Director.

Circular A–133 is revised as follows:

1. In the following sections, replace ''reportable conditions'' with ''significant deficiencies'': § __.320(b)(2)(ii); § __.320(b)(2)(iv); § __.500(c)(3); § __.505(d)(1)(ii); § __.505(d)(1)(iv); § __.510(a)(1), and § __.520(d)(1).

2. Replace § __.320(d) with the following:

(d) *Submission to clearinghouse.* All auditees shall submit to the Federal clearinghouse designated by OMB a single copy of the data collection form described in paragraph (b) of this section and the reporting package described in paragraph (c) of this section.

[FR Doc. E7–12320 Filed 6–25–07; 8:45 am]

BILLING CODE 3110–01–P

possibility of further undetected noncompliance, that the noncompliance, either individually or when aggregated with other noncompliance related to the same type of compliance requirement, would clearly be immaterial to a federal program. If a reasonable person would not reach such a conclusion regarding a particular noncompliance, that noncompliance is more than inconsequential.

[6] See footnote 1.

POSTAL REGULATORY COMMISSION

Facility Tours

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Commission tours.

SUMMARY: On Wednesday afternoon, June 27, 2007, Postal Regulatory Commissioners and advisory staff members will tour California Community News production facilities in Irwindale, California. The purpose of the tour is to observe company operations.

DATES: June 27, 2007 (2:45 p.m.).

FOR FURTHER INFORMATION CONTACT: Ann C. Fisher, Chief of Staff, Postal Regulatory Commission, at 202–789–6803 or *ann.fisher@prc.gov.*

Steven W. Williams,

Secretary.

[FR Doc. 07–3107 Filed 6–25–07; 8:45 am]

BILLING CODE 7710–FW–M

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region II Regulatory Fairness Board

The U.S. Small Business Administration (SBA) Region II Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a public hearing on Thursday, June 28, 2007, at 10 a.m. The meeting will take place at Middlesex County Regional Chamber of Commerce, 1 Distribution Way, Suite 101, Monmouth Junction, NJ 08852. The purpose of the meeting is to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Harry Menta, in writing or by fax, in order to be placed on the agenda. Harry Menta, Public Affairs Officer, SBA, New Jersey District Office, Two Gateway Center, 15th Floor, Newark, NJ 07102, phone (973) 645–6064 and fax (202) 401–2196, e-mail: *Harry.menta@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–12326 Filed 6–25–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5847]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Impressed by Light: British Photographs from Paper Negatives, 1840–1860''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Impressed by Light: British Photographs from Paper Negatives, 1840–1860'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about September 24, 2007, until on or about December 31, 2007, and the National Gallery of Art,

Washington, DC., from on or about February 3, 2008, until on or about May 4, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: June 15, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–12345 Filed 6–25–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5848]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Maps: Finding Our Way in the World''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Maps: Finding Our Way in the World,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Field Museum, Chicago, Illinois, from on or about November 2, 2007, until on or about January 27, 2008, and the Walters Art Museum, Baltimore, Maryland, from on or about March 14, 2008, until on or about June 8, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: June 15, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–12344 Filed 6–25–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Inter Island Airways, Inc. d/b/a Inter Island Air for Commuter Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2007–6–14), Docket OST–2007–26807.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Inter Island Airways, Inc. d/b/a Inter Island Air fit, willing, and able, and awarding it Commuter Air Carrier Authorization.

DATES: Persons wishing to file objections should do so no later than July 3, 2007.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–2007–26807 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Damon D. Walker, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–7785.

Dated: June 19, 2007.

Andrew B. Steineberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. E7–12339 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending June 8, 2007

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1383 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2007–28439.

Date Filed: June 4, 2007.

Parties: Members of the International Air Transport Association.

Subject: CSC/29/Meet/016/07 dated 1 June 2007; Finally Adopted Resolutions: 600a, 601, 621, 622, 662, 664, 665, 666, 681, and 686. Intended effective date: 1 October 2007.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–12342 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending June 8, 2007

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2005–21805.

Date Filed: June 6, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 27, 2007.

Description: Application of Tyrolean Jet Service Nfg. GmbH & Co. KG. (''Tyrolean Jet Services''), requesting an exemption and an amended foreign air carrier permit authorizing Tyrolean Jet Services to conduct: (i) Charter foreign

air transportation of persons, property and mail from points behind EU Member States and intermediate points to any point or points in the United States and beyond; (ii) charter foreign air transportation of persons, property and mail between any point or points in the United States and any point or points in the European Common Aviation Area (''ECAA''); and (iii) other charters (between non-EU/ECAA third countries and the United States, and otherwise).

Docket Number: OST–2007–28450.

Date Filed: June 6, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 27, 2007.

Description: Application of Cargoitalia, S.p.A. (''Cargoitalia''), requesting an amended foreign air carrier permit to engage in foreign scheduled and charter air transportation of property and mail from any point or points behind any Member State of the European Union via the Member States and via intermediate points to any point or points in the United States and beyond; foreign scheduled and charter air transportation of property and mail between any point or points in the United States and any other point or points. Cargoitalia further requests a corresponding exemption to enable it to provide the service described above pending issuance of an amended foreign air carrier permit and such additional or other relief as the Department may deem necessary or appropriate.

Docket Number: OST–2007–28472.

Date Filed: June 7, 2007.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 28, 2007.

Description: Application of Austrian Airlines Osterreichische Luftverkehrs AG, requesting an amended foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail to the full extent authorized by the new Air Transport Agreement between the U.S. and the European Community and the Member States of the European Community, and (ii) exemption authority encompassing the service described above pending the issuance of an amended foreign air carrier permit.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E7–12343 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement, Travis and Hays County, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 40 CFR 1508.22 and 43 TAC § 2.5(e)(2), the Federal Highway Administration and the Texas Department of Transportation (TxDOT) are issuing this notice that an environmental impact statement (EIS) will be prepared for a proposed highway project on United States Highway (US) 290 from Ranch to Market (RM) 12 to Farm to Market (FM) 1826 in Travis and Hays County, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Salvador Deocampo, FHWA Texas Division District Engineer at 300 East 8th Street, Room 826, Austin, Texas 78701.

SUPPLEMENTARY INFORMATION: From RM 12 to FM 1826, US 290 is an undivided 4-lane roadway with no shoulders except where 14-foot turn lanes and 10-foot shoulders have been recently added at various intersections to improve safety. The Capitol Area Metropolitan Planning Organization (CAMPO) travel demand model shows the need for a 4–6 lane limited access freeway from RM 12 to FM 1826. Therefore, a corridor study, which is included in the CAMPO 2030 Mobility Plan, is ongoing to evaluate the options for improving mobility on US 290 from RM 12 to FM 1826. To date, the corridor study indicates that a 6-lane limited access freeway would improve mobility and increase safety. The EIS will include the evaluation of a range of alternative locations for the 6-lane limited access freeway and the no action alternative.

The EIS will evaluate the impacts that might occur as a result of the development of a 6-lane limited access freeway from RM 12 to FM 1826. Resources to be evaluated include historic resources, air quality, noise, ground and surface water resources, socio-economics, etc.

It is anticipated that a United States Army Corps of Engineers, Section 404 nationwide permit would be required at several tributary crossings. A Notice of Intent and Storm Water Pollution Prevention Plan would be required to adhere to Environmental Protection Agency, Texas Pollutant Discharge Elimination System as administered by the Texas Commission on Environmental Quality.

Opportunities for public involvement will begin with two Scoping Meetings anticipated to be held in July 2007. One meeting will be held in southwest Austin, Texas, and the other will be held in Dripping Springs, Texas. The scoping meetings are an opportunity for participating agencies, cooperating agencies, and the public to review and comment on the draft coordination plan, to be involved in defining the purpose and need for the proposed project and to assist with determining the alternatives to be considered. Letters describing the proposed action including a request for comments will be sent to appropriate federal, state, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal.

To ensure that the full range of issues related 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 directed to the FHWA or TxDOT 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)

Issued on: June 20, 2007.

Salvador Deocampo,

District Engineer.

[FR Doc. 07–3109 Filed 6–25–07; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub-No. 683X)]

CSX Transportation, Inc.—Abandonment Exemption—in Greenbrier County, WV

CSX Transportation, Inc. (CSXT) has filed a verified notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 13.6-mile line of railroad on its Southern Region, Huntington Division—East, Rupert Subdivision extending from milepost CAH 7.2 at Rupert Junction to the end of the track at milepost CAH 20.8 at Clearco in Greenbrier County, WV. The station, Raders Run, at milepost CAH 11, FSAC 083117, OPSL 62455 is located on the line. The line traverses

United States Postal Service Zip Code 25984.[1]

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (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 reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee 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 26, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 6, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 16, 2007, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Steven C. Armbust, Esq., CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

CSXT 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 29, 2007. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [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), CSXT 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 CSXT's filing of a notice of consummation by June 26, 2008, 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 15, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–12214 Filed 6–25–07; 8:45 am]

BILLING CODE 4915–01–P

[1] In *CSX Transportation, Inc.—Abandonment Exemption—in Greenbrier County, WV,* STB Docket No. AB–55 (Sub–No. 598X) (STB served Oct. 12, 2001), CSXT was authorized to abandon this line of railroad subject to certain imposed environmental conditions. By decisions served on October 10, 2002, April 9, 2003, October 9, 2003, and April 16, 2004, the due date for filing a notice of consummation was extended to October 9, 2004. However, CSXT did not exercise the abandonment authority within the given time frame, and therefore, the authority to abandon expired. On April 9, 2007, CSXT filed requests for the Board to reinstate the abandonment and seeking an extension of the deadline for filing its notice of consummation until June 1, 2007. By decision served on May 11, 2007, CXST's requests for reinstatement of the abandonment and an extension of time to file a notice of consummation were denied. In the May 2007 decision, CSXT was advised to file a new notice that should be in compliance with 49 CFR 1152 Subpart F and that it would require a new subnumber and a new filing fee.

[2] 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.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Terrorism Risk Insurance Program; Program Loss Reporting

AGENCY: Departmental Offices, Terrorism Risk Insurance Program Office, 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 Terrorism Risk Insurance Program Office is seeking comments regarding existing forms and instructions for Program Loss Reporting.

DATES: Written comments should be received on or before August 27, 2007 to be assured of consideration.

ADDRESSES: Submit comments by e-mail to *triacomments@do.treas.gov* or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''Program Loss Reporting—Comments.'' Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: Terrorism Risk Insurance Program Office at (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

OMB Number: 1506–0200.

Title: Terrorism Risk Insurance Program—Program Loss Reporting.

Form: Treasury TRIP–01 [Initial Notice of Insured Loss] and TRIP 02 [Certification of Loss] and Supporting Schedules.

Abstract: Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Public Law 107–297) authorize the Department of the Treasury to administer and implement the

temporary Terrorism Risk Insurance Program established by the Act. In 31 CFR part 50, Subpart F (Sec. 50.50–50.55) Treasury established requirements and procedures for insurers that file claims for payment of the Federal share of compensation for insured losses resulting from a certified act of terrorism under the Act. Following a Certified Act of Terrorism, insurers would be required to submit an Initial Notice of Insured Loss on Form TRIP–01 and Initial and Supplementary Certifications of Loss on Form TRIP–02.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 42 hours.

Estimated Total Annual Burden Hours: 4,200 hours.

Request for Comments: 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. 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.

Dated: June 20, 2007.

Jeffrey S. Bragg,

Director, Terrorism Risk Insurance Program.

[FR Doc. E7–12313 Filed 6–25–07; 8:45 am]

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Federal Register

Tuesday,
June 26, 2007

Part II

Department of Homeland Security

8 CFR Parts 212 and 235

Department of State

22 CFR Parts 41 and 53

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

[USCBP–2007–0061]

RIN 1651–AA69

8 CFR Parts 212 and 235

DEPARTMENT OF STATE

22 CFR Parts 41 and 53

Documents Required for Travelers Departing From or Arriving in the United States at Sea and Land Ports-of-Entry From Within the Western Hemisphere

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security; Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), as amended, provides that upon full implementation, U.S. citizens and certain classes of nonimmigrant aliens may enter the United States only with passports or such alternative documents as the Secretary of Homeland Security designates as satisfactorily establishing identity and citizenship. This notice of proposed rulemaking (NPRM) is the second phase of a joint Department of Homeland Security (DHS) and Department of State (DOS) plan, known as the Western Hemisphere Travel Initiative, to implement these new requirements. This NPRM proposes the specific documents that, as early as January 2008, and no sooner than 60 days from publication of the final rule, U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico will be required to present when entering the United States at sea and land ports-of-entry from Western Hemisphere countries.

DATES: Written comments must be submitted on or before August 27, 2007.

ADDRESSES: Comments, identified by docket number USCBP–2007–0061, may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Comments by mail are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Office of Regulations and Rulings, Border Security Regulations Branch, 1300 Pennsylvania Avenue, NW. (Mint Annex), Washington, DC 20229. Submitted comments by mail may be inspected at the U.S. Customs and Border Protection at 799 9th Street, NW., Washington, DC. To inspect comments, please call (202) 572–8768 to arrange for an appointment.

Instructions: All submissions regarding the proposed rule and regulatory assessment must include the agency name and docket number USCBP–2007–0061. All comments will be posted without change to *http://www.regulations.gov,* including any personal information sent with each comment. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or submitted comments, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:
Department of Homeland Security: Colleen Manaher, WHTI, Office of Field Operations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, telephone number (202) 344–3003.
Department of State: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, telephone number (202) 663–2662.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation
II. Background
A. Current Document Requirements for U.S. Citizens Arriving by Sea or Land
B. Current Document Requirements for Nonimmigrant Aliens Arriving by Sea or Land
1. Canadian Citizens and Citizens of the British Overseas Territory of Bermuda
2. Mexican Nationals
C. Statutory and Regulatory History
1. Intelligence Reform and Terrorism Prevention Act of 2004
2. Advance Notice of Proposed Rulemaking
3. Rules for Air Travel from within the Western Hemisphere
4. Amendment to Section 7209 of IRTPA
5. Passport Card NPRM
6. Certifications to Congress
III. Security and Operational Considerations at the U.S. Border
IV. Proposed WHTI Document Requirements for U.S. Citizens and Nonimmigrant Aliens
A. U.S. Citizens Arriving by Sea or Land
1. Passport Book
2. Passport Card
3. Trusted Traveler Program Documents
a. NEXUS Program
b. FAST Program
c. SENTRI Program
4. Merchant Mariner Document (MMD)
5. United States Military Identification
B. Canadian Citizens and Citizens of Bermuda Arriving by Sea or Land
1. Canadians
2. Bermudians
C. Mexican Nationals Arriving by Sea or Land
1. Border Crossing Card (BCC)
2. Trusted Traveler Program Use
3. Elimination of Passport Waiver to Obtain Documents at Mexican Consulate in United States
D. Other Approved Documents
E. Timing of Changes and Effective Date for Final Rule
1. Satisfactory Evidence of Citizenship
2. Implementation and Effective Date of Final Rule
V. Special Rules for Specific Groups of Travelers Permitted to Present Other Documents
A. U.S. Citizen Cruise Ship Passengers
B. U.S. and Canadian Citizen Children
1. Children Under Age 16
2. Children in Groups Under Age 19
3. Alternative Approach for Children; Parental Consent
C. Lawful Permanent Residents
D. Alien Members of the U.S. Armed Forces
E. Members of NATO Armed Forces
F. American Indian Card Holders From Kickapoo Band of Texas and Tribe of Oklahoma
G. Members of United States Native American Tribes
1. Proposed Acceptance of Satisfactory Tribal Enrollment Documents at Traditional Border Crossing Points for Tribes Who Continue Traditional Land Border Crossings
2. Possible Alternative Treatment of United States Native Americans
H. Canadian Indians
I. Sea Travel From Territories Subject to the Jurisdiction of the United States
J. Outer Continental Shelf Employees
K. International Boundary and Water Commission Employees
L. Individual Cases of Passport Waivers
M. Summary of Document Requirements
VI. Section-By-Section Discussion of Proposed Amendments
VII. Regulatory Analyses
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act
C. Executive Order 13132: Federalism
D. Unfunded Mandates Reform Act Assessment
E. National Environmental Policy Act of 1969
F. Paperwork Reduction Act
G. Privacy Statement
List of Subjects

Abbreviations and Terms Used in This Document

ANPRM—Advance Notice of Proposed Rulemaking
BCC—Form DSP–150, B–1/B–2 Visa and Border Crossing Card
CBP—U.S. Customs and Border Protection
CBSA—Canadian Border Services Agency
DHS—Department of Homeland Security
DOS—Department of State
FAST—Free and Secure Trade

FBI—Federal Bureau of Investigation
IBWC—International Boundary and Water Commission
INA—Immigration and Nationality Act
IRTPA—Intelligence Reform and Terrorism Prevention Act of 2004
LPR—Lawful Permanent Resident
MMD—Merchant Mariner Document
MODU—Mobile Offshore Drilling Unit
MRZ—Machine Readable Zone
NATO—North Atlantic Treaty Organization
NEPA—National Environmental Policy Act of 1969
NPRM—Notice of Proposed Rulemaking
OARS—Outlying Area Reporting System
OCS—Outer Continental Shelf
PEA—Programmatic Environmental Assessment
SENTRI—Secure Electronic Network for Travelers Rapid Inspection
TBKA—Texas Band of Kickapoo Act
UMRA—Unfunded Mandates Reform Act
USCIS—U.S. Citizenship and Immigration Services
US—VISIT–United States Visitor and Immigrant Status Indicator Technology Program
WHTI—Western Hemisphere Travel Initiative

I. Public Partication

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. DHS and DOS also invite comments that relate to the economic effects or the federalism implications that might result from this proposed rule. Comments that will provide the most assistance to DHS and DOS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

This notice includes proposed regulatory text that represents the initial preference of DHS and DOS unless otherwise identified, but the Departments also seek comment on proposals and ideas discussed in the preamble, but not contained in the regulatory text because the Departments are interested in comments on these alternative approaches and may include these alternatives in the final rule. See **ADDRESSES** above for information on how to submit comments.

II. Background

The current document requirements for travelers entering the United States by sea or land generally depend on the nationality of the traveler and whether or not the traveler is entering the United States from a country within the Western Hemisphere.[1] The following is an overview of the current document requirements for citizens of the United States, Canada, British Overseas Territory of Bermuda, and Mexico who enter the United States at sea or land ports-of-entry. The requirements discussed in this section are the subject of proposed changes under this NPRM.

A. Current Document Requirements for U.S. Citizens Arriving by Sea or Land

In general, under Federal law it is ''unlawful for any citizen of the United States to depart from or enter * * * the United States unless he bears a valid United States passport.''[2] However, the statutory passport requirement has been waived in the past for U.S. citizens traveling between the United States and locations within the Western Hemisphere by land or sea, other than from Cuba.[3] Currently, a U.S. citizen entering the United States by land or sea from within the Western Hemisphere is inspected by a Customs and Border Protection (CBP) Officer. To enter the United States in conformance with the Immigration and Nationality Act (INA), these U.S. citizens must satisfy the CBP Officer of their citizenship.[4] In addition to assessing the verbal declaration and examining whatever documentation a traveler may present initially, the CBP Officer may ask for additional identification and proof of citizenship until such time as the CBP Officer is satisfied that the traveler seeking entry into the United States is a U.S. citizen.

U.S. citizens arriving at sea or land ports-of-entry from within the Western Hemisphere, other than Cuba, can currently present to CBP Officers a wide variety of documents to establish their right to enter the United States. A driver's license issued by a state motor vehicle administration or other competent state government authority is the most common form of identity document now provided to CBP at the border even though such documents do not denote citizenship. Documents currently used at these ports-of-entry also include birth certificates issued by a U.S. jurisdiction, Consular Reports of Birth Abroad, Certificates of Naturalization, and Certificates of Citizenship.

B. Current Document Requirements for Nonimmigrant Aliens Arriving by Sea or Land

Currently, each nonimmigrant alien arriving in the United States must present to the CBP Officer at the port-of-entry a valid passport issued by his or her country of citizenship and a valid visa issued by a U.S. embassy or consulate abroad, unless one or both requirements have been waived.[5] Nonimmigrant aliens applying for entry to the United States must also satisfy any other applicable entry requirements (*e.g.*, U.S. Visitor and Immigrant Status Indicator Technology Program (US–VISIT)) and overcome all grounds of inadmissibility before being admitted to the United States. For nonimmigrant aliens arriving in the United States at sea or land ports-of-entry, the only current waiver to the passport requirement applies to (1) Citizens of Canada and Bermuda arriving from within the Western Hemisphere, and (2) Mexican nationals with a Border Crossing Card (BCC) arriving from a contiguous territory.[6]

1. Canadian Citizens and Citizens of the British Overseas Territory of Bermuda

In most cases, Canadian citizens and citizens of the British Overseas Territory of Bermuda (Bermuda) are not currently required to present a passport and visa[7] when entering the United States by sea or land as nonimmigrant visitors from countries in the Western Hemisphere. These travelers must nevertheless satisfy the inspecting CBP Officer of their identity, citizenship, and admissibility at the time of their application for admission. The applicant may present any proof of citizenship in his or her possession. An individual who initially fails to satisfy the inspecting CBP Officer that he or she is a Canadian or Bermudian citizen may then be required by CBP to provide further identification and proof of citizenship such as a birth certificate, passport, or citizenship card.

2. Mexican Nationals

Mexican nationals arriving in the United States are generally required to present a passport and visa when applying for entry to the United States. However, Mexican nationals who

[1] For purposes of this proposed rule, the Western Hemisphere is understood to be North, South or Central America, and associated islands and waters. Adjacent islands are understood to mean Bermuda and the islands located in the Caribbean Sea, except Cuba.

[2] *See* section 215(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1185(b).

[3] *See* 22 CFR 53.2(b), which waives the passport requirement pursuant to section 215(b) of the INA, 8 U.S.C. 1185(b).

[4] *See* 8 CFR 235.1(b).

[5] *See* section 212(a)(7)(B)(i) of the INA, 8 U.S.C. 1182(a)(7)(B)(i).

[6] Mexican nationals arriving in the United States who possess a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC) may be admitted without presenting a valid passport when coming from contiguous territory. *See* 8 CFR 212.1(c)(1).

[7] *See* 8 CFR 212.1(a)(1) (Canadian citizens) and 8 CFR 212.1(a)(2) (Citizens of Bermuda). *See also* 22 CFR 41.2.

possess a Form DSP–150, B–1/B–2 Visa and Border Crossing Card (BCC) currently may be admitted at sea and land ports-of-entry without presenting a passport when arriving in the United States from contiguous territory.[8] A BCC is a machine-readable, biometric card, issued by the U.S. Department of State, Bureau of Consular Affairs.

C. Statutory and Regulatory History

This NPRM is the second phase of a joint DHS and DOS plan, known as the Western Hemisphere Travel Initiative (WHTI), to implement section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended (hereinafter IRTPA).[9] A brief discussion of IRTPA and related regulatory efforts follows.

1. Intelligence Reform and Terrorism Prevention Act of 2004

Section 7209 of IRTPA requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require travelers entering the United States to present a passport, other document, or combination of documents, that are ''deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship.'' Section 7209 expressly provides that U.S. citizens and nationals for whom documentation requirements have previously been waived on the basis of reciprocity under section 212(d)(4)(B) of the INA (8 U.S.C 1182(d)(4)(B)) (*i.e.*, citizens of Canada, Mexico, and Bermuda) will be required to comply.[10]

Section 7209 limits the President's authority [11] to waive generally applicable documentation requirements after the complete implementation of the plan required by IRTPA. With respect to non-immigrant aliens currently granted a passport waiver under section 212(d)(4)(B) of the INA (*i.e.*, nationals of contiguous territory or adjacent islands), the President may not waive the document requirement imposed by IRTPA. With respect to U.S. citizens, once WHTI is completely implemented, the President may waive the new documentation requirements for departing or entering the United States only in three specific circumstances: (1) When the Secretary of Homeland Security determines that ''alternative documentation'' that is the basis of the waiver is sufficient to denote identity and citizenship; (2) in an individual case of an unforeseen emergency; or (3) in an individual case based on ''humanitarian or national interest reasons.'' [12]

Accordingly, U.S. citizens and those nonimmigrant aliens who currently are not required to present passports, pursuant to sections 215(b) and 212(d)(4)(B) of the INA respectively, will be required to present a passport or other acceptable document that establishes identity and citizenship deemed sufficient by the Secretary of Homeland Security when entering the United States from any location, including from countries within the Western Hemisphere. The principal groups affected by this provision of IRPTA are citizens of the United States, Canada, and Bermuda entering the United States from within the Western Hemisphere and Mexican nationals in possession of a BCC entering the United States from contiguous territory.[13]

2. Advance Notice of Proposed Rulemaking

On September 1, 2005, DHS and DOS published in the **Federal Register** an advance notice of proposed rulemaking (ANPRM), at 70 FR 52037, announcing a joint DHS and DOS plan to amend their respective regulations to implement section 7209 of IRTPA. The ANPRM announced that DHS and DOS anticipated implementing the documentation requirements of section 7209 in two stages. The first stage would have affected those travelers entering the United States by air and sea from within the Western Hemisphere and the second stage would have addressed travelers arriving by land. The two-stage approach was intended to ensure an orderly transition, provide affected persons with adequate notice to obtain necessary documents, and ensure that adequate resources were available to issue additional passports or other authorized documents.

In the ANPRM, DHS and DOS sought public comment to assist the Secretary of Homeland Security to make a final determination of which documents or combination of documents other than passports would be accepted at ports-of-entry to satisfy section 7209. DHS and DOS also solicited public comments regarding the economic impact of implementing section 7209, the costs anticipated to be incurred by U.S. citizens and others as a result of new document requirements, potential benefits of the rulemaking, alternative methods of complying with the legislation, and the proposed stages for implementation. In addition to receiving written comments, DHS and DOS representatives attended listening sessions and town hall meetings across the country and met with community leaders and stakeholders to discuss the initiative.

DHS and DOS received 2,062 written comments in response to the ANPRM. Comments were received from a wide range of U.S. and Canadian sources including: Private citizens; businesses and associations; local, State, Federal, and tribal governments; and members of the U.S. Congress and Canadian Parliament. The majority of the comments (1,910) addressed potential changes to the documentation requirements at land border ports-of-entry. One hundred and fifty-two (152) comments addressed changes to the documentation requirements for persons arriving at air or sea ports-of-entry. The comments related to air travel were addressed separately in the air final rule, which is discussed below.[14] Complete responses to the comments from the ANPRM related to sea and land arrivals will be presented in the final WHTI sea and land rule.

3. Rules for Air Travel From Within the Western Hemisphere

On August 11, 2006, DHS and DOS published an NPRM for air and sea arrivals. The NPRM proposed that, subject to certain narrow exceptions, beginning January 2007, all U.S. citizens and nonimmigrant aliens, including those from Canada, Bermuda, and

[8] *See* 8 CFR 212.1(c)(1)(i). *See also* 22 CFR 41.2(g). Mexican BCC holders traveling for less than 72 hours within a certain geographic area along the United States' border with Mexico: usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, do not need to obtain a form I–94. If they travel outside of that geographic area and/or period of time, they must obtain an I–94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

[9] Pub. L. 108–458, as amended, 118 Stat. 3638 (Dec. 17, 2004).

[10] Section 7209 does not apply to Lawful Permanent Residents, who will continue to be able to enter the United States upon presentation of a valid Form I–551, Permanent Resident Card, or other valid evidence of permanent resident status. See section 211(b) of the INA, 8 U.S.C. 1181(b). It also does not apply to alien members of the United States Armed Forces traveling under official orders who present military identification. See section 284 of the INA, 8 U.S.C. 1354. Additionally, section 7209 does not apply to nonimmigrant aliens from anywhere other than Canada, Mexico, or Bermuda. See section 212(d)(4)(B) of the INA, 8 U.S.C 1182(d)(4)(B). Such nonimmigrant aliens are currently required to show a passport for admission into the United States.

[11] *See* section 212(d)(4)(B) of the INA, 8 U.S.C. 1182(d)(4)(B), and section 215(b) of the INA, 8 U.S.C. 1185(b) (delegated to the Secretaries of State and Homeland Security under Executive Order 13323, 69 FR 241 (Dec. 30, 2003)).

[12] *See* section 7209(c)(2) of IRTPA.

[13] These groups of individuals are currently exempt from the general passport requirement when entering the United States. *See* 8 CFR 212.1(a)(1) (Canadian citizens), 8 CFR 212.1(c)(1)(i) (Mexican citizens), and 8 CFR 212.1(a)(2) (Bermudian citizens).

[14] *See* 71 FR 68412 (Nov. 24, 2006).

Mexico, entering the United States by air and sea would be required to present a valid passport, NEXUS Air card, or Merchant Mariner Document (MMD). The NPRM provided that the requirements would not apply to members of the United States Armed Forces. For a detailed discussion of what was proposed for air and sea arrivals, please see the NPRM at 71 FR 41655.

Based on the DOS proposal to allow use of a passport card in the sea environment discussed below, Congressional intent with respect to land and sea travel also discussed below, and the public comments, DHS and DOS deferred until this rulemaking decision on the document requirements for arrivals by sea. Complete responses to the comments relating to sea travel that were submitted in response to the air and sea NPRM will be presented in the final sea and land rule.

The final rule for travelers entering or departing the United States at air ports-of-entry (Air Rule) was published in the **Federal Register** on November 24, 2006. Beginning January 23, 2007,[15] U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering and departing the United States at air ports-of-entry from within the Western Hemisphere are generally required to present a valid passport. The main exceptions to this requirement are for U.S. citizens who present a valid, unexpired Merchant Mariner Document traveling in conjunction with maritime business and U.S. and Canadian citizens who present a NEXUS Air card for use at a NEXUS Air kiosk.[16] The Air Rule made no changes to the requirements for members of the United States Armed Forces. Please see the Air Rule at 71 FR 68412 for a full discussion of the air requirements.

4. Amendment to Section 7209 of IRTPA

On October 4, 2006, the President signed into law the Department of Homeland Security Appropriations Act of 2007 (DHS Appropriations Act of 2007).[17] Section 546 of the DHS Appropriations Act of 2007 amended section 7209 of IRTPA by stressing the need for DHS and DOS to expeditiously implement the WHTI requirements no later than the earlier of two dates, June 1, 2009, or three months after the Secretaries of Homeland Security and State certify that certain criteria have been met. The section requires ''expeditious[]'' action and states that requirements must be satisfied by the ''earlier'' of the dates identified. By using this language, the drafters expressed an intention for rapid action.[18] Congress also expressed an interest in having the requirements for sea and land implemented at the same time and having alternative procedures for groups of children traveling under adult supervision.[19]

5. Passport Card NPRM

On October 17, 2006, to meet the documentary requirements of WHTI and to facilitate the frequent travel of persons living in border communities, DOS, in consultation with DHS, proposed to develop a card-format passport for international travel by United States citizens through land and sea ports of entry between the United States, Canada, Mexico, or the Caribbean and Bermuda.[20]

The passport card would contain security features similar to the traditional passport book. The passport card would be particularly useful for citizens in border communities who regularly cross the border and would be considerably less expensive than a traditional passport. DOS anticipates the validity period for the passport card to be the same as for the traditional passport—ten years for adults and five years for minors under age 16. Please see the Passport Card NPRM at 71 FR 60298, for a full discussion of the background and details of the proposed passport card. DOS will issue a final rule prior to making passport cards available to the public.

6. Certifications to Congress

In Section 546 of the DHS Appropriations Act of 2007, Congress called for DHS and DOS to make certain certifications before completing the implementation of the WHTI plan. The Departments have been working toward making these certifications since October 2006 and have made great progress in meeting them. The Departments are instructed to certify to:

1. *NIST Certification.* National Institute of Standards and Technology (''NIST'') certification concerning security standards and best practices for protection of personal identification documents.

On May 1, 2007, NIST certified that the proposed card architecture of the passport card meets or exceeds the relevant standard and best practices, as specified in the statute.

2. *Technology Sharing.* Certify that passport card technology has been shared with Canada and Mexico.

DHS and DOS have been sharing information and meeting regularly with both Mexican and Canadian officials, including the decision to select RFID technology for the passport card.

3. *Postal Service Fee Agreement.* Certify that an agreement has been reached and reported to Congress on the fee collected by the U.S. Postal Service for acceptance agent services.

DOS is working with the Postal Service to memorialize their agreement including the proposed new fees to be set by DOS so that the appropriate certification can be made and the detailed justification submitted.

4. *Groups of Children.* Certify that an alternative procedure has been developed for border crossings by groups of children.

This NPRM contains an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent.

5. *Infrastructure.* Certify that the necessary passport card infrastructure has been installed and employees have been trained.

DHS anticipates using existing equipment along with the deployment of new technology. CBP has technology currently in place at all ports-of-entry to read any travel document with a machine-readable zone, including passports and the new passport card. All CBP Officers at ports-of-entry are currently trained in the use of this technology. Depending upon the results of our environmental analysis, CBP will deploy an integrated RFID technical infrastructure to support advanced identity verification in incremental deployment phases. RFID technology training plans and requirements are currently being developed with initial training to be completed by November 2007.

6. *Passport Card Issuance.* Certify that the passport card is available to U.S. citizens.

DOS has developed an ambitious and aggressive schedule to develop the passport card and is making progress toward that goal. The Request for Procurement (RFP) to potential contractors was issued on May 25, 2007. DOS expects to begin testing product samples in the summer. In accordance

[15] DHS and DOS determined that delaying the effective date of the Air Rule to January 23, 2007, was appropriate for air travel because of operational considerations and available resources. *See id.*

[16] Under the Air Rule, Lawful Permanent Residents of the United States continue to need to carry their I–551 cards, and permanent residents of Canada continue to be required to present a passport and a visa, if necessary, as they did before the rule came into effect.

[17] Pub. L. 109–295, 120 Stat. 1355 (Oct. 4, 2006).

[18] *Id.* at 546. *See* Congressional Record, 109th Cong., 2nd Sess., September 29, 2006 at H7964.

[19] *Id.*

[20] 71 FR 60928.

with testing requirements established in the certification by NIST, DOS will conduct the full range of security, durability and privacy tests on the passport card and protective sleeve to ensure that a high-quality, secure card is issued to the American public. DOS is planning to issue a final rule in the near future.

7. *Common Land and Sea Implementation.* Certify to one implementation date.

This NPRM sets forth one implementation date for land and sea travel.

The Departments have worked very closely to update the appropriate congressional committees on the status of these certifications and will continue to do so until final certifications are made. DOS and DHS believe that these certifications will be made well in advance of the June 1, 2009 deadline for implementation.

DOS and DHS are planning to conduct a robust public outreach program to the traveling public, which will include a more targeted effort in border communities.

We anticipate that RFID infrastructure will be rolled out to cover the top 39 ports-of-entry (in terms of number of travelers) through which 95 percent of the land traffic enters the United States. The remaining land and all sea ports-of-entry would utilize existing machine-readable zone technology to read the travel documents. Machine-readable zone technology is currently in place in all air, sea, and land ports-of-entry.

III. Security and Operational Considerations at the U.S. Border

WHTI will reduce vulnerabilities identified in the final report of the National Commission on Terrorist Attacks Upon the United States, also known as the 9/11 Commission. WHTI is intended not only to enhance security efforts at the borders, but is also intended to expedite the movement of legitimate travel within the Western Hemisphere.

The land border, in particular, presents complex operational challenges, in that a tremendous amount of traffic must be processed in a short amount of time. For example, there are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered crossing at the land border ports-of-entry are repeat crossers, who travel back and forth across the border numerous times a day.

The historical absence of standard travel document requirements for the travel of Canadian and U.S. citizens across our northern and southern borders has resulted in the current situation, where a multiplicity of documents can be presented at ports-of-entry by Canadian and U.S. travelers. As a result, those individuals who seek to enter the United States or Canada illegally or who pose a potential threat could falsely declare themselves as U.S. or Canadian citizens. They can do this through several methods: presenting fraudulent documents that cannot be validated; presenting facially valid documentation that cannot be validated against the identity of the holder [21]; assuming the identity of the legitimate authentic document holder; or undocumented false claims. These same vulnerabilities exist for individuals purporting to be U.S. citizens crossing back and forth across the southern border with Mexico.

U.S. travel document requirements for Mexican nationals already addressed most of these vulnerabilities prior to the passage of the IRTPA. Generally, Mexican nationals are required to present either a Mexican passport with a visa or a biometric BCC [22] when entering the United States. Mexican nationals can also apply for membership in DHS Trusted Traveler Programs such as FAST and SENTRI.[23]

The current documents presented by U.S., Canadian, and Bermudian citizens arriving from within the Western Hemisphere vary widely in terms of the security and reliability as evidence of identity, status, and nationality. This variety poses challenges for accurate identity and admissibility determinations by border officials and has been identified as a security vulnerability for cross-border travel between these countries. It is recognized that national passports of Canada, Mexico, Bermuda (whether Bermudian or British passports) and the United States do currently, and will continue to, provide reliable evidence of identity and nationality for the purposes of cross-border travel.

Standardizing documentation requirements for travelers entering the United States in the land border environment would enhance our national security and secure and facilitate the entry process into the United States. Limiting the number of acceptable, secure documents would allow border security officials to quickly, efficiently, accurately, and reliably review documentation, identify persons of concern to national security, and determine eligibility for entry of legitimate travelers without disrupting the critically important movement of people and goods across our land borders. Standardizing travel documents for citizens of the United States, Canada, Bermuda, and Mexico entering the United States in the land border environment would also reduce confusion for the travel industry and make the entry process more efficient for CBP officers and the public alike.

Originally, DHS and DOS proposed to implement new documentation requirements for those travelers by air and most sea travel in the first phase of the WHTI plan. However, for the reasons described above, the Departments decided to delay new requirements for sea travel until the passport card would be available for use in the sea environment. The Departments also believed it would be less confusing to the public if sea and land requirements, both of which would accept the passport card, were implemented at the same time. Thus, documentation requirements for sea travelers were deferred to this rulemaking.[24]

IV. Proposed WHTI Document Requirements for U.S. Citizens and Nonimmigrant Aliens

This NPRM proposes new documentation requirements for U.S. citizens and nonimmigrant aliens from Canada, Bermuda, and Mexico entering the United States by land from Canada and Mexico, or by sea [25] from within the Western Hemisphere. A discussion of the proposed requirements for most U.S. citizens, Canadians, Bermudians, and Mexican nationals follows in Section IV. In Section V., we explain the special circumstances under which specific groups or persons may present other documents for entry into the United States by sea or land, such as U.S. and Canadian citizen children and U.S. citizens traveling on cruise ships.

[21] This refers to individuals who obtain valid documents through malfeasance. In such cases, the individual uses fraudulently obtained source/feeder documents to impersonate the U.S. or Canadian citizen in order to obtain the new document (*i.e.*, identity theft).

[22] Development of the biometric BCC was a joint effort of DOS and U.S. Citizenship and Immigration Services (USCIS) to comply with Section 104 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRIA) Pub. L. 104–208, Div. C, 110 Stat. 3009–546.

[23] Additionally, Mexican nationals who temporarily reside lawfully in Canada or the United States during the term of the NEXUS membership and pass an Interpol criminal history check may also be eligible to participate in NEXUS.

[24] Please see the Air Rule for a full discussion of the reasons that the sea regulations were deferred, at 71 FR 68412.

[25] In some circumstances under this rule, it is important to distinguish between types of sea travel. Those circumstances are so noted in the discussion of the proposed requirements.

A. U.S. Citizens Arriving by Sea or Land

Under this proposed rule, most U.S. citizens entering the United States at all sea or land ports-of-entry would be required to have either (1) A U.S. passport; (2) a U.S. passport card; (3) a trusted traveler card (NEXUS, FAST, or SENTRI);[26] (4) a valid MMD when traveling in conjunction with official maritime business; or (5) a valid U.S. Military identification card when traveling on official orders or permit.

1. Passport Book

U.S. passports are internationally recognized, secure documents that demonstrate the individual's identity and citizenship and continue to be specifically authorized for all border-crossing purposes. Traditional U.S. passport books contain security features including digitized photographs, embossed seals, watermarks, ultraviolet and fluorescent light verification features, security laminations, micro-printing, holograms, and pages for visas and stamps.

U.S. electronic passports or e-passports, which DOS has issued to the public since August 2006, are the same as traditional passports with the addition of a small contactless integrated circuit (computer chip) embedded in the back cover. The chip securely stores the same data visually displayed on the photo page of the passport, and will additionally include a digital photograph. The inclusion of the digital photograph will enable biometric comparison, through the use of facial recognition technology at international borders. The U.S. ''e-passport'' incorporates additional anti-fraud and security features.[27]

2. Passport Card

DOS published an NPRM announcing the development and issuance of a card-format passport on October 17, 2006 (71 FR 60928), which would be a secure citizenship and identity document that carries most of the rights and privileges of a traditional U.S. passport, but with validity limited to international travel by land and sea between the United States and Canada, Mexico, the Caribbean or Bermuda.

The passport card would contain security features similar to the passport book, would be issued by DOS, would contain biographical information about the holder, and would be readily authenticated and validated at the border. The passport card will contain a radio frequency identification (RFID) chip, which will link the card, via a manufacturer-generated reference number, to a stored record in secure government databases. Unlike the e-passport, which contains personal data on the RFID chip, there will be no personal information stored on the passport card's RFID chip. The passport card would be particularly useful for citizens in border communities who cross the land border every day. The passport card would satisfy the definition of a passport, and, therefore, it would be specifically authorized in section 7209 of IRTPA.

3. Trusted Traveler Program Documents

Under the proposed rule, U.S. citizens would be permitted to present cards issued for certain DHS Trusted Traveler Programs, such as NEXUS, Free and Secure Trade (FAST), and Secure Electronic Network for Travelers Rapid Inspection (SENTRI), at all lanes at all land and sea ports-of-entry when traveling from contiguous territory or adjacent islands.

These trusted traveler cards contain numerous security features, are issued by either U.S. or Canadian border security agencies, contain biographical information about the holder, and are readily authenticated and validated at the border. These programs are implemented in partnership with the Governments of Canada and Mexico, and many citizens of these countries participate in the programs.

Under the proposed rule, U.S. citizens who arrive by pleasure vessel[28] from contiguous territory would be permitted to show the trusted traveler cards, among other documents, at all ports of entry. Additionally, U.S. citizens who have been pre-screened as part of the NEXUS or Canadian Border Boat Landing Program who arrive by pleasure vessel from Canada would be permitted to report their arrival by telephone or by remote video inspection, respectively.

U.S. citizens who arrive by pleasure vessel from Canada would be permitted to show the NEXUS card in lieu of a passport or passport card along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS). Currently, as NEXUS members, U.S. citizen recreational boaters can report their arrival to CBP by telephone. Otherwise, these pleasure vessel travelers would be required to report in person to a port-of-entry in order to enter the United States.[29]

a. NEXUS Program

The NEXUS program is implemented by CBP and the Canadian Border Services Agency (CBSA), pursuant to the Shared Border Accord and Smart Border Declaration between the United States and Canada.[30] NEXUS streamlines border inspection for pre-screened, low-risk travelers by utilizing one application form, a joint enrollment process, bi-national security screening, and one card for expedited entry to both Canada and the United States for air, land and sea travel.[31]

Applicants for NEXUS complete a joint U.S./Canada NEXUS Application. The application is then reviewed by both CBP and the CBSA. Once approved by both countries, the applicant reports to a joint CBP/CBSA enrollment center where the applicant is interviewed and fingerprinted by CBP and CBSA. Applicants who are deemed low-risk and are approved for the program are then issued a NEXUS Identification Card.

b. FAST Program

The Free and Secure Trade (FAST) program is designed to enhance the security and safety along both the northern and southern land borders of the United States, while also enhancing the economic prosperity of the United States, Canada, and Mexico, by coordinating, to the maximum extent possible, their customs commercial programs. The program accomplishes this by allowing member commercial

[26] Currently, U.S. citizens can show a NEXUS, SENTRI, or FAST card for entry into the United States only at dedicated lanes at designated land border ports-of-entry.

[27] More information about e-passports is available at *http://www.state.gov. See also,* 70 FR 61553 (Oct. 25, 2005)(final rule for e-passports).

[28] For purposes of this rule, a pleasure vessel is a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire.

[29] *See* 8 CFR 235.1(g). U.S. citizen holders of a Canadian Border Boat Landing Permit (Form I–68) would be required to possess a passport, passport card, or other document specified in this NPRM when arriving in the United States in combination with the Form I–68 and would be required to show this documentation when applying for or renewing the Form I–68. Participants would continue to benefit from entering the United States from time to time without having to wait for a physical inspection, subject to the applicable regulations. More information on the Canadian Border Boat Landing Program (I–68 Permit Program) is available on the CBP Web site at *http://www.cbp.gov.*

[30] On December 14, 2006, CBP announced that the NEXUS air, highway, and marine modes had been integrated into one program. This integration means that there will be one application form and fee to participate in all three modes of the NEXUS program. CBP also announced that NEXUS would expand the number of processing locations at Canadian airports in 2007. More information on the NEXUS program is available on the CBP Web site at *http://www.cbp.gov.*

[31] Lawful Permanent Residents of the United States would continue to be required to carry I–551 Permanent Resident cards while they are traveling under the NEXUS program.

drivers to cross the border with expedited customs and immigration processing and to transport eligible goods for FAST approved carriers along the northern and southern borders.

Commercial drivers applying for the FAST program on the northern border complete a U.S./Canada FAST Commercial Driver Application and send it to the FAST Application Processing Center in Canada. The application is then reviewed by both CBP and CBSA. Once approved by both countries, the applicant reports to a joint CBP/CBSA enrollment center where he or she is interviewed by CBP and CBSA.

During the application process, a U.S. applicant's ten fingerprints are taken and submitted to the FBI for a records check; [32] identification and immigration documents are checked for validity; and a digital photograph is taken. Applicants who are deemed low-risk and are approved for the program are then issued a FAST Commercial Driver Identification Card (FAST Card). Drivers applying for the FAST program on the southern border enroll in a similar process where the card applications are reviewed and cards are issued by CBP.

c. SENTRI Program

SENTRI currently streamlines border inspection for pre-approved low-risk travelers for expedited entry into the United States for land travel along the southern border, similar to NEXUS and FAST.[33] To enroll in SENTRI a participant must provide acceptable proof of citizenship or permanent resident status in the United States. U.S. citizens and Lawful Permanent Residents must provide an original birth certificate with government-issued photo identification, a valid passport, or a certificate of naturalization.

4. Merchant Mariner Document (MMD)

Currently, a Merchant Mariner Document (MMD) is accepted for U.S. citizen Merchant Mariners in lieu of a passport.[34] U.S. citizen Merchant Mariners must provide proof of their U.S. citizenship and undergo an application process that includes a fingerprint background check submitted to the FBI, a National Driver Register check, and a drug test from an authorized official that administers a drug testing program in order to obtain an MMD.

The Air Rule provides that an MMD used by U.S. citizens in conjunction with maritime business is sufficient to denote identity and citizenship when presented upon arrival at an air port-of-entry.

Under this proposed rule, DHS and DOS propose that U.S. citizen Merchant Mariners may present a valid MMD when arriving in the United States at sea or land ports-of-entry when traveling in conjunction with official maritime business. It should be noted that the U.S. Coast Guard has proposed to phase-out the MMD over the next five years and streamline all existing Merchant Mariner credentials.[35] DHS and DOS propose to accept the MMD as long as it is an unexpired document.[36]

United States citizen Merchant Mariners serving on U.S. flag vessels are eligible for no-fee U.S. passports upon presentation of a letter from the employer and an MMD, in addition to the standard evidence of citizenship and identity.

5. U.S. Military Identification Card

Citizens of the United States currently are not required to possess a valid passport to enter or depart the United States when traveling as a member of the Armed Forces of the United States on active duty under 22 CFR 53.2(d). Because the military identification card is issued to U.S. citizens of the Armed Forces and because U.S. citizen members of the U.S. military traveling under military orders are, without exception, entitled to be admitted to the United States, the Secretary of Homeland Security proposes to determine that a military identification card when traveling under official orders or permit of the U.S. Armed Forces would be an acceptable form of alternative documentation when presented upon arrival at air, sea, and land ports-of-entry.

Allowing members of the U.S. Armed Forces to cross the U.S. borders without the need to present a passport is necessary to meet the operational requirements of the Armed Forces. In fact, pursuant to Section 284 of the INA,[37] alien members of the U.S. Armed Forces entering under official orders and presenting military identification specifically are not required to present a passport and visa.[38] Imposing a passport requirement on U.S. citizens who are members of the U.S. Armed Forces when there is no such requirement for alien members, would not be a desired result of the WHTI rulemaking.

Travel document requirements for spouses and dependents of U.S. citizen members of the U.S. Armed Forces, as well as Department of Defense contractors and civilian employees, will be subject to the same document requirements applicable to other arrivals at sea and land ports-of-entry otherwise specified in this NPRM.

B. Canadian Citizens and Citizens of Bermuda Arriving by Sea or Land

1. Canadians

Canadian citizens entering the United States at sea and land ports-of-entry would be required to present, in addition to any applicable visa requirements: [39]

1. A passport issued by the Government of Canada; [40]

2. A valid trusted traveler program card issued by CBSA or DHS as discussed above in Section III.C.1.c, *e.g.,* FAST, NEXUS, or SENTRI [41]; or

3. Alternative Canadian citizenship and identity documents hereafter proposed by Canada and accepted by DHS and DOS.

Additionally, Canadian citizens in the NEXUS program who arrive by pleasure vessel from Canada would be permitted to present a NEXUS membership card in lieu of a passport along the northern border under the auspices of the remote inspection system for pleasure vessels, such as the Outlying Area Reporting System (OARS).[42] Currently, as NEXUS members, Canadian recreational boaters

[32] For Canadian applicants, fingerprints are submitted to Canadian authorities for a records check.

[33] Enrollment in the program is available to Mexican nationals, United States citizens or lawful permanent residents, and a national of any other country who demonstrates a need to use the program.

[34] *See* 22 CFR 53.2(c).

[35] *See* 71 FR 29462 (May 22, 2006) and 72 FR 3605 (Jan. 25, 2007).

[36] On April 24, 2007, the U.S. Coast Guard published an interim final rule amending Coast Guard regulations to allow for the issuance of MMDs to certain non-resident aliens for service in the stewards departments of U.S.-flag large passenger vessels endorsed for coastwise trade. *See* 72 FR 20278. However, only U.S. citizens may use the MMD in lieu of a passport under this proposed rule.

[37] *See* 8 U.S.C. 1354.

[38] *See* 8 CFR 235.1(c).

[39] *See* 8 CFR 212.1(h), (l), and (m) and 22 CFR 41.2(k) and (m).

[40] Foreign passports remain an acceptable border crossing document under section 7209 of the IRTPA.

[41] Canadian citizens who demonstrate a need may enroll in the SENTRI program and currently may use the SENTRI card in lieu of a passport. To enroll in SENTRI, a Canadian participant must present a valid passport and a valid visa, if required, when applying for SENTRI membership. Other foreign participants in the SENTRI program must present a valid passport and a valid visa, if required, when seeking admission to the United States, in addition to the SENTRI card. This proposed rule does not alter the passport and visa requirements for other foreign enrollees in SENTRI (*i.e.*, other than Canadian foreign enrollees). Currently, Canadian citizens can show a SENTRI, NEXUS, or FAST card for entry into the United States only at designated lanes at designated land border ports-of-entry.

[42] Permanent residents of Canada must also carry a valid passport and valid visa, if required.

can report their arrival to CBP by telephone.[43] Otherwise, these pleasure vessel travelers would be required to report in person to a port-of-entry in order to enter the United States.[44]

Both DHS and DOS have engaged with the Government of Canada and various provinces in discussions of alternative documents that could be considered for border crossing use at land and sea ports of entry under this rule. For instance, one Canadian office, Indians and Northern Affairs Canada, is in the process of issuing a card to registered Indians. This alternative document and any other alternative identity and citizenship document issued by the Government of Canada will be considered, as appropriate, in the course of this rulemaking. While we are not in a position to propose a complete list of alternative Canadian documents we will continue to engage in discussions of alternatives and welcome comments suggesting alternative Canadian documents.

In fact, various Canadian provinces have indicated their interest or intention in pursuing pilots of enhanced driver's licenses similar to the Washington State and DHS pilot (described below). Because documents accepted for border crossing under WHTI must denote citizenship, the participation of the Government of Canada in determinations of citizenship on behalf of its citizens, and recognition of this determination, is a strong consideration by the United States in the acceptance of documents by Canadian citizens. Therefore, at this time, DHS and DOS are not proposing to accept documents from Canadian citizens other than those described above. We will, however, consider other documents, as described above and in Section IV.D., as appropriate.

2. Bermudians

Under this proposed rule, all Bermudian citizens would be required to present a passport issued by the Government of Bermuda or the United Kingdom when seeking admission to the United States at all sea or land ports-of-entry, including travel from within the Western Hemisphere.

C. Mexican Nationals Arriving by Sea or Land

Under this proposed rule, all Mexican nationals would be required to present either (1) A passport issued by the Government of Mexico and a visa when seeking admission to the United States, or (2) a valid Form DSP–150, B–1/B–2 laser visa Border Crossing Card (BCC) when seeking admission to the United States at land ports-of-entry or arriving by pleasure vessel or by ferry from Mexico.

For purposes of this rule, a pleasure vessel is defined as a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire. A ferry is defined as any vessel: (1) Operating on a pre-determined fixed schedule; (2) providing transportation only between places that are no more than 300 miles apart; and (3) transporting passengers, vehicles, and/or railroad cars. We note that ferries are subject to land border-type entry processing on arrival from, or departure to, a foreign port or place. Arrivals aboard all vessels other than ferries and pleasure vessels would be treated as sea arrivals.[45]

1. Border Crossing Card (BCC)

DOS issues BCCs to Mexican nationals who come to the United States on a regular basis. Since 1998, every new BCC contains a biometric identifier, such as a fingerprint, and a machine-readable zone (MRZ). In order to obtain a new BCC, a Mexican traveler must have a passport. Because the BCC is a B–1/B–2 visa, the State Department issuance process is nearly identical to that of other visas, with the attendant background checks and interviews necessary for security purposes.

Mexican nationals who hold a BCC will be allowed to use their BCC for entry at the land border and when arriving by ferry or pleasure vessel in lieu of a passport for travel within 25 miles of the border with Mexico (75 miles for the Tucson, Arizona region) and no longer than a 30-day stay in the United States. For travel outside of these geographical limits or a stay over 30 days, under the proposed rule, Mexican nationals possessing a BCC would also be required to obtain a Form I–94 from CBP at the POE, as is currently the practice.[46] The BCC would not be permitted in lieu of a passport for commercial or other sea arrivals in the United States.

2. Trusted Traveler Program Use

We propose continuing the current practice that Mexican nationals may not use the FAST or SENTRI card in lieu of a passport or BCC. These participants, however, would continue to benefit from expedited border processing.

Mexican nationals applying for the FAST program on the southern border and applying for the SENTRI program must present a valid passport and valid visa or valid laser visa/BCC when applying to CBP for membership. CBP then reviews the applications and issues the cards.

3. Elimination of Passport Waiver to Obtain Documents at Mexican Consulate in United States

Mexican nationals who enter the United States from Mexico solely to apply for a Mexican passport or other ''official Mexican document'' at a Mexican consulate in the United States located directly adjacent to a land port-of-entry currently are not required to present a valid passport. This type of entry generally occurs at land borders.[47] There is no basis under section 7209, as amended, to exempt Mexican nationals coming to the United States to apply for a passport from the general requirements of WHTI. This proposed rule would eliminate this exception to the passport requirement for Mexican nationals. Under the proposed rule, all Mexican nationals will be required to have a passport with a visa or a BCC to enter the United States.

D. Other Approved Documents

DHS and DOS remain committed to considering travel documents developed by the various U.S. States and the Governments of Canada and Mexico in the future that would denote identity and citizenship and would also satisfy section 7209 of IRTPA.

Under this proposed rule, DHS proposes to consider as appropriate, documents such as State driver's licenses that satisfy the WHTI

[43] Remote pleasure vessel inspection locations are only located on the northern border.

[44] *See* 8 CFR 235.1(g). Canadian holders of a Canadian Border Boat Landing Permit (Form I–68) would be required to possess a passport, passport card, or other document specified in this NPRM when arriving in the United States in combination with the Form I–68 and would be required to show this documentation when applying for or renewing the Form I–68.

[45] For example, commercial vessels would be treated as arrivals at sea ports-of-entry. A commercial vessel is any civilian vessel being used to transport persons or property for compensation or hire to or from any port or place. A charter vessel that is leased or contracted to transport persons or property for compensation or hire to or from any port or place would be considered an arrival by sea under this rule. Arrivals by travelers on fishing vessels, research or seismic vessels, other service-type vessels (such as salvage, cable layers, etc.), or humanitarian service vessels (such as rescue vessels or hospital ships) would all be considered as arrivals by sea.

[46] *See* 8 CFR 212.1(c)(1)(i); *also* 22 CFR 41.2 (g). If Mexicans are only traveling within a certain geographic area along the United States' border with Mexico: usually up to 25 miles from the border but within 75 miles under the exception for Tucson, Arizona, they do not need to obtain a form I–94. If they travel outside of that geographic area, they must obtain an I–94 from CBP at the port-of-entry. 8 CFR 235.1(h)(1).

[47] *See* 8 CFR 212.1(c)(1)(ii).

requirements by denoting identity and citizenship. These documents could be from a State, tribe, band, province, territory, or foreign government if developed in accordance with pilot program agreements between those entities and DHS. In addition to denoting identity and citizenship, these documents will have compatible technology, security criteria, and respond to CBP's operational concerns.

These documents would be announced and updated by publishing a notice in the **Federal Register**. A list of such programs and documents would also be maintained on the CBP Web site. It is anticipated that the Secretary of Homeland Security would designate successful pilot program documents that satisfy section 7209 and the technology, security, and operational concerns discussed above as documents acceptable for travel under section 7209. At the completion of a successful pilot, the Department would designate a document by rulemaking.

For example, the State of Washington (Washington) has begun a voluntary program to develop an ''enhanced driver's license'' and identification card that would denote identity and citizenship. On March 23, 2007, the Secretary of Homeland Security and the Governor of Washington signed a Memorandum of Agreement to develop, issue, test and evaluate an enhanced driver's license and identification card with facilitative technology to be used for border crossing purposes.[48]

On March 9, 2007, DHS published in the **Federal Register** an NPRM concerning minimum standards for State-issued driver's licenses and identification cards that can be accepted for official purposes in accordance with the REAL ID Act.[49] DHS encourages States interested in developing driver's licenses that will meet both the REAL ID and WHTI requirements to work closely with DHS to that end.

E. Timing of Changes and Effective Date for Final Rule

1. Satisfactory Evidence of Citizenship

Reducing the well-known vulnerability posed by those who might illegally purport to be U.S. or foreign citizens trying to enter the U.S. by land or sea on a mere oral declaration is imperative. As we move towards WHTI implementation, it is the intention of DHS to end the routine practice of accepting oral declarations alone starting January 31, 2008. CBP will retain its discretionary authority to request additional documentation when warranted and to make individual exceptions in extraordinary circumstances when oral declarations alone or with other alternative documents may be accepted. Beginning January 31, 2008, DHS will expect the satisfactory evidence of U.S. or Canadian citizenship to include either of the following documents or groups of documents: (1) A document specified in this NPRM as WHTI-compliant for that individual's entry; or (2) a government-issued photo identification document presented with a birth certificate.[50] CBP will also act according to the procedures for children outlined in Sections V.B.1. and V.B.2 beginning January 31, 2008.

2. Implementation and Effective Date of Final Rule

At a date to be determined by the Secretary of Homeland Security, in consultation with the Secretary of State, the Departments will implement the full requirements of the land and sea phase of WHTI. The implementation date will be determined based on a number of factors, including the progress of actions undertaken by the Department of Homeland Security to implement the WHTI requirements and the availability of WHTI compliant documents on both sides of the border.

DHS and DOS expect the date of full WHTI implementation to be in the summer of 2008. The precise implementation date will be published in the Final Rule or will separately be published, with at least 60 days notice, in the **Federal Register**.

V. Special Rules for Specific Groups of Travelers Permitted To Use Other Alternative Documents

Even though DHS and DOS have presented generally applicable document requirements above, in reviewing the security and travel considerations for the sea and land environments, the Departments believe there are certain special circumstances for specific groups of travelers that warrant permitting use of other documents. For these specific groups of travelers, within these limited circumstances, the Secretary of Homeland Security proposes that the delineated documents be accepted for travel as discussed.

There are other groups of travelers that fall outside the scope of section 7209 and are therefore not subject to these requirements. The documents permitted for these populations under the foregoing special circumstances are also explained below.

A. U.S. Citizen Cruise Ship Passengers

Because of the nature of round trip cruise ship travel, DHS has determined that when U.S. citizens depart from and reenter the United States on board the same cruise ship, they pose a low security risk in contrast to cruise ship passengers who embark in foreign ports.

Although round trip cruises may stop in foreign ports (*e.g.*, some east coast cruises stop in the Caribbean and some cruises in the Pacific Northwest may include land excursions in Canada), there are reasons why U.S. citizens aboard these cruises pose a low security risk. First, on round trip cruises, passengers who depart from the United States would have their documents checked both when they depart from the United States and when they return to the United States. Under current Advanced Passenger Information System (APIS) requirements,[51] the cruise lines are required to check the accuracy of the travel documents for all departing passengers. The passenger information is transmitted to CBP well before the return of the cruise ship.

While on the voyage, the cruise lines also check the identity of passengers as they return to the ship at various ports of call along the voyage. CBP has worked with the cruise lines to establish proper security protocols for these voyages and will continue to work with the cruise lines on security protocols in the future.

When the cruise ships return to the United States, CBP officers examine the documents of the incoming passengers as they would for other cruise passengers. Because of the advanced passenger information supplied to CBP upon departure and because of CBP's ability to check this passenger data against the information supplied by passengers upon return to the United States, the security risks associated with allowing U.S. citizens to use the documents described below are low.

Accordingly, and in response to public comments, DHS and DOS propose the following alternative document requirement for U.S. cruise ship passengers. For purposes of the proposed rule, a cruise ship is defined as a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers

[48] For more information on this pilot program, see *http://www.dhs.gov*.

[49] *See* REAL ID NPRM at 72 FR 10819.

[50] For U.S. citizens, a government-issued photo identification combined with a Consular Report of Birth Abroad or a Certificate of Naturalization could also be presented.

[51] *See* 19 CFR 4.7b (vessel arrivals) and 19 CFR 4.64 (vessel departures).

are embarked or disembarked in the United States or its territories.[52]

U.S. cruise ship passengers traveling within the Western Hemisphere would be permitted to present a government issued photo identification document in combination with either (1) An original or a certified copy of a birth certificate, (2) a Consular Report of Birth Abroad issued by DOS, or (3) a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services (USCIS), when returning to the United States, under certain conditions:

- The passengers must board the cruise ship at a port or place within the United States; and
- The passengers must return on the same ship to the same U.S. port or place from where they originally departed.

All passengers arriving on a cruise ship that originated at a foreign port or place would have to present travel documents that comply with applicable document requirements otherwise specified in this NPRM when arriving in the United States. For voyages where the cruise ship originated in the United States, if any new passengers board the ship at a foreign port or place, the new passengers would have to present travel documents that comply with applicable document requirements otherwise specified in this NPRM when arriving in the United States. U.S. citizen cruise ship passengers that would fall under this alternative document requirement are reminded to carry appropriate travel documentation to enter any foreign countries or stops on the cruise.

B. U.S. and Canadian Citizen Children

The U.S. government currently requires all children arriving from countries outside the Western Hemisphere to present a passport when entering the United States. Currently, children (like adults) from the United States, Canada, and Bermuda are not required to present a passport when entering the United States from contiguous territory or adjacent islands by sea or land, excluding Cuba. Mexican children are currently required to present either a passport and visa or BCC upon arrival in the United States, as discussed above.

DHS and DOS considered extending this passport requirement to all U.S. and Canadian children entering the United States by sea or land from within the Western Hemisphere as well; however, many public comments have expressed a desire for an exception to be made for these children traveling across international borders, primarily in the land environment.

Because DHS and DOS believe that these children traveling in the sea and land environments pose a low security risk, DHS, in consultation with DOS, proposes the procedures below.

Mexican children are currently required to present either a passport and visa or BCC upon arrival in the United States, as discussed above. DHS and DOS do not propose to change the current document requirements for Mexican children entering the United States because Mexican children must now present either a passport and visa or BCC upon arrival in the United States from contiguous territory. As discussed above, IRTPA directs DHS to implement a plan to require documents for citizens for whom the general passport requirements have previously been waived, not to eliminate document requirements currently in place.

1. Children Under Age 16

Under the proposed rule, all U.S. citizen children under the age of 16 would be permitted to present either (1) An original or a certified copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS at all sea and land ports-of-entry when arriving from contiguous territory. Canadian citizen children under the age of 16 would be permitted to present an original or a certified copy of a birth certificate at all sea and land ports-of-entry when arriving from contiguous territory.

DHS and DOS have determined that 16 is the most appropriate age to begin the requirement to present a passport, passport card (for U.S. citizens), or other approved document because at that age most states begin issuing photo identification to children, such as a driver's license, and at that point, the child would consequently, have a known and established identity that could be readily accessed by border security and law enforcement personnel. CBP officers at the border could more easily determine if the traveler was wanted for a federal crime, or if the person had been listed as missing in a Federal database. Also, age 16 is the age that DOS begins to issue adult passports, valid for 10 years instead of 5 years for children. DHS and DOS also recognize that it is difficult for the majority of children under 16 to obtain a form of government-issued photo identification other than a passport or passport card. U.S. and Canadian children age 16 and over who arrive from contiguous territory would be subject to the WHTI document requirements specified below or otherwise specified in this NPRM.

In order to facilitate law enforcement functions, DHS and DOS recommend that those attempting to enter the United States with children under the age of 16 have verbal or written evidence of parental consent for the child to travel internationally. For example, both parents or legal guardians, or one parent or guardian with sole custody, may provide written consent for a child's international travel with an adult who is not that child's parent or guardian.

2. Groups of Children Under Age 19

In Section 546 of the DHS Appropriations Act of 2007, Congress expressed an interest that an alternative procedure be developed for groups of children traveling across an international border under adult supervision with parental consent.

Under this proposed rule, U.S. and Canadian citizen children under age 19, who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry from contiguous territory, would be permitted to present either (1) An original or a certified copy of a birth certificate; (2) a Consular Report of Birth Abroad issued by DOS; or (3) a Certificate of Naturalization issued by USCIS, when the groups are under the supervision of an adult affiliated with the organization (including a parent of one of the accompanied children who is only affiliated with the organization for purposes of a particular trip) and when all the children have parental or legal guardian consent to travel. For purposes of this alternative procedure, an adult would be considered to be a person age 19 or older, and a group would consist of two or more people.

The group, organization, or team would be required to contact CBP upon crossing the border at the port-of-entry where it will cross and provide on organizational letterhead: (1) The name of the group, organization or team and the name of the supervising adult; (2) a list of the children on the trip; (3) for each child, the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian; and (4) the signature of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each participating child. The group, organization, or team would be able to demonstrate parental or legal guardian consent by having the adult leading the group sign and certify in writing that he

[52] For this proposed rule, DHS proposes to adopt the definition of a cruise ship used by the U.S. Coast Guard. *See* 33 CFR 101.105.

or she has obtained parental or legal guardian consent for each participating child.

For Canadian children, in addition to the information indicated above, a trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay would be required.

As it is structured, we believe most of the groups utilizing this alternative procedure would be high school groups or groups containing children aged 16 to 18. Based on experience, there is little, if any, risk of child trafficking or parental abduction in the group travel context. To avoid delays upon arrival at a port-of-entry, CBP would recommend that the group, organization, or team provide this information well in advance of arrival, and would recommend that each participant traveling on an original or certified copy of a birth certificate, Consular Report of Birth Abroad, or Certificate of Naturalization carry a government or school issued photo identification document, if available. Travelers with the group who are age 19 and over would be subject to the generally applicable travel document requirements specified in 8 CFR parts 211, 212 or 235 and 22 CFR parts 41 or 53.

3. Alternative Approach for Children; Parental Consent

DOS and DHS also seek comments regarding approaches to ensuring proper documentation to address concerns about child abduction, parental kidnapping, and trafficking in children across U.S. borders.

DOS's Office to Monitor and Combat Trafficking in Persons estimates that approximately half the victims of trafficking who enter the United States are minors. At any one time, there are approximately 700 open cases of parental child abduction across the United States borders with Canada and Mexico.

In light of concerns about the safety of children, the American public supported changes in passport processing beginning in 1999 to require evidence of parental consent. Currently, DOS requires the execution of a passport application by both parents or legal guardian(s) before the passport agent or passport acceptance agent as a precondition to the issuance of a passport to a child under 14. On March 7, 2007, DOS published for public comment a rule proposing to require the execution of a passport application by both parents or legal guardian(s) for a passport application pertaining to a minor under the age of 16.[53] Furthermore, parents are making use of the DOS Children's Passport Issuance Alert System. Under this system, DOS notifies a parent or court ordered legal guardian, when requested, before issuing a U.S. passport for his or her child.

DOS and DHS are soliciting comments on whether a traditional passport or a passport card should be required for any child under 16 entering the United States not in a group without his/her parents. DOS and DHS are also soliciting comments on what would be the advantages and disadvantages to requiring a traditional passport or a passport card, and not allowing child travelers in such circumstances to rely upon a birth certificate, Consular Record of Birth Abroad, or Certificate of Naturalization.

C. Lawful Permanent Residents of the United States

Section 7209 of IRTPA does not apply to Lawful Permanent Residents (LPRs), because LPRs are immigrant aliens exempted from the requirement to present a passport under section 211(b) of the INA. LPRs will continue to be able to enter the United States upon presentation of a valid Form I–551, Permanent Resident Card[54] or other evidence of permanent resident status.[55]

We note that DHS published a notice of proposed rulemaking in the **Federal Register** on July 27, 2006, that proposes to collect and verify the identity of LPRs arriving at air and sea ports-of-entry, or requiring secondary inspection at land ports-of-entry, through US–VISIT.[56] CBP Trusted Traveler program members (FAST, SENTRI or NEXUS) who are LPRs must always carry their Form I–551 cards in addition to their membership card.

D. Alien Members of the U.S. Armed Forces

Pursuant to Section 284 of the INA,[57] alien members of the U.S. Armed Forces entering under official orders presenting military identification are not required to present a passport and visa.[58] Because this statutory exemption does not fall within the scope of section 7209 of IRTPA, under this proposed rule, alien members of the U.S. Armed Forces traveling under orders would continue to be exempt from the requirement to present a passport when arriving in the United States at sea and land ports-of-entry. Accordingly, under this NPRM, alien members of the U.S. Armed Forces traveling under official orders or permit of the Armed Forces would be permitted to present those orders and a military identification card in lieu of a passport when entering the United States at air, sea, and land ports-of-entry. However, spouses and dependents of military members are not covered by the exemption set forth in section 284 of the INA.[59] Under this proposed rule, spouses and dependents of these alien military members, unless they are LPRs, will be subject to the same document requirements as other sea and land border arrivals otherwise specified in this NPRM or the INA.

E. Members of NATO Armed Forces

Pursuant to Article III of the Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951,[60] North Atlantic Treaty Organization (NATO) military personnel on official duty are normally exempt from passport and visa regulations and immigration inspection on entering and leaving the territory of a NATO party, but, if asked, must present a personal identification card issued by their NATO party of nationality and official orders from an appropriate agency of that country or from NATO.[61] Because their exemption from the passport requirement is based on the NATO Status of Forces Agreement rather than a waiver under section 212(d)(4)(B), they are not subject to section 7209 of IRTPA. Therefore, notwithstanding this proposed rule, NATO military personnel would not be subject to the requirement to present a passport when arriving in the United States at sea and land ports-of-entry.

F. American Indian Card Holders From Kickapoo Band of Texas and Tribe of Oklahoma

U.S. Citizenship and Immigration Services (USCIS) issues American Indian Cards (Form I–872) to members of the Kickapoo Band of Texas and Tribe of Oklahoma to document their status. The American Indian Card is issued pursuant to the Texas Band of

[53] *See* 72 FR 10095.

[54] *See* Section 211(b) of the INA, 8 U.S.C. 1181(b).

[55] *See* 8 CFR 211.1.

[56] *See* 71 FR 42605.

[57] *See* 8 U.S.C. 1354.

[58] *See* 8 CFR 235.1(c).

[59] *See* 8 U.S.C. 1354.

[60] Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Their Forces, June 19, 1951, [1953, pt.2] 4 U.S.T. 1792, T.I.A.S. No. 2846 (effective Aug. 23, 1953). NATO member countries are: Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Turkey, the United Kingdom of Great Britain and Northern Ireland, and the United States.

[61] *See* 8 CFR 235.1(c).

Kickapoo Act of 1983 (TBKA), 25 U.S.C. 1300b–13. There are two versions of the American Indian Card: (1) For Kickapoos who opted to become U.S. citizens under the TBKA (the filing deadline for this benefit closed in 1989) and (2) for Kickapoos who opted not to become U.S. citizens, but instead were afforded ''pass/repass'' status.

We note that by Federal law, all of the Kickapoo Indians described above, whether or not they are U.S. citizens, may ''pass the borders'' between Mexico and the United States,[62] which has historically applied to land border crossings. We propose to continue the current practice of allowing U.S. citizen and Mexican national Kickapoo Indians to enter and exit the United States using their American Indian Cards, issued by USCIS, as an alternative to the traditional passport or passport card at all sea and land border ports-of-entry.

Under the proposed rule, U.S. citizen members of the Kickapoo Band of Texas and Tribe of Oklahoma would be permitted to present the Form I–872 American Indian Card in lieu of a passport or passport card at all sea and land ports of entry when arriving from contiguous territory or adjacent islands. Mexican national members of the Kickapoo Band of Texas and Tribe of Oklahoma would be permitted to present the I–872 in lieu of either a passport and visa or BCC at sea and land ports-of-entry when arriving from contiguous territory or adjacent islands.

G. Members of United States Native American Tribes

IRTPA expressly applies to all United States citizens. Federal statutes apply to Native Americans born in the United States[63] absent some clear indication that Congress did not intend the statute to apply.[64] However, the United States has a special relationship, founded in the Constitution, with its Native American tribes.[65] This relationship permits special rules for Native American members of federally recognized United States tribes.[66]

Comments on the ANPRM and consultations with United States Native American tribes have emphasized the particular impact which a new document requirement may have on Native Americans belonging to United States tribes who continue to cross the land borders for traditional historic, religious, and other cultural purposes. A number of border tribes are particularly concerned that their members will be required to obtain a passport card or other alternative document to maintain contact with ethnically related communities, including, for some tribes, members who live on traditional land in Mexico or Canada.

1. Proposed Acceptance of Satisfactory Tribal Enrollment Documents at Traditional Border Crossing Points for Tribes Who Continue Traditional Land Border Crossings

DHS and DOS do not propose to accept any particular tribal enrollment documents as part of this NPRM. DHS and DOS do propose, however, to consider such documents for the final rule as discussed below. Documents that may be found acceptable and so designated in the final rule must establish the identity and citizenship of members of United States tribes. DHS and DOS propose to accept such tribal enrollment documents only if members of the issuing tribe continue to cross the land border of the United States for a historic, religious or other cultural purpose.[67] The tribal enrollment card must be satisfactory to CBP, may only be used at that tribe's traditional border crossing points and will only be accepted so long as that tribe cooperates with the verification and validation of the document. These tribes must also cooperate with CBP on the enhancement of their documents in the future as a condition for the continued acceptance of the document.

DHS and DOS invite comments from those United States tribes that enroll members who continue to cross the border for a traditional purpose. Any tribe that wishes to propose its tribal enrollment card as an acceptable alternative document at one or more traditional border crossing points should submit comments supporting acceptance of its tribal enrollment card as an alternative for its members. All such comments should explain fully why the proposed tribal enrollment card should be an acceptable alternative document for its members.

Each comment should explain the traditional border crossings of that tribe by:

a. Specifically identifying the federally recognized tribe;

b. Indicating the traditional destination or destinations across the border that are visited by members of the tribe;

c. Explaining in detail the purpose or purposes of all such travel;

d. Relating all such travel to traditional ethnic, religious, cultural or other activities of the tribe;

e. Indicating the frequency of the travel; and

f. Specifying the border crossing point or points which are generally utilized to travel to each destination.

If the cross-border travel is reciprocated by a tribe, community, or band from Canada or Mexico, the United States tribe should also fully explain the connection with Canadian or Mexican Native Americans including a complete description of all such travel into the United States by individuals from the related Native American community.

The record of the rulemaking will need to detail the enrollment qualifications employed by each United States tribe in order to propose the acceptance of the tribe's enrollment document. All qualifications for membership in any such tribe should be fully described in the comments as well as whether, and in what circumstances, spouses, children or others may be ''adopted'' into the tribe. In addition, each tribe should indicate the relevant categories of information from its enrollment records that support the acceptance of its tribal enrollment document as an acceptable citizenship and identity document. Such comments should explain and document the reliability of each tribe's records. For that reason, tribes interested in pursuing this option should indicate the information that it is willing to make available to CBP from tribal enrollment records. At a minimum, CBP will need to verify the names, residences, and birthplaces of enrolled tribal members, the identity of the parents of enrolled tribal members who were not born in the United States, and the procedures followed by each tribe to document all such information contained in its enrollment records.

DHS and DOS also welcome comments concerning the determination

[62] *See* Texas Band of Kickapoo Act, Pub. L. 97–429, 96 Stat. 2269 (1983).

[63] In 1924, Congress conferred United States citizenship on all Native Americans born in the United States. Act of June 2, 1924, ch. 233, 43 Stat. 253, codified as INA § 301(b), 8 U.S.C. 1401(b).

[64] *See Federal Power Commission* v. *Tuscarora Indian Nation,* 362 U.S. 99, 120 (1960); *Taylor* v. *Ala. Intertribal Council Title IV J.T.P.A.,* 261 F.3d 1032, 1034–1035 (11th Cir. 2001).

[65] *See* Constitution, I, § 8, cl.3; *Cherokee Nation* v. *Georgia,* 30 U.S. 1, 17 (1831); *Worcester* v. *Georgia,* 31 U.S. 515, 561 (1832); *U.S.* v. *Sandoval,* 231 U.S. 28, 46–47 (1913).

[66] *Morton* v. *Mancari,* 417 U.S. 535, 551–55.

[67] From our consultations with Native American communities, DHS understands that members of a number of federally recognized tribes maintain contact with ethnically related people across our land border. For example, the Kumeyaay of California, Tohono O'odham of Arizona, Kickapoo of Texas, Oklahoma and Kansas, and Haudenosaunee or Six Nations of the New York State area maintain contact with ethnically related people on the other side of border. We also have been told that the three Kickapoo bands in the United States all lay their dead to rest in a traditional cemetery in Mexico. Traditional border crossings may continue for these and similar historic, religious and cultural purposes.

of which cards are satisfactory as well as information concerning the specific features of each tribal enrollment card used by tribal members who continue to cross the land border for a traditional purpose. All biometric and other security features on each card should be described in full in the comments and a life size image of both sides of a sample card should be submitted for the record with each set of comments.

Comments must also include a description of the issuance process used by the tribe to physically issue the tribal enrollment document. DHS and DOS are particularly interested in the materials and techniques used to ensure that the tribal enrollment document cannot be obtained improperly. This description must also include a description of the physical security features utilized to ensure that documents are not issued to individuals who are not qualified to receive such documents.

A tribe that issues an acceptable tribal enrollment document may be asked to regularly provide CBP with an electronic copy of current relevant information from its tribal enrollment roles for purposes of verifying and validating tribal enrollment documents. Comments should indicate whether the tribe is willing and able to provide this information on an ongoing basis.

DHS and DOS are also sensitive to the privacy of tribal enrollment records not related to the establishment of identity and citizenship such as alternative tribal names. Comments explaining specific privacy and other concerns related to the sharing of tribal enrollment information are particularly encouraged.

Each tribe which proposes a tribal enrollment card as an alternative border crossing document should indicate whether the tribe is willing to cooperate with CBP on the enhancement of the document in the future.

Tribes will only have the opportunity to participate in the shaping of the standards for tribal documents through this rulemaking. Therefore any tribe that is considering submitting the information outlined above must do so through this rulemaking process, as outlined in this NPRM.

2. Possible Alternative Treatment of United States Native Americans

DHS and DOS are also considering alternative approaches and invite comments on the following approaches:

- Make no special provision for U.S. Native Americans because they have an equal opportunity to obtain the same documents that are available to all other U.S. citizens.
- Consider broader issuance of the American Indian Card now issued to members of the federally recognized Kickapoo Tribes or a similar card.
- Accept tribal enrollment cards from tribes whose members continue traditional border crossings without any limitation on the border crossing point or points where each such tribal enrollment card is accepted.
- Accept all tribal enrollment cards from all federally recognized Native American tribes at some or all border crossing points.

DHS and DOS specifically request comments on these alternatives and suggestions for any other alternatives for U.S. Native Americans.

H. Canadian Indians

Section 289 of the INA [68] refers to the ''right'' of Native Americans born in Canada to ''pass the borders of the United States,'' provided they possess at least 50 percent of Native American blood. Under this proposed rule, Canadian members of First Nations or ''bands'' would be permitted to enter the United States at traditional border crossing points with tribal membership documents subject to the same conditions applicable to United States Native Americans. Canadian First Nations or bands who seek to have their tribal enrollment cards accepted for border crossing purposes should submit comments for the record which contain the information requested in subsection G for comparable federally recognized U.S. tribes.

As previously noted, the new Indian and Northern Affairs Canada card may also be accepted as satisfactory evidence of the citizenship and identity of registered Canadian Indians.

I. Sea Travel From Territories Subject to the Jurisdiction of the United States

As we stated in the Air Rule, for purposes of the passport requirement of section 215(c) of the INA,[69] the term ''United States'' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States. The United States, for purposes of section 215 of the INA and section 7209 of the IRTPA, includes Guam, Puerto Rico, the U.S. Virgin Islands, American Samoa, Swains Island, and the Commonwealth of the Northern Mariana Islands.[70] Because section 7209, applies only to persons traveling between the United States and foreign countries, these requirements to carry specified documents will not apply to United States citizens and nationals who travel directly between parts of the United States, as defined in section 215(c) of the INA, without touching at a foreign port or place.

J. Outer Continental Shelf Employees

In response to comments received to the ANPRM and Air/Sea NPRM, DHS and DOS are clarifying that offshore workers who work aboard Mobile Offshore Drilling Units (MODUs) attached to the United States Outer Continental Shelf (OCS), and who travel to and from MODUs, would not need to possess a passport or other designated document to re-enter the United States if they do not enter a foreign port or place. Upon return to the United States from a MODU, such an individual would not be considered an applicant for admission for inspection purposes under 8 CFR 235.1. Therefore, this individual would not need to possess a passport or other designated document when returning to the United States. However, an individual who travels to a MODU from outside of the United States and, therefore, has not been previously inspected and admitted to the United States, would be required to possess a passport and visa, if required, or other designated document when arriving at the U.S. port-of-entry.

DHS and DOS note that for immigration purposes offshore employees on MODUs underway, which are not considered attached, would not need to present a passport or other designated document for re-entry to the United States mainland or other territory if they do not enter a foreign port or place during transit. However, an individual who travels to a MODU from outside the United States OCS and, therefore, has not been previously inspected and admitted to the United States, would be required to possess a passport and visa or other designated document when arriving at the United States port-of-entry by sea.

K. International Boundary and Water Commission Employees

Alien direct and indirect employees of the International Boundary and Water Commission (IBWC) are not required to present a passport and visa when seeking admission to the United States temporarily in connection with their employment.[71] Instead, these employees usually present IBWC identification cards. The exemption is pursuant to treaty and thus not affected by IRPTA. Accordingly, there is no substantive

[68] *See* 8 U.S.C. 1359.

[69] *See* 8 U.S.C. 1185(c).

[70] *See* 8 CFR 215.1(e) and 22 CFR 50.1.

[71] Article 20 of the 1944 Treaty Between the United States and Mexico (regarding division of boundary water and the functions of International Boundary and Water Commission), TS 922, Bevan 1166, 59 Stat. 1219; 8 CFR 212.1(c)(5).

change to the rule regarding alien employees of the IBWC.

U.S. citizen direct and indirect employees of the IBWC who enter the United States from Mexico in connection with their IBWC employment would continue to be able to present an IBWC identification card.

L. Individual Cases of Passport Waivers

The passport requirement may be waived for U.S. citizens in certain individual cases on a case-by-case basis.[72] A waiver may be granted in the case of an emergency, such as individuals in need of emergency medical treatment, fire fighters responding to a call, emergency workers responding to a natural disaster, Medivac (land and air ambulance) cases, sick or injured crewmembers, and shipwreck or plane crash survivors. A waiver may also be granted in other cases of humanitarian or national interest.[73]

M. Summary of Document Requirements

The following chart summarizes the acceptable documents for sea and land arrivals from the Western Hemisphere under WHTI.

Group/population	Acceptable document(s)	Land	Ferry	Pleasure vessel	Sea (all other vessels)
All Travelers (U.S., Can., Mex., Berm.) at all sea and land POEs.	Valid Passport (and valid visa, if necessary for foreign travelers).	Yes	Yes	Yes	Yes.
U.S. Citizens at all sea and land POEs when arriving from Canada, Mexico, the Caribbean, and Bermuda.	Valid Passport card	Yes	Yes	Yes	Yes.
Trusted Traveler Members at all sea and land POEs when arriving from contiguous territory or adjacent islands.	Trusted Traveler Cards (NEXUS, FAST, SENTRI).	Yes*	Yes*	Yes*	Yes.*
U.S. Citizen Merchant Mariner on official mariner business at all sea and land POEs.	U.S. Merchant Mariners Document (MMD).	Yes	Yes	Yes	Yes.
Mexican Nationals arriving from Mexico.	Border Crossing Card (BCC).	Yes**	Yes**	Yes**	No.
Lawful Permanent Residents (LPRs) at all land and sea POE.	I–551; I–688 with proper stamp; I–327; I–571; I–512; other evidence of permanent resident status.	Yes	Yes	Yes	Yes.
U.S. Citizen Cruise Ship Passengers on round trip voyages that begin and end in the same U.S. port.	Government-issued photo ID *and* certified copy of birth certificate.	N/A	N/A	N/A	Yes—for round trip voyages that originate in U.S.
U.S. and Canadian Citizen Children Under 16 at all sea and land POEs when arriving from contiguous territory or adjacent islands.	Certified copy of birth certificate (government-issued photo ID recommended, but not or required).	Yes	Yes	Yes	Yes.
U.S. and Canadian Citizen Children—Groups of Children Under Age 19, under adult supervision with parental/guardian consent at all sea and land POEs when arriving from contiguous territory or adjacent islands.	Certified copy of birth certificate and parental/guardian consent (government-issued photo ID recommended, but not required.).	Yes	Yes	Yes	Yes.
U.S. Citizen/Alien Members of U.S. Armed Forces traveling under official orders or permit at all air, sea and land POEs.	Military ID and Official Orders.	Yes	Yes	Yes	Yes.
Members of NATO Armed Forces at all sea and land POEs.	Military ID *and* Official Orders.	Yes	Yes	Yes	Yes.

[72] *See* 22 CFR 53.2.

[73] *See* section 7209(c)(2) of IRTPA.

Group/population	Acceptable document(s)	Land	Ferry	Pleasure vessel	Sea (all other vessels)
U.S. and Mexican Kickapoo at all sea and land POEs when arriving from contiguous territory and adjacent islands.	Form I–872 American Indian Card.	Yes	Yes	Yes	Yes.

* Approved for Mexican national members traveling with passport and visa or BCC.
** In conjunction with a valid I–94 for travel outside the 25- or 75-mile geographic limits of the BCC.

VI. Section-by-Section Discussion of Proposed Amendments

Based on the discussion above, the following changes are necessary to the regulations.

8 CFR 212.0

This amendment would add a new section 212.0 that would define the terms ''adjacent islands'', ''cruise ship'', ''ferry'', ''pleasure vessel'', and ''United States'' for purposes of § 212.1 and § 235.1 of this subchapter of title 8.

8 CFR 212.1

The amendments to this section would revise paragraphs (a)(1) and (a)(2) to add a requirement that Canadians and citizens of the British Overseas Territory of Bermuda present a passport when seeking admission to the United States at sea or land ports-of-entry, except in certain enumerated circumstances. The amendment designates acceptable alternative documents for trusted traveler program (NEXUS, FAST, or SENTRI) members; children under age 16; and children under age 19 traveling in groups.

In addition, the amendments to this section would revise paragraph (c)(1) by deleting the current paragraph (c)(1)(ii), which provides a passport exception to Mexican nationals obtaining a passport at Mexican consulates in the United States. The amendment would add a new paragraph (c)(1)(ii), allowing alternative documentation to be presented by Mexican national Kickapoo holders of a Form I–872 American Indian Card.

8 CFR 235.1

The amendment to this section would revise paragraph (b) to provide that certain categories of United States citizens may present alternative documentation in lieu of a passport when they enter the United States. The revised paragraph (b) would list the acceptable documentation for each category of U.S. citizen when they enter the United States at sea or land ports-of-entry: a passport; a passport card; a trusted traveler card (NEXUS, FAST, or SENTRI); an unexpired MMD for merchant mariners traveling in conjunction with official maritime business.

The amendments would designate acceptable alternative documents to the passport for: U.S. citizen members of the Armed Forces of the United States; cruise ship passengers on cruises that originate and return to the United States; children under age 16; children under to age 19 traveling in groups; and U.S. citizen direct and indirect employees of the International Boundary and Water Commission traveling in connection with Commission employment with proper identification.

The amendments to this section also remove the current paragraph (d) and add a new paragraph (d), which provides that the Secretary of Homeland Security may designate certain documents or combinations of documents as sufficient to denote identity and citizenship for certain approved pilot programs effective upon publishing notice in the **Federal Register**.

22 CFR Part 41

The amendments to this part would add definitions in a new section numbered 41.0, delete section 41.1(b) and revise sections 41.2(a), (b), and (g). These sections currently provide passport exceptions for Canadian citizens and citizens of the British Overseas Territory of Bermuda. In the amendments, new language is proposed that would require a passport when seeking admission to the United States at sea or land ports-of-entry from contiguous territory within the Western Hemisphere, except in certain enumerated circumstances. The amendments propose the deletion of section 41.2(b) and the reservation of that subsection for future rulemaking. The visa exception for certain Native Americans born in Canada is moved to revised section 41.2(a). As outlined in the preamble, the proposed rule would consider designation of a satisfactory alternative document for Canadian Native Americans belonging to a First Nation, tribe, or band whose members continue traditional border crossings. The proposed amendment would add passport exceptions for trusted traveler program (NEXUS, FAST, or SENTRI) members; children under age 16; and children under age 19 traveling in groups.

The amendments to 22 CFR 41.2(g) would eliminate the passport exceptions for Mexican nationals obtaining a passport at Mexican consulates in the United States and would add a passport exception for Mexican national Kickapoo holders of a Form I–872 American Indian Card.

22 CFR 53.2

The proposed amendments to this section would add additional categories of United States citizens who may present alternative documentation in lieu of a passport when traveling by land and sea. Specifically, the amendments would add passport exceptions for: U.S. citizen members of the Armed Forces of the United States; children under age 16; and children under age 19 traveling in groups.

VII. Regulatory Analyses

A. Executive Order 12866: Regulatory Planning and Review

This rule is considered to be an economically significant regulatory action under Executive Order 12866 because it may result in the expenditure of over $100 million in any one year. Accordingly, this proposed rule has been reviewed by the Office of Management and Budget (OMB). The following summary presents the costs and benefits of the proposed rule plus a range of alternatives considered. (The ''Regulatory Assessment'' can be found in the docket for this rulemaking: *http://www.regulations.gov;* see also *http://www.cbp.gov*). There are two documents: one document examines the impacts of WHTI in the cruise ship environment; the second document examines the impacts on border crossings by land, ferry, and pleasure vessels. Comments regarding both of the analyses and the underlying assumptions are encouraged and may be submitted by any of the methods described under the **ADDRESSES** section of this document.

The regulatory assessments summarized here consider U.S. travelers entering the United States via land

ports-of-entry on the northern and southern borders (including arrivals by ferry and pleasure boat) as well as certain cruise ship passengers. The impacts to the public due to the requirement to obtain the necessary documentation for air travel were considered in a previous analysis examining the implementation of WHTI in the air environment (the Regulatory Assessment for the November 2006 Final Rule for implementation of WHTI in the air environment can be found at *http://www.regulations.gov*; document number USCBP–2006–0097–0108). If travelers have already purchased a passport for travel in the air environment, they would not need to purchase a passport for travel in the land or sea environments. We do not attempt to estimate with any precision the number of travelers who travel in more than one environment, and, therefore, may have already obtained a passport due to the air rule and will not incur any burden due to this rulemaking. To the extent that the three traveling populations overlap in the air, land, and sea environments, we have potentially overestimated the direct costs of the proposed rule presented here.

The period of analysis is 2005–2014 (10 years). We calculate costs beginning in 2005 because although the full suite of WHTI rules is not yet in place, DOS has already seen a dramatic increase in passport applications since the WHTI plan was announced in early 2005. We account for those passports obtained prior to full implementation to more accurately estimate the economic impacts of the rule as well as to incorporate the fairly sizable percentage of travelers that currently hold passports in anticipation of the new requirements.

In addition to the traditional passport book, the Secretary of Homeland Security is designating the passport card, CBP trusted traveler cards (NEXUS, SENTRI, FAST), the Merchant Mariner Document, and specified documents from a DHS-approved WHTI pilot program as generally acceptable travel documents for U.S. citizens to enter the United States at land and sea ports-of-entry. Because DHS and DOS believe that children under the age of 16 pose a low security threat in the sea and land environments, U.S. children may present a certified copy of a birth certificate in lieu of the designated documents. Additionally, DHS and DOS have determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment. To meet the cruise exemptions, a passenger must board the cruise ship at a port or place within the United States and the passenger must return on the same ship to the same U.S. port or place from where he or she originally departed.

For the summary of the analysis presented here, CBP assumes that only the passport, trusted traveler cards, and the MMD are available in the first years of the analysis (recalling that the period of analysis begins in 2005 when passport cards and pilot-program documents were not yet available). CBP also assumes that most children under 16 will not obtain a passport or passport card but will instead use alternative documentation (birth certificates). The estimates reflect that CBP trusted traveler cards would be accepted at land and sea ports-of-entry. Finally, CBP assumes that most of the U.S. cruise passenger population will present alternative documentation (government-issued photo ID and certified copy of birth certificate) because they meet the waiver criteria proposed.

To estimate the costs of the rule, we follow this general analytical framework—

- Determine the number of U.S. travelers that will be covered.
- Determine how many already hold acceptable documents.
- Determine how many will opt to obtain passports or passport cards, and estimate their lost ''consumer surplus.''
- Determine how many will forgo travel instead of obtaining passports or passport cards, and estimate their lost ''consumer surplus.''

We estimate covered land travelers using multiple sources, including: Crossing data from the Bureau of Transportation Statistics (BTS, 2004 data), a study of passport demand conducted by DOS,[74] and a host of regional studies conducted by State and local governments and academic research centers.

Other than the DOS passport demand study, no source exists to our knowledge that has estimated the total number of land entrants nationwide. Researchers almost always count or estimate crossings, not crossers and focus on a region or locality, not an entire border. Building on the work conducted for the DOS passport study, we distilled approximately 300 million annual crossings into the number of frequent (defined as at least once a year), infrequent (once every 3 years), and rare (once every 10 years) ''unique U.S. adult travelers.'' We then estimate the number of travelers without the documentation this rulemaking proposes to be required and estimate the cost to obtain such documents. The fee for the passport varies depending on the age of the applicant, whether or not the applicant is renewing a passport, whether or not the applicant is requesting expedited service, and whether or not the applicant obtains a passport or a passport card. Additionally, we consider the amount of time required to obtain the document and the value of that time. To estimate the value of an applicant's time in the land environment, we conducted new research that builds on existing estimates from the Department of Transportation.[75] To estimate the value of an applicant's time in the sea environment, we use estimates for air travelers' value of time (recall that air and sea travelers share very similar characteristics) from the Federal Aviation Administration (FAA, 2005 data). We use the 2005 DOS passport demand study and CBP statistics on the trusted traveler programs to estimate how many unique U.S. travelers already hold acceptable documents.

We estimate covered cruise passengers using data from the Maritime Administration (MARAD, 2006 data) and itineraries available on the cruise line Web sites (for 2007). The overwhelming majority of Western Hemisphere cruise passengers—92 percent—would fall under the proposed cruise-passenger waiver. Passengers not covered by the waiver fall into four trade markets—Alaska (72 percent), Trans-Panama Canal (16 percent), U.S. Pacific Coast (8 percent), and Canada/New England (4 percent). We estimate that these passengers will have to obtain a passport rather than one of the other acceptable documents because these travelers will likely have an international flight as part of their cruise vacation, and only the passport is a globally accepted travel document. We use a comment to the August 2006 NPRM for implementation of WHTI in the air and sea environments (71 FR 46155) from the International Council of Cruise Lines to estimate how many unique U.S. cruise travelers already hold acceptable documentation; however, we will continue to study this issue.

[74] A Study to Determine the Inaugural and Annual Demand for U.S. Passports by U.S. Citizens Living in and Traveling to Canada, Mexico and the Caribbean (U.S. State Department, Prepared by Bearing Point Oct. 2005).

[75] U.S. Department of Transportation, Departmental Guidance for the Valuation of Travel Time in Economic Analysis (Memorandum from F.E. Kruesi) (April 1997); and U.S. Department of Transportation. Revised Departmental Guidance, Valuation of Travel Time in Economic Analysis (Memorandum from E.H. Frankel) (February 2003).

Based on CBP's analysis, approximately 3.2 million U.S. travelers are affected by the proposed rule in the first year of analysis (2005). Of these, approximately 2.9 million enter through a land-border crossing (via privately owned vehicle, commercial truck, bus, train, on foot) and ferry and recreational boat landing sites. An estimated 0.3 million are cruise passengers that do not meet the waiver criteria in the NPRM (note that over 90 percent of U.S. cruise passengers are expected to meet the proposed waiver criteria). CBP estimates that the traveling public acquired approximately 3.2 million passports in the first year of the analysis, in the anticipation of the passport requirements, at a direct cost of $417 million. These estimates are summarized in Table A.

TABLE A.—FIRST-YEAR ESTIMATES (2005) FOR U.S. ADULT TRAVELERS

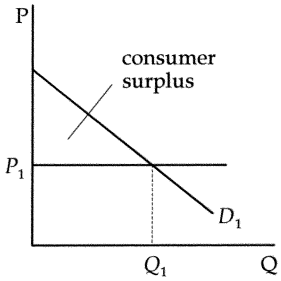
[All estimates in millions]

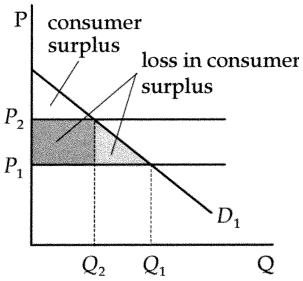
Affected Travelers:	
Land/ferry/pleasure boat crossers	2.9
Cruise passengers	0.3
Total	3.2
Passports demanded:	
Land/ferry/pleasure boat crossers	2.7
Cruise passengers	0.3
Total	3.0
Total cost of passports:	
Land-border crossers	$370.7
Cruise passengers	45.8
Total	$416.5

To estimate potential forgone travel in the land environment, we derive traveler demand curves for access to Mexico and Canada based on survey responses collected in the DOS passport study. We estimate that when the rule is implemented, the number of unique U.S. travelers to Mexico who are frequent travelers decreases by 6.5 percent, the unique U.S. travelers who are infrequent travelers decreases by 7.3 percent, and the unique U.S. travelers who are rare travelers decreases by 17.8 percent. The number of U.S. travelers visiting Canada who are frequent travelers decreases by 3.7 percent, the unique U.S. travelers who are infrequent travelers decreases by 10.7 percent, and the unique U.S. travelers who are rare travelers decreases by 10.9 percent. These estimates account for the use of a passport card for those travelers who choose to obtain one. For unique travelers deciding to forgo future visits, their implied value for access to these countries is less than the cost of obtaining a passport card.

To estimate potential forgone travel in the relatively small number of cruises affected in the sea environment, we use a study from Coleman, Meyer, and Scheffman (2003), which described the Federal Trade Commission investigation into potential impacts of two cruise-line mergers and estimated a demand elasticity for cruise travel. We estimate that the number of travelers decreases by 24.4 percent, 13.4 percent, 7.0 percent, and 5.6 percent for travelers on short (1 to 5 nights), medium (6 to 8 nights), long (9 to 17 nights), and very long cruises (over 17 nights) once the rule is implemented.

We then estimate total losses in consumer surplus. The first figure below represents U.S. travelers' willingness to pay (D_1) for access to Mexico and Canada. At price P_1, the number of U.S. travelers without passports currently making trips to these countries is represented by Q_1. As seen in the second figure, if the government requires travelers to obtain a passport or passport card in order to take trips to Mexico and Canada, the price of access increases by the cost of obtaining the new document, to P_2. As a result, the number of travelers making trips to these countries decreases to Q_2.





All travelers in this figure experience a loss in consumer surplus; the size of the surplus loss depends on their willingness to pay for access to these countries. The lost surplus experienced by travelers whose willingness to pay exceeds P_2 is shown in the dark gray rectangle, and is calculated as $(P_2 - P_1) * Q_2$. In other words, the lost consumer surplus of travelers willing to buy the passport or passport card is simply the cost $(P_2 - P_1)$ of the passport or passport card. Travelers whose willingness to pay for access to these countries is less than the price of the passport or passport card will experience a loss equal to the area of the light gray triangle, calculated as $\frac{1}{2} * (Q_1 - Q_2) * (P_2 - P_1)$.

Costs of the rule (expressed as losses in consumer surplus) are summed by year of the analysis. We then add the government costs of implementing WHTI over the period of analysis. Ten-year costs are $3.3 billion at the 3 percent discount rate and $2.8 billion at 7 percent, as shown in Table B. Annualized costs are $384 million at 3 percent and $406 million at 7 percent.

TABLE B.—TOTAL COSTS FOR U.S. TRAVELERS OVER THE PERIOD OF ANALYSIS

[2005–2014, in $Millions]

Year	Cost	3% discount rate	7% discount rate
2005	$436	$436	$435
2006	173	168	163

TABLE B.—TOTAL COSTS FOR U.S. TRAVELERS OVER THE PERIOD OF ANALYSIS—Continued

[2005–2014, in $Millions]

Year	Cost	3% discount rate	7% discount rate
2007	405	381	357
2008	603	552	498
2009	476	423	368
2010	386	333	280
2011	297	249	202
2012	291	236	184
2013	276	218	163
2014	361	277	198
Total		$3,272	$2,848

The primary analysis for land summarized here assumes a constant number of border crossers over the period of analysis; in the complete Regulatory Assessment, we also consider scenarios where the number of border crossers both increases and decreases over the period of analysis. It is worth noting that border crossings have been mostly decreasing at both the northern and southern borders since 1999. The analysis for sea travel assumes a 6 percent annual increase in passenger counts over the period of analysis as the Western Hemisphere cruise industry continues to experience growth.

Finally, we conduct a formal uncertainty (Monte Carlo) analysis to test our assumptions in the land environment. We first conducted a preliminary sensitivity analysis to identify the variables that have the most significant effect on consumer welfare losses. We found that the frequency of travel (frequent, infrequent, rare), crossings at multiple ports-of-entry, future annual affected individuals, and the amount of time spent applying for documentation were the most sensitive variables in the analysis. The variables that did not appear to have an impact on consumer losses were the estimated number of crossings by Lawful Permanent Residents (LPRs) or Native Americans and estimated future timing with which travelers will apply for acceptable documentation. After we conducted our formal Monte Carlo we found that our most sensitive assumptions are: the projected crossing growth rate, the frequency of travel, and the number of new unique travelers that enter the population annually. The results of the Monte Carlo analysis are presented in Table C. Note that these estimates do not include the government costs of implementation, estimated at an annualized cost of $100 million (3 percent discount rate, 10 years), because we have no basis for assigning uncertainty parameters for government costs.

TABLE C.—SUMMARY OF KEY CHARACTERISTICS OF PROBABILITY DISTRIBUTIONS OF TOTAL WELFARE LOSSES IN THE LAND ENVIRONMENT (2005–2014, IN $BILLIONS), 3 PERCENT DISCOUNT RATE

Statistic	Value
Trials	10,000
Mean	$2.1
Median	$2.1
Std Dev	$0.5
Variance	2.8E+08
5th Percentile	$1.4
95th Percentile	$3.1
Point Estimate	$2.2

We then consider the secondary impacts of forgone travel in the land and sea environments. Forgone travel will result in gains and losses in the United States, Canada, and Mexico. For this analysis, we made the simplifying assumption that if U.S. citizens forgo travel to Canada and Mexico, their expenditures that would have been spent outside the country now remain here. In this case, industries receiving the diverted expenditure in the United States experience a gain, while the travel and related industries in Canada and Mexico suffer a loss. Conversely, if Canadian and Mexican citizens forgo travel to the United States, their potential expenditures remain abroad—a loss for the travel and related industries in the U.S., but a gain to Canada and Mexico. Please note that ''gains'' and ''losses'' in this analysis cannot readily be compared to the costs and benefits of the rulemaking, since they represent primarily transfers in and out of the U.S. economy.

For cruise passengers, we have only rough estimates of where U.S. passengers come from, how they travel to and from the ports where they embark, where they go, and the activities they engage in while cruising. We know even less about how they will alter their behavior if they do, in fact, forgo obtaining a passport. Ideally, we could model the indirect impacts of the rule with an input-output model (either static or dynamic) that could give us a reasonable estimation of the level the impact, the sectors affected, and regional impacts. Unfortunately, given the dearth of data, the assumptions we had to make, the small numbers of travelers who are estimated to forgo travel, and the fact that much of their travel experience occurs outside the United States, using such a model would not likely produce meaningful results. We recognize, however, that multiple industries could be indirectly affected by forgone cruise travel, including (but not limited to): Cruise lines; cruise terminals and their support services; air carriers and their support services; travel agents; traveler accommodations; dining services; retail shopping; tour operators; scenic and sightseeing transportation; hired transportation (taxis, buses); and arts, entertainment, and recreation.

According to the MARAD dataset used for the sea analysis, there are 17 cruise lines operating in the Western Hemisphere, 9 of which are currently offering cruises that would be indirectly affected by a passport requirement. While we expect that cruise lines will be indirectly affected by the rule, how they will be affected depends on their itineraries, the length of their cruises, their current capacity, and future expansion, as well as by travelers' decisions. We expect short cruises (1 to 5 nights) to be most notably affected because the passport represents a greater percentage of the overall trip cost, passengers on these cruises are less likely to already hold a passport, and travel plans for these cruises are frequently made closer to voyage time. Longer cruises are less likely to be affected because these trips are planned

well in advance, passengers on these voyages are more likely to already possess a passport, and the passport cost is a smaller fraction of the total trip cost.

Because border-crossing activity is predominantly a localized phenomenon, and the activities engaged in while visiting the United States are well documented in existing studies, we can explore the potential impacts of forgone travel more quantitatively in the land environment. Using various studies on average spending per trip in the United States, Canada, and Mexico, we estimate the net results of changes in expenditure flows in 2008 (the presumed first year the requirements will be implemented) and subsequent years. Because Mexican crossers already possess acceptable documentation to enter the United States (passport or BCC), we do not estimate that Mexican travelers will forgo travel to the United States. The summary of expenditure flows is presented in Table D.

TABLE D.—NET EXPENDITURE FLOWS IN NORTH AMERICA, 2008 AND SUBSEQUENT YEARS

[$Millions]

2008:	
Spending by U.S. travelers who forgo travel to Mexico	+$440
Spending by Mexican travelers who forgo travel to the United States	0
Spending by U.S. travelers who forgo travel to Canada	+170
Spending by Canadian travelers who forgo travel to United States	−200
Net	$410
Subsequent years (annual):	
Spending by U.S. travelers who forgo travel to Mexico	+$310
Spending by Mexican travelers who forgo travel to United States	0
Spending by U.S. travelers who forgo travel to Canada	+120
Spending by Canadian travelers who forgo travel to United States	−200
Net	$230

To examine these impacts more locally, we conduct eight case studies using a commonly applied input-output model (IMPLAN), which examines regional changes in economic activity given an external stimulus affecting those activities. In all our case studies but one, forgone border crossings attributable to WHTI have a less-than-1-percent impact on the regional economy both in terms of output and employment. The results of these eight case studies are presented in Table E.

TABLE E.—MODELED DISTRIBUTIONAL EFFECTS IN EIGHT CASE STUDIES

Study area (counties)	State	Change as % of total . . .	
		Output	Employment
San Diego	California	+0.03	+0.03
Pima, Santa Cruz	Arizona	+0.03	+0.03
Hidalgo, Cameron	Texas	+0.22	+0.19
Presidio	Texas	+0.55	+0.62
Niagara, Erie	New York	−0.06	−0.12
Washington	Maine	−0.61	−1.41
Macomb, Wayne, Oakland	Michigan	−0.01	−0.01
Whatcom	Washington	−0.21	−0.53

As shown, we anticipate very small net positive changes in the southern-border case studies because Mexican travelers to the United States use existing documentation, and their travel is not affected. The net change in regional output and employment is negative (though still very small) in the northern-border case studies because Canadian travelers forgoing trips outnumber U.S. travelers staying in the United States and because Canadian travelers to the United States generally spend more per trip than U.S. travelers to Canada. On both borders, those U.S. travelers that forgo travel do not necessarily spend the money they would have spent outside the United States in the case-study region; they may spend it outside the region, and thus outside the model.

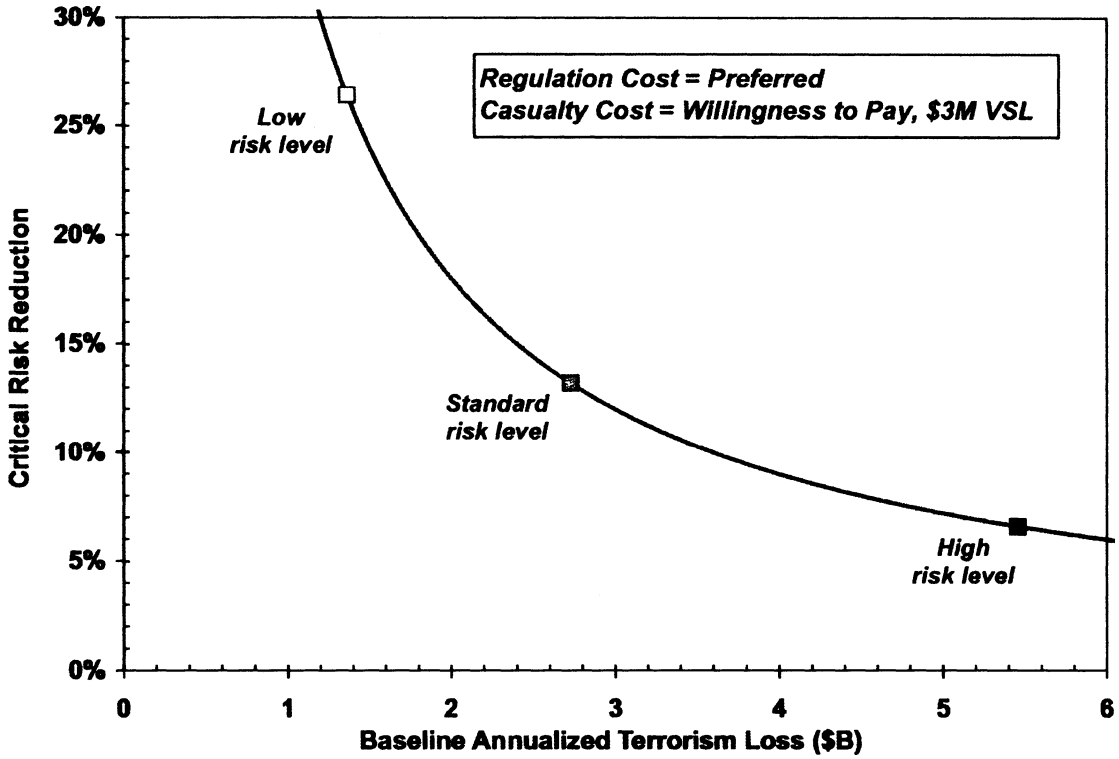
As this is one of the first comprehensive attempts by DHS to develop a model to estimate localized cross-border economic impacts due to a rulemaking, we explicitly seek comment on this proposed analysis. Specifically, we may not have captured all of the changes in local expenditures that may be attributable to the proposed rulemaking. For example, U.S. citizens purchasing documentation required for travel to Canada or Mexico will not have that money available for other consumption. Similarly, Canadian travelers may spend less in the United States on travel to compensate for the costs of acquiring documentation.

Finally, because the benefits of homeland security regulations cannot readily be quantified using traditional analytical methods, we conduct a ''breakeven analysis'' to determine what the reduction in risk would have to be given the estimated costs of the implementation of WHTI (land environment only). Using the Risk Management Solutions U.S. Terrorism Risk Model (RMS model), we estimated the critical risk reduction that would have to occur in order for the costs of the rule to equal the benefits—or break even.

The RMS model has been developed for use by the insurance industry and provides a comprehensive assessment of the overall terrorism risk from both foreign and domestic terrorist

organizations. The RMS model generates a probabilistic estimate of the overall terrorism risk from loss estimates for dozens of types of potential attacks against several thousand potential targets of terrorism across the United States. For each attack mode-target pair (constituting an individual scenario) the model accounts for the probability that a successful attack will occur and the consequences of the attack. RMS derives attack probabilities from a semi-annual structured expert elicitation process focusing on terrorists' intentions and capabilities. It bases scenario consequences on physical modeling of attack phenomena and casts target characteristics in terms of property damage and casualties of interest to insurers. Specifically, property damages include costs of damaged buildings, loss of building contents, and loss from business interruption associated with property to which law enforcement prohibits entry immediately following a terrorist attack. RMS classifies casualties based on injury-severity categories used by the worker compensation insurance industry.

The results in the figure below are for the cost estimates presented above and casualty costs based on willingness-to-pay estimates and a $3 million value of a statistical life (VSL). These results show that a decrease in perceived risk leads to a smaller annualized loss and a greater critical risk reduction, and an increase in perceived risk leads to a greater annualized loss and a smaller critical risk reduction. The total range in critical risk reduction is a factor of four and ranges from 6.6 to 26 percent, with a critical risk reduction of 13 percent required for the standard risk scenario.



The critical risk reduction for all risk levels considered and multiple injury and fatality estimates are presented in Table F. As shown, critical risk reduction ranges from 3.5 percent (high risk, quality-of-life, VSL $6 million) to 35 percent (low risk, cost-of-injury, no VSL). Note that because the annualized costs of the rulemaking are very similar at the 7 percent discount rate, the critical risk reduction estimates presented in Table F would not change appreciably at the 7 percent rate.

TABLE F.—CRITICAL RISK REDUCTION FOR THE PROPOSED RULE

[Standard risk scenario, 3 percent discount rate]

	Critical risk reduction (%)		
	Low	Standard	High
Cost of injury (fatality = $1.1m)	35	17	8.7
Willingness to pay (VSL = $3m)	26	13	6.6
Quality of life (VSL = $3m)	22	11	5.6
Willingness to pay (VSL = $6m)	18	8.8	4.4
Quality of life (VSL = $6m)	14	6.9	3.5

In addition to the methodology used to value casualties, several other key factors affect the critical risk reduction estimate. These factors include: The uncertainty in the risk estimate produced by the RMS model; the

potential for other types of baseline losses not captured in the RMS model; and the size of other non-quantified direct and ancillary benefits of the rule. The RMS model likely underestimates total baseline terrorism loss because it only reflects the direct, insurable costs of terrorism. It does not include any indirect losses that would result from continued change in consumption patterns or preferences or that would result from propagating consequences of interdependent infrastructure systems. For example, the RMS model does not capture the economic disruption of a terrorism event beyond the immediate insured losses. Furthermore, the model also excludes non-worker casualty losses and losses associated with government buildings and employees. Finally, the model may not capture less-tangible components of losses that the public wishes to avoid, such as the fear and anxiety associated with experiencing a terrorist attack. Omission of these losses will cause us to overstate the necessary risk reductions.

Alternatives to the Proposed Rule

CBP considered the following alternatives to the NPRM—

1. Require all U.S. travelers (including children) to present a valid passport book upon return to the United States from countries in the Western Hemisphere.

2. Require all U.S. travelers (including children) to present a valid passport book, passport card, CBP trusted traveler document, MMD, or a specified document from a DHS-approved WHTI pilot program upon return to the United States from countries in the Western Hemisphere.

Calculations of costs for the alternatives can be found in the two Regulatory Assessments for the NPRM.

Alternative 1: Require All U.S. Travelers (Including Children) to Present a Valid Passport Book

This alternative would require all U.S. citizens, including minors under 16 and all cruise passengers, to present a valid passport book. The passport card, CBP trusted traveler documents, the MMD, and documents from DHS-approved pilot programs would not be accepted. This would be a more stringent alternative, and it was rejected as potentially too costly and burdensome for low-risk populations of travelers. While the traditional passport book will always be an acceptable document for a U.S. citizen to present upon entry to the United States, DHS and DOS believe that the cost of a traditional passport book may be too burdensome for some U.S. citizens, particularly those living in border communities where land-border crossings are an integral part of everyday life. As stated previously, DHS and DOS believe that children under the age of 16 pose a low security threat in the land and sea environments and will be permitted to present a certified copy of a birth certificate when arriving in the United States at all land and sea ports-of-entry from within the Western Hemisphere. Additionally, DHS and CBP have developed an alternative procedure for children traveling in groups. DHS and DOS have also determined that exempting certain cruise passengers from a passport requirement is the best approach to balance security and travel efficiency considerations in the cruise ship environment.

Alternative 2: Require All U.S. Ttravelers (Including All Cchildren) to Present a Valid Passport Book, Passport Card, or Other Approved Document

The second alternative is similar to the proposed rule, though it includes children and does not exempt cruise passengers. It is again more stringent than the proposed rule. While this alternative incorporates the low-cost passport card and CBP trusted traveler cards as acceptable travel documents, this alternative was ultimately rejected as potentially too costly and burdensome for low-risk populations of travelers (certain cruise passengers and minors under 16).

Table G presents a comparison of the costs of the proposed rule and the alternatives considered.

TABLE G.—COMPARISON OF REGULATORY ALTERNATIVES

[In $Millions]

Alternative	10-year cost (7%)	Cost compared to proposed rule	Reason rejected
Proposed rule	$2,848	n/a	
1. Passport book only for all U.S. travelers	5,254	+$2,406	Cost of a passport considered too high for citizens in border communities; low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened.
2. Passport book, passport card, and other designated documents for all U.S. travelers.	5,448	+2,600	Low-risk traveling populations (certain cruise passengers, children under 16) unduly burdened.

It is important to note that for scenarios where the passport card is acceptable (the proposed rule and Alternative 2), the estimates include government implementation costs for CBP to install the appropriate technology at land ports-of-entry to read RFID-enabled passport cards and the next generation of CBP trusted traveler documents. These technology deployment costs are estimated to be substantial, particularly in the early phases of implementation. As a result, the alternatives allowing more documents than just the passport cost more over 10 years than alternatives allowing only the passport, which can be processed with existing readers that scan the passport's MRZ. Providing waivers for minors and most cruise passengers results in notable cost savings over 10 years (about $2.5 billion depending on the documents considered).

The passport card is designed specifically to address the needs and travel patterns of those who live in land-border communities and frequently cross the border in their day-to-day activities. The passport card is intended not only to enhance security efforts for international land and sea travel between the U.S. and Canada, Mexico, the Caribbean, or Bermuda, but is also intended to assist DHS in expediting the movement of legitimate travel within the Western Hemisphere.

In particular, the land border presents complex operational challenges, in that a tremendous amount of traffic must be processed in a short amount of time. There are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered

crossing at the land border ports-of-entry are frequent crossers. However, CBP does not receive advance information on these land border travelers. For these reasons, the Department of State, in consultation with DHS, agreed to develop a technology-based solution.

The data printed on the face of the passport card will be the same as that currently shown on the data page of the U.S. passport—bearer's facial image, full name, date and place of birth, passport card number, dates of validity and issuing authority. The reverse side of the passport card will carry a machine-readable zone (MRZ) and notation that the card is valid only for international land and sea travel between the U.S. and Canada, Mexico, the Caribbean, or Bermuda. In addition, each passport card will utilize Radio Frequency (RF) technology to store and transmit only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. This reference number will be assigned by Department of State at the time the passport card is issued and no personal or biographic information will be stored or transmitted using Radio Frequency (RF) technology. Presenting the passport card will allow the linked information to be retrieved from the secure DHS database to allow the CBP officer to compare the citizen presenting him or herself for entry into the United States with the original issuance record to ensure that it is the same person. This database could include additional information, for example, information about the bearer's membership in one of CBP's trusted traveler programs (NEXUS, SENTRI, or FAST).

After reviewing a number of options to provide the CBP officer with appropriate personal information to facilitate the processing of travelers, DOS and DHS believe that the most promising technology is RF technology. This technology utilizes a passive chip deriving its power from the reader that communicates with it. We focused on RF vicinity read (GEN 2) technology.

RF vicinity read technology conforms to International Standards Organization (ISO) 18000 6–C specifications. Vicinity read technology would allow the passport card data to be read at a distance of up to 20 feet from the reader. The vicinity read chip would contain only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. In addition to having commercial applications, vicinity-read technology is currently being used in a number of DHS programs. Operationally, it has similarities to CBP land border international trusted traveler programs, and DHS's pilot electronic I–94 program currently in place at several land border crossings in that it will only store and transmit a unique reference number and no personal or biographic information. Vicinity read technology is similar to that used in highway toll systems throughout the U.S. From an operational sense, this technology would allow passengers approaching a land crossing in vehicles to present the passport card to the reader easily from within the vehicle and these readers could process information from up to eight cards at one time. In addition, the use of vicinity technology would provide information to border security personnel further in advance of a traveler's arrival at an inspection booth, facilitate a faster processing of individuals, and provide more opportunities to leverage existing technologies.

DHS selected RF vicinity read technology for its border management system. To ensure compatibility and interoperability with the DHS border management system, and to secure significant travel facilitation advantages, DOS proposed to produce the passport card utilizing RF vicinity read technology (see 71 FR 60928 for DOS's proposed rule, which contains a more detailed discussion of the advantages and disadvantages of different technology choices). The selection of vicinity read technology for the passport card was made in an effort to ensure a seamless operational environment with DHS, and provide the infrastructure support to strengthen our national security at U.S. land borders. DOS proposed to produce the card and deliver them with a thin protective sleeve, designed to protect the card from unauthorized access. The card could be stored in the sleeve and removed only when needed.

In addition to the State Department's proposed rule referenced above, please see the DHS Land border analysis document for a more detailed discussion of both the deployment and other costs of the proposed form of the passport card, and the advantages to the border management system provided by the RF vicinity read technology.

Accounting Statement

As required by OMB Circular A–4, CBP has prepared an accounting statement showing the classification of the expenditures associated with this rule. The table below provides an estimate of the dollar amount of these costs and benefits, expressed in 2005 dollars, at 7 percent and 3 percent discount rates. We estimate that the cost of this rule will be approximately $406 million annualized (7 percent discount rate) and approximately $384 million annualized (3 percent discount rate). Non-quantified benefits are enhanced security and efficiency.

ACCOUNTING STATEMENT: CLASSIFICATION OF EXPENDITURES, 2005—2014

[2005 dollars]

	3% Discount rate	7% Discount rate
Costs:		
Annualized monetized costs	$384 million	$406 million.
Annualized quantified, but un-monetized costs.	None	None.
Qualitative (un-quantified) costs	Indirect costs to the travel and tourism industry.	Indirect costs to the travel and tourism industry.
Benefits:		
Annualized monetized benefits	None quantified	None quantified.
Annualized, quantified, but un-monetized benefits.	None quantified	None quantified.
Qualitative (un-quantified) benefits	Enhanced security and efficiency	Enhanced security and efficiency.

B. Regulatory Flexibility Act

CBP has prepared this section to examine the impacts of the proposed rule on small entities as required by the Regulatory Flexibility Act (RFA).[76] A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

When considering the impacts on small entities for the purpose of complying with the RFA, CBP consulted the Small Business Administration's guidance document for conducting regulatory flexibility analysis.[77] Per this guidance, a regulatory flexibility analysis is required when an agency determines that the rule will have a significant economic impact on a substantial number of small entities that are *subject to the requirements of the rule*.[78] This guidance document also includes a good discussion describing how direct and indirect costs of a regulation are considered differently for the purposes of the RFA. CBP does not believe that small entities are subject to the requirements of the proposed rule; individuals are subject to the requirements, and individuals are not considered small entities. To wit, ''The courts have held that the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates them.'' [79]

As described in the Regulatory Assessment for this rulemaking, CBP could not quantify the indirect impacts of the proposed rule with any degree of certainty; it instead focused the analysis on the direct costs to individuals recognizing that some small entities will face indirect impacts.

Some of the small entities indirectly affected will be foreign owned and will be located outside the United States. Additionally, reductions in international travel that result from the proposed rule could lead to gains for domestic industries. Most travelers are expected to eventually obtain passports and continue traveling. Consequently, indirect effects are expected to be spread over wide swaths of domestic and foreign economies.

Small businesses may be indirectly affected by the proposed rule if international travelers forego travel to affected Western Hemisphere countries. These industry sectors may include (but are not limited to):

—Manufacturing
—Wholesale trade
—Retail trade
—Transportation (including water, air, truck, bus, and rail)
—Real estate
—Arts, entertainment, and recreation
—Accommodation and food services

Because this rule does not directly regulate small entities, we do not believe that this rule has a significant economic impact on a substantial number of small entities. The exception could be certain ''sole proprietors'' who could be considered small businesses and could be directly affected by the rule if their occupations required travel within the Western Hemisphere where a passport was not previously required. The cost to such businesses would be only $128 for a first-time passport applicant, or $195 if expedited service were requested, and would only be incurred if the individual needed a passport. We believe such an expense would not rise to the level of being a ''significant economic impact.'' We welcome comments on our assumptions. The most helpful comments are those that can provide specific information or examples of a direct impact on small entities. If we do not receive comments that demonstrate that the rule causes small entities to incur direct costs, we may certify that this action does not have a significant economic impact on a substantial number of small entities during the final rule.

The complete analysis of impacts to small entities for this proposed rulemaking is available on the CBP Web site at: *http://www.regulations.gov;* see also *http://www.cbp.gov.* Comments regarding the analysis and the underlying assumptions are encouraged and may be submitted by any of the methods described under the **ADDRESSES** section of this document.

C. Executive Order 13132: Federalism

Executive Order 13132 requires DHS and DOS to develop a process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' Policies that have federalism implications are defined in the Executive Order to include rules that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' DHS and DOS have analyzed the proposed rule in accordance with the principles and criteria in the Executive Order and have determined that it does not have federalism implications or a substantial direct effect on the States. The proposed rule requires U.S. citizens and nonimmigrant aliens from Canada, Bermuda and Mexico entering the United States by land or by sea from Western Hemisphere countries to present a valid passport or other identified alternative document. States do not conduct activities with which this rule would interfere. For these reasons, this proposed rule would not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

D. Unfunded Mandates Reform Act Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the UMRA, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the UMRA is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the UMRA, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This proposal would not impose a significant cost or uniquely affect small governments. The proposal does have an effect on the private sector of $100 million or more in any one year. This

[76] *See* 5 U.S.C. 601–612.

[77] *See* Small Business Administration, Office of Advocacy, *A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act,* May 2003.

[78] *See id.* at 69.

[79] *See id.* at 20.

impact is discussed under the Executive Order 12866 discussion.

E. National Environmental Policy Act of 1969

DHS and CBP, in consultation with DOS, the Environmental Protection Agency and the General Services Administration have been reviewing the potential environmental and other impacts of this proposed rule in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and DHS Management Directive 5100.1, *Environmental Planning Program of April 19, 2006.* A programmatic environmental assessment (PEA) is being prepared that examines, among other things, potential alternatives regarding implementation of the proposed rule at the various land and sea ports of entry and what, if any, environmental impacts may result from the proposed rule and its implementation. The PEA will serve as the basis for the determination whether the proposed rule and its implementation will have a significant impact on the quality of the human environment such that it will require further analysis under NEPA.

A Notice of Availability will be published in the **Federal Register**, and the PEA will be available for viewing and comments on *http://www.regulations.gov.* The Notice of Availability will also be published in newspapers, and copies placed in public libraries, in certain border areas. Additionally, copies of the PEA will be posted on the CBP Web site at *http://www.cbp.gov.* The Notice of Availability will provide details on how the public may provide comments on the PEA. In addition, copies may be obtained by writing to: U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.4C, Attn: WHTI Environmental Assessment, Washington, DC 20229.

F. Paperwork Reduction Act

1. Passports/Passport Cards

The collection of information requirement for passports is contained in 22 CFR 51.20 and 51.21. The required information is necessary for DOS Passport Services to issue a United States passport in the exercise of authorities granted to the Secretary of State in 22 U.S.C. Section 211a *et seq.* and Executive Order 11295 (August 5, 1966) for the issuance of passports to United States citizens and non-citizen nationals. The issuance of U.S. passports requires the determination of identity and nationality with reference to the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. sections 1401–1504), the Fourteenth Amendment to the Constitution of the United States, and other applicable treaties and laws. The primary purpose for soliciting the information is to establish nationality, identity, and entitlement to the issuance of a United States passport or related service and to properly administer and enforce the laws pertaining to issuance thereof.

There are currently two OMB-approved application forms for passports, the DS–11 Application for a U.S. Passport (OMB Approval No. 1405–0004) and the DS–82 Application for a U.S. Passport by Mail. Applicants for the proposed passport cards would use the same application forms (DS–11 and DS–82). First time applicants must use the DS–11. The rule would not create any new collection of information requiring OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). It would result in an increase in the number of persons filing the DS–11, and a corresponding increase in the annual reporting and/or record-keeping burden. In conjunction with publication of the final rule, DOS will amend the OMB form 83–I (Paperwork Reduction Act Submission) relating to the DS–11 to reflect these increases.

The collection of information encompassed within this rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual average reporting and/or recordkeeping burden: 14.7 million hours.

Estimated annual average number of respondents: 9 million.

Estimated average burden per respondent: 1 hour 25 minutes.

Estimated frequency of responses: every 10 years (adult passport and passport card applications); every 5 years (minor passport and passport card applications).

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of State, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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 startup costs and costs of operations, maintenance, and purchases of services to provide information.

2. Groups of Children

The collection of information requirements for groups of children would be contained in 8 CFR 212.1 and 235.1. The required information is necessary to comply with section 7209 of IRTPA, as amended, to develop an alternative procedure for groups of children traveling across an international border under adult supervision with parental consent. DHS, in consultation with DOS, has developed alternate procedures requiring that certain information be provided to CBP so that these children would not be required to present a passport. Consequently, U.S. and Canadian citizen children through age 18, who are traveling with public or private school groups, religious groups, social or cultural organizations, or teams associated with youth sport organizations that arrive at U.S. sea or land ports-of-entry, would be permitted to present a certified copy of a birth certificate (rather than a passport), when the groups are under the supervision of an adult affiliated with the organization and when all the children have parental or legal guardian consent to travel. U.S. citizen children would also be permitted to present a certification of Naturalization or a Consular Report of Birth Abroad.

When crossing the border at the port-of-entry, the U.S. group, organization, or team would be required to provide to CBP on organizational letterhead the following information: (1) The name of the group; (2) the name of each child on the trip; (3) the primary address, primary phone number, date of birth, place of birth, and name of at least one parent or legal guardian for each child on the trip; (4) the name of the chaperone or supervising adult; and (5) the signature of the supervising adult certifying that he or she has obtained parental or legal guardian consent for each child.

The primary purpose for soliciting the information is to allow groups of children arriving at the U.S. border under adult supervision with parental consent to present either an original or a certified copy of a birth certificate, Consular Report of Birth Abroad, or Certificate of Naturalization, rather than a passport, when the requested information is provided to CBP. This information is necessary for CBP to verify that the group of children entering the United States would be eligible for this alternative procedure so that the children would not be required to present a passport.

The collection of information encompassed within this proposed rule has been submitted to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). An agency may not conduct, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

Estimated annual reporting and/or recordkeeping burden: 1,625 hours.

Estimated average annual respondent or recordkeeping burden: 15 minutes.

Estimated number of respondents and/or recordkeepers: 6,500 respondents.

Estimated annual frequency of responses: 6,500 responses.

Comments on this collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of Homeland Security, Office of Information and Regulatory Affairs, Washington, DC 20503. Comments should be submitted within the time frame that comments are due regarding the substance of the proposal.

Comments are invited on: (a) Whether the collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the 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 startup costs and costs of operations, maintenance, and purchases of services to provide information.

G. Privacy Statement

A Privacy Impact Assessment (PIA) is being posted to the DHS Web site in conjunction with the publication of this proposed rule in the **Federal Register**. The changes proposed in this rule involve the removal of an exception for U.S. citizens from having to present a passport in connection with Western Hemisphere travel other than Cuba, such that said individuals would now be required to present a passport or other identified alternative document when traveling from points of origin both within and without of the Western Hemisphere. The rule expands the number of individuals submitting passport information for travel within the Western Hemisphere, but does not involve the collection of any new data elements. Presently, CBP collects and stores passport information from all travelers, required to provide such information pursuant to the Aviation and Transportation Security Act of 2001 (ATSA) and the Enhanced Border Security and Visa Reform Act of 2002 (EBSA), in the Treasury Enforcement Communications System (TECS) (for which a System of Records Notice is published at 66 FR 53029). By removing the exception for submitting passport information from U.S. citizens traveling within the Western Hemisphere, DOS and CBP are requiring these individuals to comply with the general requirement to submit passport information when traveling to and from the United States.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

22 CFR Part 53

Passports and visas, Travel restrictions.

Proposed Amendments to the Regulations

For the reasons stated above, DHS and DOS propose to amend 8 CFR parts 212 and 235 and 22 CFR parts 41 and 53 as set forth below.

Title 8—Aliens and Nationality

PART 212—DOCUMENTARY REQUIREMENTS; NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1359; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

2. A new section 212.0 is added to read as follows:

§ 212.0 Definitions.

For purposes of § 212.1 and § 235.1 of this chapter:

Adjacent islands means Bermuda and the islands located in the Caribbean Sea, except Cuba.

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

Ferry means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars;

Pleasure vessel means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire; and

United States means ''United States'' as defined in section 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

3. Section 212.1 is amended by:

a. Revising paragraphs (a)(1) and (a)(2); and

b. Revising paragraph (c)(1).

The revisions read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(a) *Citizens of Canada or Bermuda, Bahamian nationals or British subjects resident in certain islands*—(1) *Canadian citizens.* A visa is generally not required for Canadian citizens, except those Canadians that fall under nonimmigrant visa categories E, K, S or V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A valid unexpired passport is required for Canadian citizens arriving in the United States, except when meeting one of the following requirements:

(i) *NEXUS Program.* A Canadian citizen who is traveling as a participant in the NEXUS program may present a valid unexpired NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a valid unexpired NEXUS program card.

(ii) *FAST Program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired FAST card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iii) *SENTRI Program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2, may present a valid unexpired SENTRI card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(iv) *Children.* A child who is a Canadian citizen arriving from contiguous territory may present for admission to the United States at sea or land ports-of-entry certain other documents if the arrival meets the requirements described below.

(A) *Children Under Age 16.* A Canadian citizen who is under the age of 16 is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry.

(B) *Groups of Children Under Age 19.* A Canadian citizen, under age 19 who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(1) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(i) The name of the group, organization or team, and the name of the supervising adult;

(ii) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(iii) A list of the children on the trip;

(iv) For each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(2) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a)(1)(iv)(B)*(1)* of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(3) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part or parts 211 or 235 of this subchapter.

(2) *Citizens of the British Overseas Territory of Bermuda.* A visa is generally not required for Citizens of the British Overseas Territory of Bermuda, except those Bermudians that fall under nonimmigrant visa categories E, K, S or V as provided in paragraphs (h), (l), and (m) of this section and 22 CFR 41.2. A passport is required for Citizens of the British Overseas Territory of Bermuda arriving in the United States.

* * * * *

(c) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who:

(i) Is applying for admission as a temporary visitor for business or pleasure from Mexico at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

(ii) Is applying for admission from contiguous territory or adjacent islands at a sea or land port-of-entry, if the national is a member of the Texas Band of Kickapoo who is in possession of a Form I–872 American Indian Card.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

4. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, published January 2, 2004), 1201, 1224, 1225, 1226, 1228, 1365a note, 1379, 1731–32; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

5. Section 235.1 is amended by:

a. Revising paragraph (b); and

b. Revising paragraph (d).

The revised text reads as follows:

§ 235.1 Scope of Examination.

* * * * *

(b) *U.S. Citizens.* A person claiming United States citizenship must establish that fact to the examining officer's satisfaction and must present a passport or alternative documentation as required by 22 CFR part 53. If such applicant for admission fails to satisfy the examining immigration officer that he or she is a citizen, he or she shall thereafter be inspected as an alien. A United States citizen must present a valid unexpired traditional passport upon entering the United States, unless he or she presents one of the following documents:

(1) *Passport Card.* A United States citizen who possesses a valid unexpired United States passport card, as defined in 22 CFR 53.1, may present the passport card when entering the United States from Canada, Mexico, the Caribbean or Bermuda at sea or land ports-of-entry.

(2) *Merchant Mariner Document.* A United States citizen who holds a Merchant Mariner Document (MMD) issued by the U.S. Coast Guard may present an unexpired MMD used in conjunction with official maritime business when entering the United States.

(3) *Military Identification.* Any U.S. citizen member of the U.S. Armed Forces who is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces, may present a military identification card and the official orders when entering the United States.

(4) *Trusted Traveler Programs.* A United States citizen who travels as a participant in the NEXUS, FAST or SENTRI programs may present a valid NEXUS program card when using a NEXUS Air kiosk or a valid NEXUS, FAST, or SENTRI card at a sea or land port-of-entry prior to entering the

United States from contiguous territory or adjacent islands. A United States citizen who enters the United States by pleasure vessel from Canada using the remote inspection system may present a NEXUS program card.

(5) *Certain Cruise Ship Passengers.* A United States citizen traveling entirely within the Western Hemisphere is permitted to present a government-issued photo identification document in combination with either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States when the United States citizen:

(i) Boards a cruise ship at a port or place within the United States; and,

(ii) Returns on the same cruise ship to the same United States port or place from where he or she originally departed.

(6) *Native American Holders of an American Indian Card.* A Native American holder of a Form I–872 American Indian Card arriving from contiguous territory is permitted to present the Form I–872 card prior to entering the United States at a land or sea port-of-entry.

(7) *Children.* A child who is a United States citizen entering the United States from contiguous territory at a sea or land ports-of-entry may present certain other documents, if the arrival meets the applicable requirements described below.

(i) *Children Under Age 16.* A United States citizen who is under the age of 16 is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at sea or land ports-of-entry.

(ii) *Groups of Children Under Age 19.* A United States citizen, who is under age 19 and is traveling with a public or private school group, religious group, social or cultural organization or team associated with a youth sport organization is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department of State, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving from contiguous territory at sea or land ports-of-entry, when the group, organization, or team is under the supervision of an adult affiliated with the group, organization, or team and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person age 19 or older. The following requirements will apply:

(A) The group or organization must provide to CBP upon crossing the border, on organizational letterhead:

(1) The name of the group, organization or team, and the name of the supervising adult;

(2) A list of the children on the trip;

(3) For each child, the primary address, primary phone number, date of birth, place of birth, and name of a parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (b)(7)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The inspection procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part.

* * * * *

(d) *Pilot Programs; alternate requirements.* For purposes of conducting a test program or procedure designed to evaluate the effectiveness of technology or operational procedures regarding the suitability of travel documents that denote citizenship and identity, the Secretary of Homeland Security may enter into a voluntary pilot program agreement with a State, tribe, province, territory, or foreign government. The Secretary of Homeland Security may, by publication of a notice in the **Federal Register**, designate as an acceptable document for travel into the United States from elsewhere in the Western Hemisphere, on a temporary basis, a valid and lawfully obtained document from a State, tribe, province, territory, or foreign government developed in accordance with a voluntary pilot program agreement between that entity and the Department of Homeland Security. If a pilot program document is announced in such a notice, United States citizens or foreign nationals may present these accepted pilot program documents in lieu of a passport upon entering or seeking admission to the United States according to the terms announced in the pilot program agreements. A list of such programs and documents are available on the Customs and Border Protection Web site.

* * * * *

Title 22—Foreign Relations

PART 41—VISAS: DOCUMENTATION OF NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT

1. The authority citation for part 41 is revised to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458, as amended by section 546 of Pub. L. 109–295).

Subpart A—Passport and Visas Not Required for Certain Nonimmigrants

2. A new section 41.0 is added to read as follows:

§ 41.0 Definitions.

For purposes of this chapter:

Adjacent islands means Bermuda and the islands located in the Caribbean Sea, except Cuba.

Cruise ship means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire, making a voyage lasting more than 24 hours any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

Ferry means any vessel operating on a pre-determined fixed schedule and route, which is being used solely to provide transportation between places that are no more than 300 miles apart and which is being used to transport passengers, vehicles, and/or railroad cars;

Pleasure vessel means a vessel that is used exclusively for recreational or personal purposes and not to transport passengers or property for hire; and

United States means ''United States'' as defined in section 215(c) of the Immigration and Nationality Act of 1952, as amended (8 U.S.C. 1185(c)).

§ 41.1 [Amended]

3. Section 41.1 is amended by removing and reserving paragraph (b).

4. Section 41.2 is amended by revising the introductory text and paragraphs (a), (b), and (g)(1), and adding a paragraph (g)(5) to read as follows:

§ 41.2 Exemption or Waiver by Secretary of State and Secretary of Homeland Security of passport and/or visa requirements for certain categories of nonimmigrants.

Pursuant to the authority of the Secretary of State and the Secretary of Homeland Security under INA as amended a passport and/or visa is not

required for the following categories of nonimmigrants:

(a) *Canadian citizens.* A visa is not required for an American Indian born in Canada having at least 50 percentum of blood of the American Indian race. A visa is not required for other Canadian citizens except for those who apply for admission in E, K, V, or S nonimmigrant classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Canadian citizens applying for admission to the United States, except when one of the following exceptions applies:

(1) *NEXUS Program.* A Canadian citizen who is traveling as a participant in the NEXUS program may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may present a NEXUS program card.

(2) *FAST Program.* A Canadian citizen who is traveling as a participant in the FAST program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid FAST card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(3) *SENTRI Program.* A Canadian citizen who is traveling as a participant in the SENTRI program, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1, may present a valid SENTRI card at a sea or land port-of-entry prior to entering the United States from contiguous territory or adjacent islands.

(4) *Children.* A child who is a Canadian citizen who is seeking admission to the United States when arriving from contiguous territory at a sea or land port-of-entry, may present certain other documents if the arrival meets the applicable requirements described below.

(i) *Children Under Age 16.* A Canadian citizen who is under the age of 16 is permitted to present an original or certified copy of his or her birth certificate when arriving in the United States from contiguous territory at sea or land ports-of-entry.

(ii) *Groups of Children Under Age 19.* A Canadian citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present an original or certified copy of his or her birth certificate when applying for admission to the United States from contiguous territory at all sea and land ports-of-entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older.

The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border, on organizational letterhead:

(1) The name of the group, organization or team, and the name of the supervising adult;

(2) A trip itinerary, including the stated purpose of the trip, the location of the destination, and the length of stay;

(3) A list of the children on the trip;

(4) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by certifying in the writing submitted in paragraph (a)(4)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team that are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in this part and 8 CFR parts 212 and 235.

(5) *Pilot Programs.* A Canadian citizen who is traveling as a participant in a pilot program approved by the Secretary of Homeland Security pursuant to 8 CFR 235.1(d) may present an acceptable alternative document specified for that pilot program when entering the United States from contiguous territory or adjacent islands at a land or sea port-of-entry, and who is not otherwise required to present a passport and visa as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A Canadian citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present an acceptable pilot program document if the Canadian citizen is participating in a pilot program which specifically provides that the acceptable pilot program document may be presented for remote entry.

* * * * *

(b) *Citizens of the British Overseas Territory of Bermuda.* A visa is not required, except for Citizens of the British Overseas Territory of Bermuda who apply for admission in E, K, V, or S nonimmigrant visa classification as provided in paragraphs (k) and (m) of this section and 8 CFR 212.1. A passport is required for Citizens of the British Overseas Territory of Bermuda applying for admission to the United States.

* * * * *

(g) *Mexican nationals.* (1) A visa and a passport are not required of a Mexican national who is applying for admission from Mexico as a temporary visitor for business or pleasure at a land port-of-entry, or arriving by pleasure vessel or ferry, if the national is in possession of a Form DSP–150, B–1/B–2 Visa and Border Crossing Card, containing a machine-readable biometric identifier, issued by the Department of State.

* * * * *

(5) A visa and a passport are not required of a Mexican national who is applying for admission from contiguous territory or adjacent islands at a land or sea port-of-entry, if the national is a member of the Texas Band of Kickapoo who is in possession of a Form I–872 American Indian Card issued by U.S. Citizenship and Immigration Services (USCIS).

* * * * *

PART 53—PASSPORT REQUIREMENT AND EXCEPTIONS

5. The authority citation for part 53 continues to read as follows:

Authority: 8 U.S.C. 1185; 8 U.S.C. 1185 note (section 7209 of Pub. L. 108–458); E.O. 13323, 69 FR 241 (Dec. 30, 2003).

6. Section 53.2 is revised to read as follows:

§ 53.2 Exceptions.

(a) U.S. citizens are not required to bear U.S. passports when traveling directly between parts of the United States as defined in § 50.1 of this chapter.

(b) A U.S. citizen is not required to bear a valid U.S. passport to enter or depart the United States:

(1) When traveling as a member of the Armed Forces of the United States on active duty and when he or she is in the uniform of, or bears documents identifying him or her as a member of, such Armed Forces, when under official orders or permit of such Armed Forces, and when carrying a military identification card; or

(2) When traveling entirely within the Western Hemisphere on a cruise ship, when the U.S. citizen boards the cruise ship at a port or place within the United States, and, returns on the same cruise ship to the same United States port or place from where he or she originally departed. That U.S. citizen may present a government-issued photo identification document in combination with either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad issued by the Department, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services before entering the United States; or

(3) When traveling as a U.S. citizen seaman, carrying an unexpired Merchant Marine Document (MMD) in conjunction with maritime business. The MMD is not sufficient to establish citizenship for purposes of issuance of a United States passport under part 51 of this chapter; or

(4) *Trusted Traveler Programs*—(i) *NEXUS Program.* When traveling as a participant in the NEXUS program, he or she may present a valid NEXUS program card when using a NEXUS Air kiosk or when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry. A U.S. citizen who enters the United States by pleasure vessel from Canada under the remote inspection system may also present a NEXUS program card;

(ii) *FAST Program.* A U.S. citizen who is traveling as a participant in the FAST program may present a valid FAST card when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry;

(iii) *SENTRI Program.* A U.S. citizen who is traveling as a participant in the SENTRI program may present a valid SENTRI card when entering the United States from contiguous territory or adjacent islands at a sea or land port-of-entry;

(iv) The NEXUS, FAST, and SENTRI cards are not sufficient to establish citizenship for purposes of issuance of a U.S. passport under part 51 of this chapter; or

(5) When arriving at land ports of entry and sea ports of entry from contiguous territory or adjacent islands, Native American holders of American Indian Cards (Form I–872) issued by United States Citizenship and Immigration Services (USCIS) may present those cards.

(6) When bearing documents or combinations of documents the Secretary of Homeland Security has determined under Section 7209(b) of Public Law 108–458 (8 U.S.C. 1185 note) are sufficient to denote identity and citizenship.

(7) When the U.S. citizen is employed directly or indirectly on the construction, operation, or maintenance of works undertaken in accordance with the treaty concluded on February 3, 1944, between the United States and Mexico regarding the functions of the International Boundary and Water Commission (IBWC), TS 994, 9 Bevans 1166, 59 Stat. 1219, or other related agreements, provided that the U.S. citizen bears an official identification card issued by the IBWC and is traveling in connection with such employment; or

(8) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec. 2, the requirement with respect to the U.S. citizen because there is an unforeseen emergency; or

(9) When the Department of State waives, pursuant to EO 13323 of December 30, 2003, Sec. 2, the requirement with respect to the U.S. citizen for humanitarian or national interest reasons.

(10) When the U.S. citizen is a child under the age of 19 arriving from contiguous territory in the following circumstances:

(i) *Children Under Age 16.* A United States citizen who is under the age of 16 is permitted to present either an original or a certified copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when entering the United States from contiguous territory at sea or land ports-of-entry.

(ii) *Groups of Children Under Age 19.* A U.S. citizen who is under age 19 and who is traveling with a public or private school group, religious group, social or cultural organization, or team associated with a youth sport organization may present either an original or certified copy of his or her birth certificate, a Consular Report of Birth Abroad, or a Certificate of Naturalization issued by U.S. Citizenship and Immigration Services when arriving in the United States from contiguous territory at all land or sea ports of entry, when the group, organization or team is under the supervision of an adult affiliated with the organization and when the child has parental or legal guardian consent to travel. For purposes of this paragraph, an adult is considered to be a person who is age 19 or older. The following requirements will apply:

(A) The group, organization, or team must provide to CBP upon crossing the border on organizational letterhead:

(*1*) The name of the group, organization or team, and the name of the supervising adult;

(*2*) A list of the children on the trip; and

(*3*) For each child, the primary address, primary phone number, date of birth, place of birth, and the name of at least one parent or legal guardian.

(B) The adult leading the group, organization, or team must demonstrate parental or legal guardian consent by providing certifying in the writing submitted in paragraph (b)(10)(ii)(A) of this section that he or she has obtained for each child the consent of at least one parent or legal guardian.

(C) The procedure described in this paragraph is limited to members of the group, organization, or team who are under age 19. Other members of the group, organization, or team must comply with other applicable document and/or inspection requirements found in 8 CFR parts 211, 212 or 235.

Michael Chertoff,

Secretary of Homeland Security, Department of Homeland Security.

Dated: June 19, 2007.

Henrietta Fore,

Under Secretary of State for Management, Department of State.

[FR Doc. 07–3104 Filed 6–21–07; 2:11 pm]

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Part III

Securities and Exchange Commission

17 CFR Part 239

Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 and F–3; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release No. 33–8812; File No. S7–10–07]

RIN 3235–AJ89

Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S–3 And F–3

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the eligibility requirements of Form S–3 and Form F–3 to allow domestic and foreign private issuers to conduct primary securities offerings on these forms without regard to the size of their public float or the rating of debt they are offering, so long as they satisfy the other eligibility conditions of the respective form and do not sell more than the equivalent of 20% of their public float in primary offerings pursuant to the new instructions on these forms over any period of 12 calendar months. The amendments are intended to allow more companies to benefit from the greater flexibility and efficiency in accessing the public securities markets afforded by Form S–3 and Form F–3 without compromising investor protection. The proposal would not extend to shell companies, however, which would be prohibited from using Form S–3 and Form F–3 for primary offerings until 12 calendar months after they cease being shell companies.

DATES: Comments should be received on or before August 27, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*);
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–10–07 on the subject line; or
- Use the Federal Rulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–10–07. This file number should be included on the subject line if e-mail is used. To help us 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/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Daniel Greenspan, at (202) 551–3430, in the Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3010.

SUPPLEMENTARY INFORMATION: We are proposing to amend Form S–3 [1] and Form F–3 [2] under the Securities Act of 1933.[3]

Table of Contents

I. Discussion
A. Background
1. Form S–3
2. 1992 Amendments to Form S–3
3. Advisory Committee on Smaller Public Companies
4. Reasons for Proposal
B. Proposed Revisions to Form S–3
C. Proposed Revisions to Form F–3
D. Request for Comment
II. Paperwork Reduction Act
A. Background
B. Summary of Information Collections
C. Paperwork Reduction Act Burden Estimates
D. Request for Comment
III. Cost-Benefit Analysis
A. Summary of Proposals
B. Benefits
C. Costs
D. Request for Comment
IV. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation
V. Initial Regulatory Flexibility Act Analysis
A. Reasons for the Proposed Action
B. Objectives
C. Legal Basis
D. Small Entities Subject to the Proposed Amendments
E. Reporting, Recordkeeping and Other Compliance Requirements
F. Duplicative, Overlapping or Conflicting Federal Rules
G. Significant Alternatives
H. Solicitation of Comment
VI. Small Business Regulatory Enforcement Fairness Act
VII. Statutory Authority and Text of the Amendments

[1] 17 CFR 239.13.

[2] 17 CFR 239.33.

[3] 15 U.S.C. 77a *et seq.*

I. Discussion

A. Background

1. Form S–3

Form S–3 is the ''short form'' used by eligible domestic companies to register securities offerings under the Securities Act of 1933. The form also allows these companies to rely on their reports filed under the Securities Exchange Act of 1934 [4] to satisfy the form's disclosure requirements. Although there have been amendments to Form S–3 since it was first adopted in 1982,[5] the basic framework still remains. To use Form S–3, a company must meet the form's registrant requirements,[6] which generally pertain to reporting history under the Exchange Act,[7] as well as at least one of the form's transaction requirements.[8] These transaction requirements provide that companies may register *primary* offerings (that is, securities offered by or on behalf of the registrant for its own account) on Form S–3 only if their non-affiliate equity market capitalization, or ''public float,'' is a certain size.[9] Transactions involving primary offerings of non-convertible investment grade securities; certain rights offerings, dividend reinvestment plans and conversions; and offerings by selling shareholders of securities registered on a national securities exchange do not require that the company has a minimum public float.[10]

2. 1992 Amendments to Form S–3

As originally adopted, the ''public float'' requirement for companies eligible to use Form S–3 to register primary offerings was $150 million.[11] In 1992, the Commission reduced the minimum float threshold to the current $75 million, based on its analysis of the trading markets and market following of registrants in various capitalization

[4] 15 U.S.C. 78a *et seq.*

[5] Most notably, the Commission adopted a set of comprehensive amendments in 2005 known as ''Securities Offering Reform.'' See *Securities Offering Reform,* Release No. 33–8591 (Jul. 19, 2005) (70 FR 44722). See also *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6964 (Oct. 22, 1992) [57 FR 48970], which is discussed further at n. 12.

[6] See General Instruction I.A. of Form S–3.

[7] For example, the form is available only to issuers that have complied with the reporting requirements of the Exchange Act for at least one year. However, issuers of investment grade asset-backed securities do not need to have a reporting history. See General Instruction I.A.4. of Form S–3.

[8] See General Instruction I.B. of Form S–3.

[9] General Instruction I.B.1. of Form S–3.

[10] See General Instructions I.B.2. through I.B.4. of Form S–3.

[11] *Adoption of Integrated Disclosure System,* Release No. 33–6383 (Mar. 3, 1982) [47 FR 11380].

ranges.[12] When it reduced the required public float to $75 million, the Commission stated that a large majority of the companies that would become eligible to use Form S–3 for primary offerings as a result of the reduction in required float had securities traded on either a national securities exchange or authorized for inclusion on the NASDAQ National Market System [13] and that approximately two-thirds of the companies were followed by at least three research analysts.[14] This, combined with the success of the 10-year-old integrated disclosure system and shelf registration process, persuaded the Commission that it could extend the benefits of Form S–3 for primary offerings to a larger class of issuers without compromising the investing public's access to sufficient and timely information about such issuers.[15]

3. Advisory Committee on Smaller Public Companies

Recently, the issue of Form S–3 eligibility for primary offerings was addressed by the Commission's Advisory Committee on Smaller Public Companies (the ''Advisory Committee''), an advisory committee chartered by the Commission in 2005 to assess the current regulatory system for smaller companies under U.S. securities laws.[16] In its April 23, 2006 Final Report to the Commission, the Advisory Committee recommended that we allow all reporting companies listed on a national securities exchange, NASDAQ or trading on the Over-the-Counter Bulletin Board electronic quotation service to be eligible to use Form S–3 if they have been reporting under the Exchange Act for at least one year and are current in their reporting at the time of filing.[17] The Advisory Committee noted that many smaller public companies currently are not eligible to use Form S–3 to register primary offerings because they do not meet the minimum public float requirement and are, therefore, not able to take advantage of the efficiencies associated with the use of the form. As a consequence, the Advisory Committee argued that this restriction placed limits on the ability of such companies to raise capital. The Advisory Committee also expressed its view that the reporting obligations of smaller public companies, combined with the widespread accessibility over the Internet of documents filed with the Commission, have lessened the need to retain the public float standard in Form S–3. In the Advisory Committee's view, the Exchange Act reporting obligations of smaller public companies are comparable today to even the largest reporting companies and, therefore, compliance with these disclosure requirements ''should be sufficient to protect investors and inform the marketplace about developments in these companies.'' [18]

4. Reasons for Proposal

The ability to conduct primary offerings on Form S–3 confers significant advantages on eligible companies. Form S–3 permits the incorporation of required information by reference to a company's disclosure in its Exchange Act filings, including Exchange Act reports that were previously filed as well as those that will be filed in the future.[19] The ability of Form S–3 registrants to incorporate their subsequently filed Exchange Act reports, often called ''forward incorporation,'' allows for automatic updating of the registration statement. By contrast, a registrant without the ability to forward incorporate [20] must file a new registration statement or post-effective amendment to its registration statement to prevent information in the registration statement from becoming outdated and to update for fundamental changes to the information set forth in the registration statement.[21]

Form S–3 eligibility for primary offerings also enables companies to conduct primary offerings ''off the shelf'' under Rule 415 of the Securities Act.[22] Rule 415 provides considerable flexibility in accessing the public securities markets from time to time in response to changes in the market and other factors. Companies that are eligible to register these primary ''shelf'' offerings under Rule 415 are permitted to register securities offerings prior to planning any specific offering and, once the registration statement is effective, offer securities in one or more tranches without waiting for further Commission action. In general, post-effective amendments and new registration statements may be subject to selective review by the Commission staff and must be declared effective by the Commission or our staff through delegated authority before the registration statement may be used again to offer and sell securities.[23] The shelf eligibility resulting from Form S–3 eligibility and the ability to forward incorporate on Form S–3, therefore, allow companies to avoid additional

[12] Release No. 33–6964. In that release, the Commission estimated that, as a result of the reduction in required float, 450 additional companies with an aggregate float of $88 billion would be eligible to register primary offerings of their securities on Form S–3. This is compared to the Commission's estimate, in Release No. 33–6943, of 370 companies that registered approximately $200 billion of securities on Form S–3 for delayed primary shelf offerings during calendar year 1991.

As part of this rulemaking, the Commission also reduced the reporting history necessary to register on Form S–3 from 36 to 12 months for most issuers and eliminated the alternative eligibility test for primary offerings requiring registrants to have a public float of at least $100 million and an annual trading volume of at least 3 million shares.

[13] There is no longer a distinction between Nasdaq and national securities exchanges. On January 13, 2006, the Commission approved Nasdaq's application for conversion from a national securities association to a national securities exchange. The NASDAQ Stock Market commenced operations on August 1, 2006.

[14] *Simplification of Registration Procedures for Primary Securities Offerings,* Release No. 33–6943 (July 16, 1992) [57 FR 32461], at p. 6. In this discussion, the Commission stated that ''one indicia of market interest and following of a company is the number of research analysts covering the company.''

[15] Id.

[16] More information about the Advisory Committee is available at *http://www.sec.gov/info/smallbus/acspc.shtml.*

[17] Recommendation IV.P.3. of the Final Report of the Advisory Committee on Smaller Public Companies (Apr. 23, 2006) (the ''Final Report''), at 68–72. The Final Report is available at *http://www.sec.gov/info/smallbus/acspc/acspc-finalreport.pdf.* In addition to elimination of the public float requirement, Recommendation IV.P.3. also called for (1) Elimination of General Instruction I.A.3.(b) to Form S–3 requiring that the issuer has timely filed all required reports in the last year and (2) extending Form S–3 eligibility for secondary transactions to issuers quoted on the Over-the-Counter Bulletin Board.

[18] The Final Report, at 69. The Advisory Committee also noted:

The Sarbanes-Oxley Act has required more frequent SEC review of periodic reports as well as enhanced processes, such as disclosure controls and procedures and certifications by the chief executive and chief financial officers, which further enhance investor protection.

Id. at 70.

[19] See Item 12 of Form S–3: ''Incorporation of Certain Information by Reference.''

[20] For example, Forms S–1 and SB–2 do not allow registrants to forward incorporate their Exchange Act filings.

[21] See Section 10(a)(3) of the Securities Act (requiring that the information contained in a prospectus used more than nine months after the effective date be as of a date not more than sixteen months prior to the effective date) and Item 512(a)(1)(i) and (ii) of Regulation S–K (requiring the inclusion by the company of an undertaking to file a post-effective amendment to comply with Section 10(a)(3) of the Securities Act and to reflect the occurrence of facts or events arising after the effective date that, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement).

[22] Rule 415 [17 CFR 230.415] provides that:

(a) Securities may be registered for an offering to be made on a continuous or delayed basis in the future, *Provided,* That:

(1) The registration statement pertains only to: * * *

(x) Securities registered (or qualified to be registered) on Form S–3 or Form F–3 which are to be offered and sold on an immediate, continuous or delayed basis by or on behalf of the registrant, a majority owned subsidiary of the registrant or a person of which the registrant is a majority-owned subsidiary.

[23] See Section 8(c) of the Securities Act.

delays and interruptions in the offering process and can reduce or even eliminate the costs associated with preparing and filing post-effective amendments to the registration statement.

By having more control over the timing of their offerings, these companies can take advantage of desirable market conditions, thus allowing them to raise capital on more favorable terms (such as pricing) or to obtain lower interest rates on debt. As a result, the ability to take securities off the shelf as needed gives issuers a significant financing alternative to other widely available methods, such as private placements with shares usually priced at discounted values based in part on their relative illiquidity.[24]

Registration of an offering on Form S–1, the form available to many companies ineligible to use Form S–3, permits certain issuers [25] to incorporate by reference previously filed Exchange Act reports, but it does not permit registrants to automatically update information in the prospectus by forward incorporation of their Exchange Act filings. Further, issuers filing registration statements on Form S–1 because they are not eligible to file on Form S–3 are not permitted to register primary shelf offerings under Rule 415. Thus, it is harder for Form S–1 registrants to take advantage of favorable market opportunities. Consequently, we believe that extending Form S–3 short-form registration to additional issuers should enhance their ability to access the public securities markets.

Given the great advances in the electronic dissemination and accessibility of company disclosure transmitted over the Internet over the last several years,[26] we believe that expanding the class of companies that are permitted to use Form S–3 for primary securities offerings is once again warranted. In contrast to 1992, when the Commission last adjusted the issuer eligibility requirements for Form S–3,[27] all filings on Form S–3 now are filed on the Commission's Electronic Data Gathering, Analysis and Retrieval system (''EDGAR'') and, therefore, are available at little or no cost to anyone interested in obtaining the information. While we believe that retaining some restrictions on Form S–3 eligibility is still advisable, we nevertheless agree with the Advisory Committee that more companies should benefit from the greater flexibility and efficiency in accessing the capital markets afforded by Form S–3. Accordingly, we are proposing to amend the Form S–3 eligibility requirements to permit registrants other than shell companies to use Form S–3 for primary offerings, whether or not they satisfy the minimum $75 million float threshold, so long as they stay within certain offering size limitations and otherwise satisfy the eligibility requirements of the form, such as timely Exchange Act reporting for at least the prior year.

B. Proposed Revisions to Form S–3

Specifically, we are proposing new General Instruction I.B.6. to Form S–3 to allow companies with less than $75 million in public float to register primary offerings of their securities on Form S–3,[28] provided:

- They meet the other registrant eligibility conditions for the use of Form S–3; [29]
- They are not shell companies [30] and have not been shell companies for at least 12 calendar months before filing the registration statement; and
- They do not sell more than the equivalent of 20% of their public float in primary offerings under General Instruction I.B.6. of Form S–3 over any period of 12 calendar months.[31]

As a result, even companies not traded on a national securities exchange could potentially avail themselves of this new eligibility rule so long as they were able to satisfy the registrant eligibility requirements provided in General Instruction I.A.[32] This would include companies quoted on the Over-the-Counter-Bulletin Board and Pink Sheets quotation services. We note that the Over-the-Counter-Bulletin Board requires quoted issuers to be registered

[24] See, for example, Susan Chaplinsky and David Haushalter, *Financing Under Extreme Uncertainty: Contract Terms and Returns to Private Investments in Public Equity* (May 2006), available at: *http://papers.ssrn.com/sol3/papers.cfm?abstract_id=907676* (discussing the typical contractual terms of PIPEs (Private Investments in Public Equities) financings, where the average purchase discount is between 18.5% to 19.7%, depending on the types of contractual rights embedded in the securities).

[25] See General Instruction VII. to Form S–1, ''Eligibility to Use Incorporation by Reference,'' for the criteria that registrants on Form S–1 must meet in order to incorporate information by reference.

[26] See, for example, *Internet Availability of Proxy Materials,* Release No. 34–52926 (Dec. 8, 2005) [70 FR 74597] and the Final Report of the Advisory Committee, at 69:

The Commission has recently taken several steps acknowledging the widespread accessibility over the Internet of documents filed with the Commission. In its recent release concerning Internet delivery of proxy materials, the Commission notes that recent data indicates that up to 75% of Americans have access to the Internet in their homes, and that this percentage is increasing steadily among all age groups. As a result we believe that investor protection would not be materially diminished if all reporting companies on a national securities exchange, NASDAQ or the Over-the-Counter Bulletin Board were permitted to utilize Form S–3 and the associated benefits of incorporation by reference.

[27] See Release No. 33–6964.

[28] As mentioned in n. 17 above, as part of Recommendation IV.P.3 of the Final Report, the Advisory Committee also recommended that the Commission extend S–3 eligibility for secondary transactions to issuers quoted on the Over-the-Counter Bulletin Board. General Instruction I.B.3. to Form S–3 limits the use of the form for secondary offerings to securities ''listed and registered on a national securities exchange or * * * quoted on the automated quotation system of a national securities association,'' a restriction that excludes the securities of Over-the-Counter Bulletin Board and Pink Sheet issuers. Notwithstanding the Advisory Committee's recommendation, we are not at this time proposing to amend the Form S–3 eligibility rules for secondary offerings because of the potential for abusive primary offerings disguised as secondary offerings. As such, this rulemaking proposal pertains only to Form S–3 eligibility for primary securities offerings and is not intended to encompass or otherwise impact existing requirements for secondary offerings on Form S–3. In this regard, we also are not revising the interpretive positions on secondary offering eligibility under General Instruction I.B.3.

[29] See General Instruction I.A. of Form S–3. Among other things, General Instruction I.A. requires that the registrant:

- Has a class of securities registered pursuant to Section 12(b) or 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act; and
- Has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed in a timely manner all the material required to be filed pursuant to Section 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the Form S–3 registration statement.

[30] The term ''shell company'' is defined in Rule 405 of the Securities Act [17 CFR 230.405]. See also *Use of Form S–8, Form 8–K, and Form 20–F by Shell Companies*, Release No. 33–8587 (July 15, 2005) [70 FR 42233] (adopting definition of shell company).

[31] The meaning of the phrase ''period of 12 calendar months'' is intended to be consistent with the way in which the phrase ''12 calendar months'' is used for purposes of the registrant eligibility requirements in Form S–3. A ''calendar month'' is a month beginning on the first day of the month and ending on the last day of that month. For example, for purposes of Form S–3 registrant eligibility, if a registrant were not timely on a Form 10–Q due on September 15, 2006, but was timely thereafter, it would first be eligible to use Form S–3 on October 1, 2007. Similarly, for purposes of proposed General Instruction I.B.6. of Form S–3, if a registrant relies on this Instruction to conduct a shelf takedown equivalent to 20% of its public float on September 15, 2007, it will next be eligible to do another takedown (assuming no change in its float) on October 1, 2008.

[32] Form S–3 eligibility under proposed General Instruction I.B.6 and Form F–3 eligibility under proposed General Instruction I.B.5. is not intended to have broader implications under our rules beyond an issuer's ability to conduct a primary offering on Form S–3 or Form F–3, as applicable. That is, an issuer's eligibility to use Form S–3 or Form F–3 under those proposed additional form instructions does not mean that the issuer meets the requirements of Form S–3 or Form F–3 for purposes of any other rule or regulation of the Commission (apart from Rule 415(a)(1)(x), which pertains to shelf registration). See Instruction 6 to proposed General Instruction I.B.6. of Form S–3 and Instruction 6 to proposed General Instruction I.B.5. of Form F–3.

under Section 12 of the Exchange Act[33] and filing Exchange Act reports or otherwise filing periodic reports with the appropriate regulatory agency. Moreover, we have built into our proposed rule the condition that an eligible company must be required to file Exchange Act reports and has timely filed all such reports for the 12 calendar months and any portion of a month preceding the filing of the registration statement.

To ascertain the amount of securities that may be sold pursuant to Form S–3 by registrants with a public float below $75 million, the proposal contemplates a two-step process:

- Determination of the registrant's public float immediately prior to the intended sale; and
- Aggregation of all sales of the registrant's securities pursuant to primary offerings under General Instruction I.B.6. of Form S–3 in the previous 12-month period (including the intended sale) to determine whether the 20% limitation would be exceeded.

The proposal would require registrants to compute their public float by reference to the price at which their common equity was last sold, or the average of the bid and asked prices of their common equity, in the principal market for the common equity as of a date within 60 days prior to the date of sale.[34] Then, for purposes of calculating the aggregate market value of securities sold during the preceding period of 12 calendar months, the proposal would require that registrants add together the gross sales price for all primary offerings pursuant to proposed Instruction I.B.6. to Form S–3 during the preceding period of 12 calendar months. Based on that calculation, registrants would be permitted to sell securities with a value up to, but not greater than, the difference between 20% of their public float and the value of securities sold in primary offerings on Form S–3 under proposed Instruction I.B.6. in the prior period of 12 calendar months.[35] We have placed the cap of 20% in order to allow an offering that is large enough to help an issuer meet its financing needs when market opportunities arise but small enough to take into account the effect such new issuance may have on the market for a thinly traded security.

This aggregate gross sales price includes the sales of equity as well as debt offerings. Therefore, these registrants would now be eligible to offer non-investment grade debt on Form S–3.[36] In the case of securities that are convertible into or exercisable for equity shares, such as convertible debt or warrants, however, we are proposing that registrants calculate the amount of securities they may sell in any period of 12 calendar months by reference to the aggregate market value of the underlying equity shares in lieu of the market value of the convertible securities. The aggregate market value of the underlying equity would be based on the maximum number of shares into which the securities sold in the prior period of 12 calendar months are convertible as of a date within 60 days prior to the date of sale, multiplied by the same per share market price of the registrant's equity used for purposes of calculating its public float pursuant to Instruction 1 to proposed General Instruction I.B.6. of Form S–3. We believe calculating the 20% cap based on the market value of the underlying securities makes it less likely that convertible securities would be structured and offered in a manner designed to avoid the effectiveness of the cap.

It is important to note that the proposed 20% limit on sales is not intended to impact a holder's ability to convert or exercise derivative securities purchased from the company. For example, the 20% limit would apply to the amount of common stock warrants that a company could sell under Form S–3, and the number of common shares into which the warrants are exercisable would be relevant for determining the company's compliance with the 20% rule at the time the warrants were sold, but would not impede the purchaser's later exercise of the warrants.

Consistent with our desire to ensure that the expansion of Form S–3 eligibility does not diminish the protection of investors, the proposal specifically excludes shell companies, which will be prohibited from registering securities in primary offerings on Form S–3 unless they meet the minimum $75 million float threshold of General Instruction I.B.1.[37] While we are not passing on the relative merits of shell companies and we recognize that these entities are used for many legitimate business purposes, we have repeatedly stated our belief that these entities may give rise to disclosure abuses.[38] Under the proposal, a former shell company that cannot meet the $75 million float criterion but otherwise satisfies the registrant requirements of Form S–3 will become eligible to use Form S–3 to register primary offerings of its securities:

- 12 calendar months after it ceases being a shell company;
- Has filed information that would be required in a registration statement on Form 10, Form 10–SB or Form 20–F, as applicable, to register a class of securities under Section 12 of the Exchange Act; and
- Has been timely reporting for 12 calendar months.[39]

[33] 15 U.S.C. 78*l*.

[34] The determination of public float is based on a public trading market for the registrant's common equity. This is the same requirement in General Instruction I.B.1. of Form S–3 and Form F–3 that a registrant have a $75 million market value and in the definition of accelerated filer in Exchange Act Rule 12b–2 [17 CFR 240.12b2]. Therefore, an entity with common equity securities outstanding but not trading in any public trading market would not be entitled to sell securities in a primary offering on Form S–3 under this proposal. Note that the determination of public float for purposes of form eligibility in current General Instruction I.B.1 of Form S–3 is based on the price of the registrant's common equity within 60 days prior to the date of filing the registration statement. The determination of ''aggregate market value'' for purposes of determining an issuer's status as an accelerated filer under Rule 12b–2 is based on the market price of the issuer's equity as of the last business day of the issuer's most recently completed second fiscal quarter.

[35] As proposed, the method of calculating the 20% limit on sales is the same whether the registrant is selling equity or debt securities, or a combination of both. If the proposed 20% limitation excluded debt, there is some concern that we would be inadvertently encouraging issuances of debt securities over equity. Because we do not intend for the rule to dictate or otherwise influence the overall form of security that companies offer, we have drafted the 20% limit on sales to include both equity and debt.

[36] Currently, registrants may offer non-convertible investment grade debt securities on Form S–3 regardless of the size of their public float. See General Instruction I.B.2. to Form S–3.

[37] This prohibition is intended to apply equally to ''blank check companies,'' as such entities are defined in Rule 419 of the Securities Act. However, because we believe that the definition of ''shell company'' under Rule 405 is expansive enough to encompass blank check companies for purposes of excluding them from S–3 eligibility under proposed General Instruction I.B.6., we do not exclude them separately. See *Use of Form S–8 and Form 8–K by Shell Companies,* Release No. 33–8407 (Apr. 15, 2004) [69 FR 21650], at n. 20:

> We believe that under today's proposals all blank check companies as defined in Rule 419 would be considered shell companies until they acquire an operating business or more than nominal assets. Not all shell companies, however, would be classified as blank check companies under Rule 419.

[38] See, for example, Release No. 33–8591; Release No. 33–8587; *Delayed Pricing for Certain Registrants,* Release No. 33–7393 (Feb. 20, 1997) [62 FR 9276]; and *Penny Stock Definition for Purposes of Blank Check Rule,* Release No. 33–7024 (Oct. 25, 1993) [58 FR 58099].

[39] Similarly, Form S–8 is not available to shell companies or to former shell companies until 60 days after they have ceased being shell companies and have filed information that would be required in a registration statement on Form 10, Form 10–SB or Form 20–F, as applicable, to register a class of securities under Section 12 of the Exchange Act. See Release No. 33–8587. Unlike the eligibility rules of Form S–8, however, a company must be reporting for at least 12 calendar months before it is eligible under any criteria to use Form S–3. Therefore, instead of the 60-day delay required by Form S–8, it is more appropriate for a shell company to be prohibited from using the proposed new provisions of S–3 and F–3 until at least 12

Continued

Ordinarily, this information would be filed in a current report on Form 8–K reporting completion of the transaction that causes it to cease being a shell company. [40] In other cases, the information may be filed in a Form 10, Form 10–SB or Form 20–F. Consistent with the current registrant eligibility rules of Form S–3 and Form F–3 that require at least 12 calendar months of timely reporting, the proposed 12 calendar-month delay is intended to provide investors in the former shell company with the benefit of 12 full months of disclosure in the newly structured entity prior to its use of Form S–3 or Form F–3 for primary securities offerings.

As proposed, the 20% limitation is designed to allow issuers flexibility. Because the restriction on the amount of securities that can be sold over a period of 12 calendar months is calculated by reference to a registrant's public float immediately prior to a contemplated sale, as opposed to the time of the initial filing of the registration statement, the amount of securities that an issuer is permitted to sell can continue to grow over time as the issuer's public float increases. Therefore, the value of 20% of a registrant's float during the period that a shelf registration statement is effective may, at any given time, be much greater than at the time the registration statement was initially filed. Registrants may therefore benefit from increases in the size of their public float during the time the registration statement is effective. Conversely, the amount of securities that an issuer is permitted to sell at any given time may also decrease if the issuer's public float contracts. It is important to note, however, that a contraction in a registrant's float, such that the value of 20% of the float decreases from the time the registration statement was initially filed, would not necessarily run afoul of the 20% limitation because the relevant point in time for determining whether a registrant has exceeded the threshold would be the time of sale. If the sale of securities, together with all securities sold in the preceding period of 12 calendar months, does not exceed 20% of the registrant's float calculated within 60 days of the sale, then the transaction would not violate proposed Instruction I.B.6. to Form S–3 even if the registrant's public float later drops to a level such that the prior sale now accounts for over 20% of the new lower float.[41]

Because Form S–3 registrants who meet the $75 million float threshold of General Instruction I.B.1. at the time their registration statement is filed are not subject to restrictions on the amount of securities they may sell under the registration statement even if their float falls below $75 million subsequent to the effective date of the Form S–3, we believe it is appropriate to provide issuers registering on Form S–3 pursuant to proposed General Instruction I.B.6. the same flexibility if their float increases to a level that equals or exceeds $75 million subsequent to the effective date of their Form S–3 without the additional burden of filing a new Form S–3 registration statement. Therefore, we are proposing an instruction to I.B.6. that lifts the 20% restriction on additional sales in the event that the registrant's float increases to $75 million or more subsequent to the effective date. Of course, pursuant to Rule 401, registrants would also be required to recompute their public float each time an amendment to the Form S–3 is filed for the purpose of updating the registration statement in accordance with Section 10(a)(3) of the Securities Act—typically when an annual report on Form 10–K is filed. In the event that the registrant's public float as of the date of the filing of the annual report is less than $75 million, the 20% restriction would be reimposed for all subsequent sales made pursuant to General Instruction I.B.6. and would remain in place until the registrant's float equaled or exceeded $75 million.

The following examples illustrate how the proposed Instruction would operate.[42] For purposes of these examples, we are assuming that the hypothetical registrants satisfy the registrant eligibility requirements in General Instruction I.A. of Form S–3 and are not shell companies.

Example A

On January 1, 2008, a registrant with a public float of $50 million files a shelf registration statement on Form S–3 pursuant to proposed General Instruction I.B.6. intending to register the registrant's offer and sale of up to $20 million of debt and equity securities over the next three years from time to time as market opportunities arise.[43] The registration statement is subsequently declared effective. In March 2008, the registrant decides to sell common stock off the registration statement. To determine the amount of securities that it may sell in connection with the intended takedown, the registrant calculates its public float as of a date within 60 days prior to the anticipated date of sale, pursuant to Instruction 1 to proposed General Instruction I.B.6. Calculating that its public float is now $55 million, the registrant determines that the total market value of all sales effected pursuant to Instruction I.B.6. over the past year, including the intended sale, may not exceed $11 million, or 20% of the registrant's float. Since the registrant has not previously filed on Form S–3 and has made no prior sales off the subject Form S–3, it is able to sell the entire $11 million off the subject Form S–3.

Assuming that it sold the entire $11 million of securities in March 2008, the registrant in September 2008 once again contemplates a takedown off the shelf. It determines that its public float (as calculated pursuant to Instruction 1 to proposed General Instruction I.B.6.) has risen to $60 million. Because 20% of $60 million is $12 million, the registrant is now able to sell additional securities in accordance with proposed General Instruction I.B.6(a), even though in March 2008 it took down the equivalent of what was then the entire 20% of its float. However, because the registrant has already sold $11 million worth of its securities within the 12 calendar months prior to the contemplated sale, the registrant may sell no more than $1 million of additional securities at this time.

In December 2008, the registrant determines that its public float has risen to $85 million. To this point, assuming it has only sold an aggregate of $12 million of its securities pursuant to the subject Form S–3 as described above, it has $8 million of securities remaining

calendar months after it ceases being a shell company.

[40] Items 2.01(f) and 5.01(a)(8) of Form 8–K require a company in a transaction where the company ceases being a shell company to file a current report on Form 8–K containing the information (or identifying the previous filing in which the information is included) that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act.

[41] Along these lines, under the proposal registrants would be able to sell up to the equivalent of the full 20% of their public float immediately following the effective date of their registration statement, provided that there were no prior sales pursuant to proposed General Instruction I.B.6. of Form S–3. This is consistent with Rule 415(a)(1)(x), which was amended in 2005 to allow primary offerings on Form S–3 or Form F–3 to occur immediately after effectiveness of a shelf in registration statement. See Release No. 33–8591. Assuming that the sale of the entire 20% allotted under the proposal complied with the rule at the time of the takedown, the subsequent contraction in the registrant's public float would not invalidate this prior sale.

[42] The examples that follow are for illustrative purposes only and are not intended to be indicative of market activity.

[43] Although only 20% of the public float may be sold in any year, a company may register a larger amount.

on the registration statement and potentially available for takedown (the total amount registered of $20 million, less the $12 million previously sold). Because 20% of $85 million is $17 million, and the registrant has already sold $12 million within the previous year, Instruction I.B.6.(a) would, in most circumstances, prohibit the registrant from selling more than an additional $5 million of securities in the latest offering. However, under Instruction 3 to proposed General Instruction I.B.6., the registrant is no longer subject to the 20% limitation on annual sales because its float has exceeded $75 million. If it chooses, the registrant may sell the entire remaining $8 million of securities all at once or in separate tranches at any time until the company updates the registration statement pursuant to Section 10(a)(3) by filing a Form 10–K. This will be the case even if the registrant's float subsequently falls below $75 million until it files that Form 10–K.

Example B

A registrant has 12 million shares of voting common equity outstanding held by nonaffiliates. The market price of this stock is $5, so the registrant has a public float of $60 million. The registrant has an effective Form S–3 shelf registration statement filed in reliance on proposed General Instruction I.B.6. of Form S–3 pursuant to which the registrant wants to issue $10 million of convertible debt securities which will be convertible into common stock at a 10% discount to the market price of the common stock. Pursuant to Instruction 2 to proposed General Instruction I.B.6., the amount of securities issued is measured by reference to the value of the underlying common stock rather than the amount for which the debt securities will be sold. At the 10% discount, the conversion price is at $4.50 and, as a result, 2,222,222 shares currently underlie the $10 million of convertible debt. Because the current market price of those underlying shares is $5, the value of the securities being offered for purposes of General Instruction I.B.6. is $11,111,110 (2,222,222 shares at $5 per share), which is less than the $12 million allowed by the 20% cap (20% of $60 million).

After the convertible debt securities are sold and are outstanding, the registrant contemplates an additional takedown. To determine the amount of securities that the registrant may sell under General Instruction I.B.6. in the anticipated offering, the registrant must know its current public float and must calculate the aggregate market value of all securities sold in the last year on Form S–3 pursuant to General Instruction I.B.6. Instruction 2 to proposed General Instruction I.B.6. requires that the registrant compute the market value of convertible debt securities sold under I.B.6. by reference to the value of the underlying common stock rather than the amount for which the debt securities were sold. With respect to the notes that were sold and have been converted, the aggregate market value of the underlying common stock is calculated by multiplying the number of common shares into which the outstanding convertible securities were converted times the market price on the day of conversion. With respect to the notes that were sold but have not yet been converted, the aggregate market value of the underlying common stock is calculated by multiplying the maximum number of common shares into which the notes are convertible as of a date within 60 days [44] prior to the anticipated sale by the per share market price of the registrant's equity used for purposes of determining its current float.

In this example, assume that the registrant has a current per share stock price of $5.55. If half of the notes converted into common stock while the per share market price was $5.00 ($4.50 discount), then, for purposes of Instruction 2 to proposed General Instruction I.B.6., the value of that prior issuance is $5,555,555 (half of the notes divided by the discounted conversion price of $4.50 and then multiplied by $5, the market price on the day of conversion).

As for the notes that have not yet been converted, the aggregate market value of the underlying common stock is determined by calculating the number of shares that may be received upon conversion and multiplying that by the current market value of $5.55. Therefore, the outstanding note amount ($5 million) is divided by the discount conversion price ($5), resulting in 1,000,000 shares and this is then multiplied by the current market value of $5.55. Thus, for purposes of Instruction 2 to proposed General Instruction I.B.6., $5,550,000 is the value of the outstanding notes that have not yet been converted. Adding this to the value of the notes that have already been converted results in a total value of $11,105,555 having been issued under this Form S–3.

To determine the amount of additional securities that the registrant may sell under General Instruction I.B.6, the registrant would add the value of the notes issued ($11,105,555) plus the value of all other securities sold by the registrant pursuant to Instruction I.B.6. during the preceding year. If this amount is less than 20% of the registrant's current public float, it may sell additional securities with a value up to, but not greater than, the difference between 20% of its current public float and the value of all securities sold by it pursuant to Instruction I.B.6. during the preceding year.

Example C

A registrant has an effective registration statement on Form S–3 through which it intends to conduct shelf offerings of its securities. The Form S–3 was filed pursuant to proposed General Instruction I.B.6. At the time of its first shelf takedown, the registrant's public float is equal to $20 million (which means that the maximum amount available to be sold under the 20% cap would be $4 million). Based on proposed General Instruction I.B.6(a), the registrant sells $3 million available of its debt securities. Six months later, the registrant's public float has decreased to $10 million. The registrant wishes to conduct an additional takedown off the shelf but, because of the reduction in its float, it is prohibited from doing so. This is because with a public float of $10 million, General Instruction I.B.6(a) would only allow the registrant to sell a maximum of $2 million worth of securities (20% of $10 million) pursuant to the registration statement during the prior period of 12 calendar months that ends on the date of the contemplated sale. However, the registrant has already sold securities valued (for purposes of proposed General Instruction I.B.6.) at $3 million in the 6 months prior to the contemplated sale and so must wait until at least a full year has passed since the $3 million sale of debt securities to undertake another offering off the Form S–3 unless its float increases. Note that, although the registrant's float would not allow additional sales, the $3 million takedown of securities 6 months prior does not violate the 20% restriction because, at the time of that prior sale, the registrant's float was $20 million.

Because allowing smaller public companies to take advantage of shelf primary offerings on Form S–3 would permit such companies to avail themselves of periodic takedowns

[44] Note that the date chosen by the registrant for determination of the maximum number of shares underlying the convertible notes must be the same date that the registrant chooses for determining its market price in connection with the calculation of public float pursuant to proposed General Instruction I.B.6. See Instruction 5 to proposed General Instruction I.B.6.

without further Commission action or prior staff review, some concerns have been raised.[45] Although the Commission staff may review registration statements before they are declared effective, individual takedowns are not subject to prior selective staff review. Under the current rules, if these issuers were instead using Form S–1 or Form SB–2, they would be required to file separate registration statements for each new offering, which would be subject to pre-offering selective staff review before going effective.

While we recognize that extending the benefits of shelf registration to an expanded group of companies will, by necessity, limit the staff's direct prior involvement in takedowns of securities off the shelf, we believe that the risks will be justified by the benefits that will accrue by facilitating the capital formation efforts of smaller public companies. As we have discussed elsewhere in this release, the risks to investor protection by expanding the base of companies eligible for primary offerings on Form S–3 have been significantly mitigated by technological advances affecting the manner in which companies communicate with investors, allowing widespread, direct, and contemporaneous accessibility to company disclosure at little or no cost. Moreover, the scope of disclosure obligations and liability of smaller public companies under the federal securities laws are sufficiently comparable for these purposes to the largest reporting companies such that the proposed expansion of Form S–3 primary offering eligibility should not adversely impact investors.[46]

Although we believe that the public securities markets have benefited from advances in both technology and corporate disclosure requirements, we are nevertheless mindful that companies with a smaller market capitalization as a group have a comparatively smaller market following than larger, well-seasoned issuers and are more thinly traded. Securities in thinly traded markets may be more vulnerable to potential manipulative practices. In this regard, to ensure that shelf eligibility is expanded with appropriate moderation and attention to the continued protection of investors, we have proposed to exclude shell companies from eligibility and to impose a 20% restriction on the amount of securities that can be sold into the market on Form S–3 in any period of 12 calendar months by issuers with a public float below $75 million.[47] By placing such restrictions on the expansion of Form S–3 eligibility, we believe we are mitigating the potential for abuse that could result as a function of the increase in the volume of smaller public company securities sold in primary offerings on Form S–3. At the same time, we believe that the 20% limit will be sufficient to accommodate the capital raising needs of the large majority of smaller public companies.[48]

We note that the Advisory Committee, in its May 2006 Final Report to the Commission, expressed support for a more expansive rule change, with no suggestion of a limitation on Form S–3 eligibility other than current required Exchange Act reporting and listed on a national securities exchange or the Over-the-Counter Bulletin Board. However, we are not at this time proposing such a less restrictive eligibility requirement. We believe that by restricting the applicability of the revised eligibility rule to companies that are not shell companies and by imposing the 20% limitation on the amount of securities that smaller public companies may sell pursuant to primary offerings on Form S–3, as described, the proposal strikes the appropriate balance between helping to facilitate capital formation through the securities markets and our objective of investor protection. If the amendment is adopted as proposed, this would not foreclose the possibility that we may revisit the appropriateness of this 20% restriction at a later time. However, we believe that limiting the expanded use of S–3 as proposed will allow us to consider the impacts of the expansion in an environment where there are limitations so that investor protection concerns are addressed.

C. Proposed Revisions to Form F–3

Form F–3, which was designed to parallel Form S–3,[49] is the equivalent short-form registration form available for use by ''foreign private issuers'' [50] to register securities offerings under the Securities Act. Similar to Form S–3, Form F–3 is available to foreign private issuers that satisfy the form's registrant requirements and at least one of the

[45] For example, see *Report of the Task Force on Disclosure Simplification* (Mar. 5, 1996) (the ''Task Force''), available at *http://www.sec.gov/news/studies/smpl.htm.* Among other things, the Task Force made several recommendations to amend the shelf registration procedure ''so as to provide increased flexibility to a wider array of companies with respect to their capital-raising activities.'' These recommendations included a ''modified form of shelf registration'' that would have allowed smaller companies to price their securities on a delayed basis for up to one year in order to time securities offerings more effectively with opportunities in the marketplace. The Task Force stated:

While this recommendation will afford small companies time and cost savings, the Task Force appreciates concerns raised about possible adverse effects shelf registration may have on the adequacy and accuracy of disclosures provided to investors, on Commission oversight of the disclosures and on the role of underwriters in the registration process. These concerns are similar to those raised when the shelf registration rule was first being considered on a temporary basis and was made available to any offering including an initial public offering.

See also, *Delayed Pricing for Certain Registrants,* Release No. 33–7393 (Feb. 20, 1997) [62 FR 9276]. Following on the Task Force's recommendations, the Commission proposed to permit certain smaller companies to price registered securities offerings on a delayed basis for up to one year after effectiveness. The Commission noted, however:

Concerns have been raised that the expedited access to the markets that would be provided by these proposals could make it difficult for gatekeepers, particularly underwriters, to perform adequate due diligence for the smaller companies that would be eligible to use expanded Rule 430A.

[46] We acknowledge that the companies implicated in this rulemaking are not yet subject to Section 404 of Sarbanes-Oxley. See *Internal Control Over Financial Reporting in Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies,* Release No. 33–8760 (Dec. 15, 2006) [71 FR 76580]. We have taken steps to implement a plan to improve the efficiency and effectiveness of Section 404 implementation, including its scalability to smaller companies. See *Commission Guidance Regarding Management's Report on Internal Control Over Financial Reporting Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934,* Release No. 34–55929 (June 20, 2007).

[47] Under the proposal, offerings above the 20% limitation would violate the form requirements, and may have implications under Section 5.

[48] In connection with this rulemaking, the Division of Corporation Finance undertook a review of shelf registration takedowns in 2006 by companies with a public float of moderate size. Specifically, the Division looked at all prospectus supplements filed pursuant to shelf registration statements in calendar year 2006 by companies with a public float between $75 million and $140 million. While we observed a wide range of variously sized shelf takedowns (from less than 1% of float to greater than 80% of float), the data suggests that limiting smaller public companies to 20% of their public float in any 12-month period strikes the appropriate balance between the capital needs of these companies and investor protection concerns.

[49] See *Integrated Disclosure System for Foreign Private Issuers,* Release No. 33–6360 (Nov. 20, 1981) [46 FR 58511], at 7:

The three forms proposed under the Securities Act roughly parallel proposed Forms S–1, S–2 and S–3 in the domestic integration system, but the foreign system is based on the Form 20–F instead of the Form 10–K and annual report to shareholders as the uniform disclosure package.

[50] The term ''foreign private issuer'' is defined in Rule 405 of the Securities Act to mean any foreign issuer other than a foreign government except an issuer meeting the following conditions:

(1) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(2) Any of the following:

(i) The majority of the executive officers or directors are United States citizens or residents;

(ii) More than 50 percent of the assets of the issuer are located in the United States; or

(iii) The business of the issuer is administered principally in the United States.

form's transaction requirements.[51] The Form F–3 registrant requirements are similar to Form S–3 and generally relate to a registrant's reporting history under the Exchange Act.[52] In addition, like the Form S–3 registration statement, Form F–3 limits the ability of registrants to conduct primary offerings on the form unless their public float equals or exceeds a particular threshold.[53]

As with Form S–3, the Commission has attempted to limit the availability of Form F–3 for primary offerings to a class of companies believed to provide a steady stream of corporate disclosure that is broadly digested and disseminated to the marketplace. When the Commission adopted Form F–3 in 1982,[54] it set the public float test for foreign issuers at $300 million in response to public comment recommending that the numerical test for foreign issuers be much greater than for domestic registrants.[55] In 1994, however, the Commission reduced this threshold to $75 million in order to extend to foreign issuers the benefits of short-form registration ''to the same extent available to domestic companies.'' [56] In explaining its rationale, the Commission stated:

> [Our] experience with foreign issuers, as well as the internationalization of securities markets, indicates that foreign issuers with a public float of $75 million or more have a degree of analyst following in their world-wide markets comparable to similarly-sized domestic companies.[57]

As a result, the Commission believed that expanding Form F–3 eligibility by lowering the float standard to $75 million would give foreign issuers the same capital raising advantages enjoyed by domestic issuers on Form S–3 without compromising investor protection.[58]

In order to maintain the rough equivalency between Form S–3 and Form F–3, which have had the same public float criteria for primary offering eligibility since 1994,[59] we are proposing amendments to Form F–3 that are comparable to our proposed changes to Form S–3. Specifically, proposed General Instruction I.B.5. to Form F–3 would allow foreign private issuers with less than $75 million in worldwide public float to register primary offerings of their securities on Form F–3, provided:

- They meet the other registrant eligibility conditions for the use of Form F–3;
- They are not shell companies and have not been shell companies for at least 12 calendar months before filing the registration statement; and
- They do not sell more than the equivalent of 20% of their public float in primary offerings under General Instruction I.B.5. on Form F–3 over any period of 12 calendar months.

D. Request for Comment

We request and encourage any interested person to submit comments on the proposal and any other matters that might have an impact on the proposal. With respect to any comments, we note that such comments are of greatest assistance to our rulemaking initiative if accompanied by supporting data and analysis of the issues addressed in those comments. In addition to general comment, we encourage commenters to address the following specific questions:

- Is the proposed change in the public float eligibility criteria for Forms S–3 and F–3 appropriate? Is our assumption correct that it is appropriate to lift the public float restrictions in a limited manner given advances in the electronic dissemination and accessibility of company disclosure transmitted over the Internet?
- In this regard, in what way is market following an important criteria in light of these technological changes?[60]
- The Form S–3 eligibility requirement for primary offerings which requires minimum public float was last set in 1992 at $75 million. Based on the Personal Consumption Expenditures Price Index (PCEPI) and the Consumer Price Index (CPI), if this threshold were adjusted for inflation, it would equal between $100–110 million, respectively, in today's dollars. Does this suggest that we should not adopt this proposal and leave the form eligibility requirements unchanged, since by retaining $75 million as the minimum and not raising it to at least $100 million to account for inflation, we are in effect allowing a lower threshold than was established in 1992?
- Should the Commission retain the float test in all cases for primary offerings, but set it below $75 million? Should the float test be higher than $75 million?
- Should we make parallel changes to Forms S–3 and F–3, as proposed? If not, in what way should they be different? For example, are there special conditions relating to foreign issuers that would make any of the proposed amendments not appropriate or should they be tailored in any way?
- Is there a more appropriate criteria to determine eligibility for primary offerings on Forms S–3 and F–3 than public float? Given the more limited liquidity of companies with a public float less than $75 million, would a more appropriate criteria for eligibility relate to Average Daily Trading Volume for the prior year? If so, is 25% of Average Daily Traded Volume an appropriate cap (for ADTV) per year? Should the cap be based on dollar volume traded per day? If not, how would the criteria be evaluated for purposes of determining issuances other than common stock? If Average Daily Trading Volume is used as the criteria instead of public float, over what period should the average be calculated?
- Is the proposed 20% limitation on the amount of securities that can be sold

[51] See General Instruction I. of Form F–3: ''Eligibility Requirements for Use of Form F–3.''

[52] One difference is that, unlike Form S–3, General Instruction I.A.1. of Form F–3 requires that registrants have previously filed at least one annual report on Form 20–F, Form 10–K or, in certain cases, Form 40–F under the Exchange Act. For an explanation of this difference, see *Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports,* Release No. 33–7029 (Nov. 3, 1993) at 3; and *Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports,* Release No. 33–7053 (Apr. 19, 1994), at 2 (explaining that the requirement was adopted ''in order to ensure that information regarding the issuer is available to the market'').

[53] See General Instruction I.B.1. of Form F–3. Note that, unlike Form S–3, the Instruction makes reference to the registrant's ''worldwide'' public float.

[54] *Adoption of Foreign Issuer Integrated Disclosure System,* Release No. 33–6437 (Nov. 19, 1982) [47 FR 54764].

[55] See Release No. 33–7029, at 2.

[56] Release No. 33–7053, at 2. In the same rulemaking, the Commission also reduced the reporting history requirement in Form F–3 from 36 to 12 months to match the eligibility criteria applicable to domestic companies using Form S–3.

[57] Release No. 33–7029, at 2.

[58] In the release adopting this change to the Form F–3 eligibility requirements, the Commission stated:

> These provisions are part of the ongoing efforts of the Commission to ease the transition of foreign companies into the U.S. disclosure system, enhance the efficiencies of the registration and reporting processes and lower costs of compliance, where consistent with investor protection.

Release No. 33–7053, at 2.

[59] The Commission's adoption of the ''Securities Offering Reform'' amendments in July 2005 is a recent instance where parallel changes were made to Form S–3 and Form F–3. See Release No. 33–8591. For example, the 2005 amendments provided that the ability to conduct an automatic shelf offering under both Form S–3 and Form F–3 is limited to registrants that qualify as ''well-known seasoned issuers'' under Rule 405 of the Securities Act. We note the minimum public float threshold required to be a well-known seasoned issuer is the same for both Form S–3 and Form F–3.

[60] *See* Release No. 33–6383, at 8 (discussing the objective of relating short-form registration to the existence of widespread following in the marketplace).

over any period of 12 calendar months appropriate? Should this restriction be broader or more narrow? For example should 20% be higher or lower or should the one-year period be longer or shorter? Is this the right amount to provide smaller public companies with a realistic financing alternative? If the restriction is not appropriate as proposed, what alternatives are preferable and why?

• Proposed General Instruction I.B.6. of Form S–3 would restrict the amount of securities that can be sold by a registrant over a period of ''12 calendar months.'' This parallels the way in which the phrase ''12 calendar months'' is used for purposes of the registrant eligibility requirements in Form S–3. Therefore, if a registrant relies on General Instruction I.B.6. to conduct a shelf takedown equivalent to 20% of its public float on September 15, 2007, it will next be eligible to do another takedown (assuming no change in its float) on October 1, 2008. Instead of ''12 calendar months,'' would it be preferable if the relevant measurement period was ''one year,'' so that a registrant who conducted a shelf takedown equal to 20% of its float on September 15, 2007 would next be eligible to do another takedown (assuming no change in its float) under General Instruction I.B.6. on September 15, 2008?

• Should we allow non-investment grade debt to be offered under this provision? Should we have a cap for the amount of non-investment grade debt that may be sold? If so, is it appropriate to tie the cap to public float? If not, what would be a more appropriate criteria?

• In the case of securities that are convertible into or exercisable for equity shares, such as convertible debt securities, we are proposing that the registrant calculate the amount sold by reference to the aggregate market value of the underlying equity shares in lieu of the market value of the convertible securities. Should we also include in the amount the value of the overlying securities? Should derivative securities be calculated in a different manner?

• Under Rule 430B, except for an effective date resulting from the filing of a form of prospectus for purposes of updating the registration statement pursuant to Section 10(a)(3) or reflecting fundamental changes in the information in the registration statement pursuant to the issuer's undertakings, the prospectus filing will not create a new effective date for directors or signing officers of the issuer, whereas the filing of a registration statement on Form S–1, which issuers with a market capitalization of less than $75 million would otherwise need to use for these offerings, would. Likewise, the filing of the prospectus will not be a new effective date for auditors who provided consent in an existing registration statement for their report on previously issued financial statements as the filing of a new Form S–1 would. Is this potential ''gap'' in liability appropriate in the situations allowed under the proposed revisions?

• Should the 20% limitation be calculated only with respect to securities sold pursuant to the proposed amendment or should it include all securities sold pursuant to registered public offerings on Form S–3, S–1, SB–2, etc.? Should the 20% also include securities sold pursuant to private offerings? Should it include securities sold pursuant to registered public offerings on any form by selling shareholders?

• Should the calculation of 20% of the registrant's public float reflect increases and decreases in the registrant's public float during the period that its shelf registration statement is effective, as is currently proposed? Do concerns relating to investor protection and potential market manipulation weigh in favor of a different method of calculating the 20% limitation, such as determining the 20% limit at the time the registration statement is filed rather than at the time of each sale under the registration statement? Would an annual limitation on the number of offerings on Forms S–3 and F–3 that a registrant may conduct under proposed General Instruction I.B.6. strike the appropriate balance between investor protection and capital formation facilitation?

• Should the calculation of a registrant's public float for purposes of the amendment be based on an average, such as the average weekly float during the four calendar weeks preceding the sale in question?

• As proposed, General Instruction I.B.6. of Form S–3 and General Instruction I.B.5. of Form F–3 provide that the 20% restriction on sales will be lifted in the event that the registrant's public float equals or exceeds $75 million subsequent to the effective date. However, registrants would be required to recompute their public float each time they filed an amendment to update the registration statement pursuant to Rule 401 and, if the float measured less than $75 million, the 20% restriction on sales could be reimposed until the float equaled or exceeded $75 million. If the 20% restriction is lifted because the registrant's public float surpasses $75 million, but is subsequently reimposed because the float falls below $75 million, should the calculation of 20% take into consideration the value of all securities sold pursuant to Form S–3 (or Form F–3, as applicable) in primary offerings in the preceding year; only securities sold pursuant to General Instruction I.B.6. of Form S–3 (or General Instruction I.B.5. of Form F–3, as applicable), in the preceding year; or, should the calculation ignore the value of securities sold prior to the date of the update when the float was last measured?

• In the event that a registrant's public float equals or exceeds $75 million, is it appropriate for the transformation of the filing from a primary shelf filing under General Instruction I.B.6. of Form S–3 (or General Instruction I.B.5. of Form F–3, as applicable) to a primary shelf filing under General Instruction I.B.1. of Form S–3 (or General Instruction I.B.1. of Form F–3, as applicable) to be made without there being a new effective date for the registration statement? If we should have a new effective date for the registration statement, how would that date be set and should there be any filing made with the Commission?

• Should the calculation of a registrant's public float for purposes of the amendments be made by reference to the price of the registrant's common equity within 60 days prior to the date of sale, or should the reference period for the price of the registrant's common equity be as of a date closer to the date of sale?

• What should be the consequence of an issuer exceeding the 20% restriction on sales? If the consequences of violating the 20% are significant, would the risks of doing so adversely affect the willingness of issuers to use the proposal? If so, what, if anything, should be done to ameliorate those risks?

• Should the issuer's intent be a factor in determining the consequences of a violation of the 20% restriction?

• Should we amend Rule 401(g) [61] of the Securities Act to provide that violations of the 20% restriction would also violate the requirements as to proper form under Rule 401 even though the registration statement has been declared effective previously?

• The proposal does not exclude any type of offerings, such as at-the-market offerings. Should we impose restrictions on the manner of sale under proposed General Instruction I.B.6. to Form S–3 (and, on Form F–3, proposed General Instruction I.B.5.), so that only certain kinds of distributions, such as firm

[61] 17 CFR 230.401(g).

commitment underwritten offerings, are permitted?

• We recently eliminated restrictions on primary ''at-the-market'' offerings of equity securities for primary shelf eligible issuers because we felt they were not necessary to provide protection to markets or investors for seasoned issuers.[62] Given that the proposal allows smaller companies to do primary offerings, should registrants utilizing proposed General Instruction I.B.6. to Form S–3 (and, on Form F–3, proposed General Instruction I.B.5.) be prohibited from conducting at-the-market offerings under Rule 415(a)(4)?[63] If at-the-market offerings are allowed, should we nevertheless require that such offers and sales be made only through registered broker-dealers and require such broker-dealers to be named as underwriters in the prospectus?

• Should all companies with a public trading market, including companies traded on the Pink Sheets, be allowed to use the amended form as proposed or should we limit it to just interdealer quotations systems with some level of oversight and operated by a self-regulatory organization?

• Is the proposal not to extend expanded Form S–3 and F–3 eligibility to shell companies appropriate? If not, why?

• Are there other restraints on the proposed expansion of Form S–3 and F–3 eligibility that should be considered, such as restricting the classes of issuers that may utilize this expansion or the types and amounts of securities that may be registered on Forms S–3 and F–3 pursuant to this expansion?

• If the eligibility standards for Form S–3 and Form F–3 are expanded as proposed, will allowing this larger class of companies to conduct limited primary offerings of their securities on these forms provide them with a meaningful source of financing? How might this proposal impact the private markets for these companies' securities?

• If the proposal is adopted, what types of financings are issuers likely to make on the expanded eligibility on Form S–3 and F–3?

• If the proposal is adopted, it is foreseeable that some companies with a public trading market but with securities not listed or authorized for listing on a national securities exchange may be eligible to offer such securities in primary offerings on Form S–3 or Form F–3. Since the proposal is not intended to alter the exemption from state regulation of securities offerings under Section 18 of the Securities Act, will the effect of state blue sky law make it prohibitively difficult for companies without ''covered'' securities (as defined by Section 18(b)) to register such securities in primary offerings on Form S–3 and F–3 pursuant to the proposal? If the answer is yes, what steps can we take to make the amendments more useful to companies?

• Are there any market practices that may arise as a result of this proposal that we should be concerned about?

• Is there any investor protection loss the proposal does not address? If so, how can we address it? Are there any additional disclosures that are appropriate? For instance, are there any disclosures required in Forms S–1 or F–1 that should be included in Forms S–3 or F–3 filed under General Instruction I.B.6. of Form S–3 or General Instruction I.B.5. of Form F–3, respectively? Should issuers have to disclose in the prospectus their calculation of the amount of securities being offered, the amount offered pursuant to these Instructions for the last 12 calendar months and of the amount of securities that may be offered under the filing during the year?

II. Paperwork Reduction Act

A. Background

The proposed amendments to Forms S–3 and F–3 contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[64] We are submitting these to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act.[65] The titles for this information are:

''Form S–3'' (OMB Control No. 3235–0073);

''Form S–1''[66] (OMB Control No. 3235–0065);

''Form SB–2''[67] (OMB Control No. 3235–0418);

''Form F–3'' (OMB Control No. 3235–0256); and

''Form F–1''[68] (OMB Control No. 3235–0258)

We adopted existing Forms S–3, S–1, SB–2, F–3 and F–1 pursuant to the Securities Act. These forms set forth the disclosure requirements for registration statements that are prepared by eligible issuers to provide investors with the information they need to make informed investment decisions in registered offerings.

Our proposed amendments to Forms S–3 and F–3 are intended to allow issuers that are currently ineligible to use Forms S–3 and F–3 for primary offerings because they do not meet the forms' public float requirements to nevertheless register a limited amount of securities in primary offerings on Form S–3 or Form F–3, as applicable, so long as they are not shell companies and meet the other eligibility requirements of the forms.

The hours and costs associated with preparing disclosure, filing forms, and retaining records constitute reporting and cost burdens imposed by the collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The information collection requirements related to registration statements on Forms S–3, S–1, SB–2, F–3 and F–1 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the EDGAR filing system.

B. Summary of Information Collections

Because the amendments that we are proposing in this release pertain only to Forms S–3 and F–3 eligibility and not to the disclosure required by these forms, we do not believe that the amendments will impose any new

[62] *See* Release No. 33–8591.

[63] Prior to the adoption of Securities Offering Reform in July 2005, Rule 415 prohibited registrants from making at-the-market offerings on Form S–3 or Form F–3 unless certain conditions were met. The conditions were that: The amount of securities could not exceed ten percent of the registrant's public float; the securities had to be sold through an underwriter or underwriters acting as principal(s) or agent(s) for the registrant; and the underwriter(s) must be named in the prospectus. Among other things, the 2005 amendments eliminated these restrictions for primary shelf eligible issuers. In the Securities Offering Reform adopting release, the Commission stated:

The restrictions on primary ''at-the-market'' offerings of equity securities currently set forth in Rule 415(a)(4) were adopted initially to address concerns about the integrity of trading markets. As discussed in the Proposing Release, we are eliminating these restrictions for primary shelf eligible issuers because they are not necessary to provide protection to markets or investors. The market today has greater information about seasoned issuers than it did at the adoption of the ''at-the-market'' limitations, due to enhanced Exchange Act reporting. Further, trading markets for these issuers' securities have grown significantly since that time. Requiring the involvement of underwriters and limiting the amount of securities that can be sold imposes artificial limitations on this avenue for these issuers to access capital.

Release No. 33–8591, at 213–214.

[64] 44 U.S.C. 3501 *et seq.*

[65] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[66] Because our amendments to Form S–3 and Form F–3 are anticipated to affect the annual number of Forms S–1, Forms SB–2 and Forms F–1 filed, we are required to include them in the titles of information collections even though we are not proposing to amend them in this release.

[67] See n. 66 above.

[68] *Id.*

recordkeeping or information collection requirements. On a per-response basis, this proposal would not increase or decrease existing disclosure burdens for Form S–3 or Form F–3. However, because we expect that many companies newly eligible for primary offerings on Forms S–3 and F–3 as a result of these amendments will choose to file short-form Form S–3 and Form F–3 registration statements in lieu of Forms S–1, SB–2 or F–1, as applicable, we believe there will be an aggregate decrease in the disclosure burdens associated with Forms S–1, SB–2 and F–1 and an increase in the disclosure burdens associated with Forms S–3 and F–3. The shift in aggregate disclosure burden among these forms will be due entirely to the change in the number of annual responses expected with respect to each form as companies previously ineligible to use Form S–3 and Form F–3 switch to these forms for their public offerings and away from Forms S–1, SB–2 and F–1. In addition, because of the anticipated benefits to issuers associated with Forms S–3 and F–3, in particular the lower costs of preparing and filing the registration statements and the ability to make delayed and continuous offerings in response to changing market conditions, we think that this will increase the demand for and lead to more company filings on Forms S–3 and F–3 than would otherwise have been made on Forms S–1, SB–2 and F–1. That is, we think that the opportunity for capital raising will be more robust for many companies because of the availability of shelf registration on Form S–3. We also anticipate that many companies will choose to offer their securities directly to the public through registration on Forms S–3 and F–3 instead of through private placements and therefore, if the proposal is adopted, we expect comparatively more Form S–3 and F–3 registration statements to be filed as companies forego private offerings in favor of the public markets. In order to provide an estimate of the change in the collection of information burden for purposes of the Paperwork Reduction Act, our assumption is that the proposed amendments to Forms S–3 and F–3 will result in an overall increase in the number of such forms filed annually and an overall decrease in the number of Forms S–1, Forms SB–2 and Forms F–1 filed annually. As discussed, however, we do not expect that the incremental increase in the number of all Forms S–3 and F–3 filed will be roughly equal to the incremental decrease in the number of Forms S–1, Forms SB–2 and Forms F–1 filed, because our assumption is that the advantages of shelf registration on Form S–3 and Form F–3 will encourage financings on these forms that would otherwise have been carried out through exempt offerings or perhaps not at all. Therefore, we believe the proposal would result in a net increase in the annual aggregate number of filings on all Forms S–3, S–1, SB–2, F–3 and F–1 taken together, since the increased number of Form S–3 and F–3 filings should exceed the decreased number of Form S–1, SB–2 and F–1 filings. Accordingly, we believe the overall net decrease in disclosure burden that should result from companies changing to the more streamlined Forms S–3 and F–3 will be offset to some extent by newly eligible companies filing Forms S–3 and F–3 more frequently than they did Forms S–1, SB–2 or F–1. However, this offset could be lessened in part by the proposed 20% limitation on the amount of securities that companies may sell on Form S–3 and Form F–3 in any period of 12 calendar months. Companies that require more capital but are prohibited by this 20% restriction from using Form S–3 and Form F–3 for primary offerings may, as a result, continue to conduct some offerings on Forms S–1, SB–2 or F–1 or through the private markets even though Form S–3 and F–3 are preferable.

C. Paperwork Reduction Act Burden Estimates

For purposes of the Paperwork Reduction Act, we estimate the annual decrease in the paperwork burden for companies to comply with our proposed collection of information requirements to be approximately 39,952 hours of in-house company personnel time and to be approximately $47,942,000 for the services of outside professionals.[69] These estimates include the time and the cost of preparing and reviewing disclosure, filing documents and retaining records. Our methodologies for deriving the above estimates are discussed below.

Our estimates represent the burden for all issuers, both large and small. As mentioned, however, the estimated decreases are wholly attributable to our assumptions, discussed in Section B. above, about how the amendments will influence the behavior of certain issuers who were formerly ineligible to conduct primary offerings on Forms S–3 and F–3. These issuers are non-shell companies who satisfy the registrant eligibility requirements of Form S–3[70] or Form F–3,[71] as applicable, but had a public float of less than $75 million at the end of their last fiscal year. In all, we estimate that there were 4,901 such companies at the end of calendar year 2006 and that they filed a total of 815 registration statements on Forms S–1, SB–2 and F–1 during the twelve months ending December 31, 2006.[72] To determine the effect of our proposal on the overall paperwork burden, we have assumed that these filings on Forms S–1, SB–2 and F–1 would have been made instead on Form S–3 or Form F–3, as applicable, to the extent that the issuers would not be limited by the proposed 20% restriction on the amount of securities they may offer in any period of 12 calendar months. Therefore, we assume that the Forms S–1, SB–2 and F–1 filed by the subject companies will decrease from the number filed in 2006, but because of the proposed 20% restriction on sales, will not decrease to 0. Instead, we believe that some Forms S–1, SB–2 and F– will continue to filed annually by these companies. To reflect this, we have taken the number of Forms S–1, SB–2 and F–1 that were filed by these companies in calendar year 2006 and decreased this number by 85% for each form, for a total decrease of 694 filings.[73] Therefore, we assume that approximately 694 fewer Forms S–1, SB–2 and F–1 will be filed by all issuers in calendar year 2006. The actual number could be more or less depending on various factors, including future market conditions.

Furthermore, we believe that the 4,901 companies that we estimate will be affected by the rule change would have conducted more registered securities offerings had they been able to use Forms S–3 and F–3 because of the benefits of forward incorporation and the ability to utilize shelf registration to maximize market opportunities. We assume that the inability of these companies to utilize Forms S–3 and F–3 limited their capacity to access the public securities markets and, because of the cost and lack of flexibility associated with Forms S–1, SB–2 and F–1, either did not file registration statements on Forms S–1 SB–2 or F–1, or were limited in the number that they

[69] For administrative convenience, the presentation of the totals related to the paperwork burden hours have been rounded to the nearest whole number and the cost totals have been rounded to the nearest thousand.

[70] See n. 29 above.

[71] See n. 51 above.

[72] The total of 815 filings is comprised of 138 Forms S–1; 674 Forms SB–2; and 3 Forms F–1.

[73] This number deducts 85% from the totals for each of the three registration forms, as follows: Form S–1 (85% of 138, rounded up, equals 118); Form SB–2 (85% of 674, rounded up, equals 573); and Form F–1 (85% of 3, rounded up, equals 3). Adding these together, the combined reduction totals 694 filings.

filed. We therefore believe that the annual number of responses on Forms S–3 and F–3 for purposes of the Paperwork Reduction Act will increase by an increment greater than simply the total of 694 fewer registration statements on Forms S–1, SB–2 and F–1 that we estimate will be filed going forward by the 4,901 companies who would qualify for primary offerings on Forms S–3 and F–3 as a result of our proposal. We further assume that this increase in Forms S–3 and F–3 will be mitigated to some degree by the proposed 20% restriction on securities sold in any period of 12 calendar months, which may limit the frequency and volume of additional securities offerings on Form S–3 and Form F–3. To reflect this, we have taken the 694 Forms S–1, SB–2 and F–1 that were filed by these companies in calendar year 2006 and increased this number by 10% for each form, for a total increase of 765 filings.[74] Therefore, we assume that approximately 765 additional Forms S–3 and F–3 will be filed over and above the number of total Forms S–3 and F–3 filed by all issuers, large and small, in calendar year 2006. The actual number could be more or less depending on various factors, including future market conditions.

To calculate the total effect of the proposed amendments on the overall compliance burden for all issuers, large and small, we subtracted the burden associated with the 694 fewer Forms S–1, SB–2 and F–1 registration statements that we expect will be filed annually in the future and added the burden associated with our estimate of 765 additional Forms S–3 and F–3 filed annually as a result of the proposal. We used current Office of Management and Budget estimates in our calculation of the hours and cost burden associated with preparing, reviewing and filing each of these forms.

Consistent with current Office of Management and Budget estimates and recent Commission rulemaking,[75] we estimate that 25% of the burden of preparation of Forms S–3, S–1, SB–2, F–3 and F–1 is carried by the company internally and that 75% of the burden is carried by outside professionals retained by the issuer at an average cost of $400 per hour.[76] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

The table below illustrates our estimates concerning the incremental annual compliance burden in the collection of information in hours and cost for Forms S–3, S–1, SB–2, F–3 and F–1 as a result of this proposal.

Form	Estimated change in annual responses (A)	Hours/form[77] (B)	Incremental burden (C)=(A)*(B)	25% Issuer (D)=(C)*0.25	75% Professional (E)=(C)*0.75	$400/hr Professional cost (F)=(E)*$400
S–3	761	459	349,299	87,324.75	261,974.25	$104,789,000
S–1	(118)	1,176	(138,768)	(34,692)	(104,076)	(41,630,400)
SB–2	(573)	638	(365,574)	(91,393.5)	(274,180.5)	(109,672,200)
F–3	4	166	664	166	498	199,200
F–1	(3)	1,809	(5,427)	(1,356.75)	(4,070.25)	(1,628,100)
Total			(159,806)	(39,951.5)	(119,854.5)	(47,941,800)

D. Request for Comment

We request comment in order to evaluate the accuracy of our estimate of the burden of the collections of information.[78] Any member of the public may direct to us any comments concerning the accuracy of these burden estimates. Persons who desire to submit comments on the collection of information requirements should direct their comments to the OMB, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, with reference to File No. S7–10–07. Requests for materials submitted to the OMB by us with regard to this collection of information should be in writing, refer to File No. S7–10–07, and be submitted to the Securities and Exchange Commission, Office of Filings and Information Services, Branch of Records Management, 6432 General Green Way, Alexandria, VA 22312. Because the OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, your comments are best assured of having their full effect if the OMB receives them within 30 days of publication.

III. Cost-Benefit Analysis

A. Summary of Proposals

We are proposing revisions to the transaction eligibility requirements of Forms S–3 and F–3 that would allow companies to take advantage of these forms for primary offerings regardless of the size of their public float. Whereas secondary offerings may be registered on Forms S–3 and F–3 irrespective of float, the current instructions to Forms S–3 and F–3 restrict the use of these forms for primary securities offerings to companies that have a minimum of $75 million in public float calculated within 60 days prior to the date the registration statement is filed. To expand the availability of Forms S–3 and F–3 for primary offerings to more companies, we propose to allow companies with

[74] This number adds a 10% premium to the individual totals for each of the three registration forms, as follows: Form S–1 (10% of 118, rounded up, equals 12); Form SB–2 (10% of 573, rounded up, equals 58); and Form F–1 (10% of 3, rounded up, equals 1). The sum of these increases, which is equal to 71, is then added to the total of 694 Forms S–1, SB–2 and F–1 filed by the subject companies in 2006.

[75] For discussions of the relative burden of preparation of registration statements under the Securities Act allocated between issuers internally and their outside advisers, see *Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 56225] and Release No. 33–8591.

[76] In connection with other recent rulemakings, we have had discussions with several private law firms to estimate an hourly rate of $400 as the average cost of outside professionals that assist issuers in preparing disclosures and conducting registered offerings.

[77] This reflects current Office of Management and Budget estimates.

[78] Comments are requested pursuant to 44 U.S.C. 3506(c)(2)(B).

less than $75 million in public float to register primary offerings of their securities on Forms S–3 and F–3, provided:

- They meet the other registrant eligibility conditions for the use of Form S–3 or Form F–3, as applicable;
- They are not shell companies and have not been shell companies for at least 12 calendar months before filing the registration statement; and
- They do not sell more than the equivalent of 20% of their public float in primary offerings under General Instruction I.B.6. of Form S–3 or under General Instruction I.B.5. of Form F–3 over any period of 12 calendar months.

B. Benefits

The ability to conduct primary offerings on Forms S–3 and F–3 confers significant advantages on eligible companies in terms of cost savings and capital formation. The time required to prepare Form S–3 or Form F–3 is significantly lower than that required for Forms S–1, F–1 and SB–2.[79] This difference is magnified by the fact that Form S–3 and Form F–3, unlike Forms S–1, SB–2 and F–1, permit registrants to forward incorporate required information by reference to disclosure in their Exchange Act filings. Therefore, Form S–3 and Form F–3 registration statements can be automatically updated. This allows such companies to avoid additional delays and interruptions in the offering process and can reduce the costs associated with preparing and filing post-effective amendments to the registration statement.

Overall, we anticipate that the proposed expansion of Form S–3 and Form F–3 eligibility will decrease the aggregate costs of complying with the Commission's rules by allowing companies previously eligible to use only Form S–1, Form SB–2 or Form F–1 the use of short-form registration on Form S–3 or Form F–3, as applicable. Using our estimates prepared for purposes of the Paperwork Reduction Act, we estimate that under the proposal the annual decrease in the compliance burden for companies to comply with our proposed collection of information requirements to be approximately 39,952 hours of in-house company personnel time (valued at $6,992,000[80]) and to be approximately $47,942,000 for the services of outside professionals. If our assumptions regarding these costs and current practices are not correct or complete, then the decreased costs we anticipate may prove to be either higher or lower than our current estimate.

In addition to the benefits associated with the estimated reduction in the time required to prepare Forms S–3 and F–3 in lieu of Forms S–1, SB–2 and F–1, and a company's ability to forward incorporate prospectus disclosure by reference, Forms S–3 and F–3 provide substantial flexibility to companies raising money in the capital markets, which ultimately may reduce the cost of capital for such companies and facilitate their access to additional sources of investment. Companies that are eligible to use Form S–3 or Form F–3 for primary offerings are able to conduct delayed and continuous registered offerings under Rule 415 of the Securities Act, which provides considerable flexibility in accessing the public securities markets from time to time in response to changes in the market and other factors. Eligible companies are permitted to register securities prior to planning any offering and, once the registration statement is effective, offer these securities in one or more tranches without waiting for further Commission action. By having more control over the timing of their offerings, these companies can take advantage of desired market conditions, thus allowing them to raise capital on more favorable terms (such as pricing) or to obtain lower interest rates on debt. In addition, they can vary certain terms of the securities being offered upon short notice, enabling them to more efficiently meet the competitive requirements of the public securities markets. We believe that extending shelf registration benefits to more companies, as we have proposed, will facilitate the capital-raising efforts of smaller public companies who currently have fewer financing options than their larger counterparts.[81] Consequently, we anticipate that the proposal, if adopted, would result in smaller issuers raising more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets. Investors in these companies will benefit by such companies' improved access to capital on more favorable terms. In particular, investors in smaller public companies may be less subject to the risk of dilution in the value of their shares if the companies in which they invest are able to meet more of their capital needs in the public markets. By selling into the public markets, these companies may be able to avoid the substantial pricing discounts that private investors often demand to compensate them for the relative illiquidity of the restricted shares they are purchasing.[82]

The public registration of securities also provides additional benefits to investors over alternative forms of capital raising. To the extent that the amendments, if adopted, lead to an increase in the use of Form S–3 and Form F–3 as a source of financing and a decrease in private market alternatives, investors in those offerings will benefit from the additional investor protections associated with public registration.

Notwithstanding our belief regarding the beneficial effects of the proposed amendments, however, any resulting benefits that accrue to companies and their investors as a result of these amendments will depend on future market conditions and circumstances unique to each company.

C. Costs

As discussed in Section B. above, we do not expect that the proposed amendments to Forms S–3 and F–3 will materially increase companies' overall compliance costs associated with preparing, reviewing and filing these registration statements, although there may be some additional costs incurred by companies to monitor their ongoing compliance with the 20% sales restriction imposed by the amendments. At the same time, the amendments could result in certain additional market costs that are difficult to quantify. For example, it has been suggested that there are risks inherent in allowing smaller public companies to take advantage of shelf primary offerings on Forms S–3 and F–3: because this would permit such companies to avail themselves of periodic takedowns without further Commission action or prior staff review, concerns have been raised about the increased potential for fraud and market manipulation.[83] Although the Commission would retain the authority to review registration statements before declaring them effective, individual takedowns are not subject to prior staff review. Under the current rules, if issuers are instead using Forms S–1, SB–2 or F–1, they would be required to file separate registration statements for each new offering, which

[79] The Office of Management and Budget currently estimates the time required to prepare Form S–3 and Form F–3 as 459 hours and 166 hours, respectively. This is contrasted with current estimates for Form S–1, F–1 and SB–2 as 1,176 hours, 1,809 hours and 638 hours, respectively.

[80] Consistent with recent rulemaking releases, we estimate the value of work performed by the company internally at a cost of $175 per hour.

[81] See generally, Chaplinsky and Haushalter, *Financing Under Extreme Uncertainty: Contract Terms and Returns to Private Investments in Public Equity.*

[82] *Id.*

[83] See n. 45 above.

would be subject to selective staff review before going effective. If these issuers can instead conduct shelf offerings on Form S–3 and Form F–3, there may be some loss of the deterrent effect on the companies' disclosures in connection with each takedown off the shelf because of the lack of prior staff review. In addition, the short time horizon of shelf offerings may also reduce the time that participating underwriters have to apply their independent scrutiny and judgment to an issuer's prospectus disclosure. We have also considered the effect the amendments may have on market demand in the securities of smaller public companies offered on Form S–3 and Form F–3. If there is a perception that smaller public company securities offered through shelf registration statements are more prone to abuse because of the lack of involvement by the Commission staff, this may erode investor confidence in these offerings generally. This could, in turn, make it more difficult for these companies to raise capital and significantly negate the benefits of the rule.

While we recognize that extending the benefits of shelf registration to an expanded group of companies will, by necessity, limit the staff's direct involvement in takedowns of securities off the shelf and could therefore pose some risk to investors, we believe that the costs will be justified by the benefits that will accrue by facilitating the capital formation efforts of smaller public companies. As we have discussed elsewhere in this release, the risks to investor protection by expanding the base of companies eligible for primary offerings on Forms S–3 and F–3 have been significantly mitigated by technological advances affecting the manner in which companies communicate with investors, allowing widespread, direct, and contemporaneous accessibility of company disclosure at little or no cost. Moreover, the scope of heightened disclosure obligations and liability of smaller public companies under the Federal securities laws are sufficiently comparable for these purposes to the largest reporting companies such that the proposed expansion of Form S–3 and Form F–3 primary offering eligibility should not adversely impact investors. In this regard, to ensure that the expansion of eligibility is carried out with appropriate moderation and attention to the continued protection of investors, we have proposed to exclude shell companies from eligibility and to impose a 20% restriction on the amount of securities that can be sold into the market in any period of 12 calendar months by eligible issuers on Forms S–3 and F–3. We note, however, that monitoring compliance with this 20% limitation may be more difficult given the lack of prior staff review before a shelf offering.

D. Request for Comment

We solicit comments, including quantitative data, to assist our assessment of the costs and benefits of the proposal that we have identified, or any other costs or benefits that we have not addressed but ought to consider. Commenters are encouraged to address any potentially material costs and benefits, whether direct or indirect.

IV. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Securities Act Section 2(b) [84] requires us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

We expect the proposed amendments, if adopted, to increase efficiency and enhance capital formation, and thereby benefit investors, by facilitating the ability of smaller public companies to access the capital markets consistent with investor protection. Currently, many companies are ineligible to use Forms S–3 and F–3 to register primary offerings of their securities because the size of their public float does not satisfy the $75 million threshold required by these forms. Consequently, they are unable to take advantage of the important benefits enjoyed by eligible companies, the most significant of which is the ability to conduct primary offerings on a delayed and continuous basis. The ability to register securities that may be taken off the shelf as needed, without prior staff review, provides a powerful tool for capital formation because it allows companies the flexibility to take advantage of desired market conditions efficiently and upon short notice. Companies may be able to raise capital more cheaply, quickly, and on more favorable terms than would otherwise be the case. We believe that investors in these companies will benefit by such companies' improved access to capital on more favorable terms. In particular, investors in smaller public companies may be less subject to the risk of dilution in the value of their shares if the companies in which they invest are able to meet more of their capital needs in the public markets. By selling into the public markets, these companies may be able to avoid the substantial pricing discounts that private investors often demand to compensate them, in part, for the relative illiquidity of the restricted shares they are purchasing.[85]

We therefore believe that extending shelf registration benefits to more companies as we have proposed will facilitate the capital-raising efforts of smaller public companies who currently have fewer financing options than their larger counterparts.[86] Consequently, we anticipate that the proposal, if adopted, would lead to efficiencies in capital formation, as smaller issuers would be able to raise more capital through the public markets rather than through exempt offerings conducted in the domestic and offshore markets.

At the same time, we have also considered the potential that the amendments might result in certain additional market costs that could limit any efficiencies realized. For example, it has been suggested that extending the benefits of shelf registration to an expanded group of companies will limit the staff's direct involvement in takedowns of securities off the shelf and could therefore pose some risk to investors. In addition, the short time horizon of shelf offerings also may reduce the time that participating underwriters have to apply their independent scrutiny and judgment to an issuer's prospectus disclosure. By reducing this staff and underwriter oversight, there is a risk that these securities offerings may be more vulnerable to abuses. Moreover, because companies with a smaller market capitalization, *as a group,* have a comparatively smaller market following than larger, well-seasoned issuers and are more thinly traded, smaller companies' securities may be more vulnerable to potential manipulative practices. We also have considered the effect the amendments may have on market demand in the securities of smaller public companies offered on Form S–3 and Form F–3. If there is a perception that smaller public company securities offered through shelf registration statements are more prone to abuse because of the lack of prior involvement by the Commission staff, this may erode investor confidence in these offerings generally. This could, in turn, make it more difficult for these companies to raise capital and

[84] 15 U.S.C. 77b(b).

[85] See n. 82.

[86] See n. 81.

significantly negate the benefits of the rule.

We do not believe that the potential efficiencies and benefits to capital formation resulting from the amendments will be substantially lessened by these potential costs. We believe that the risks to investor protection by expanding the base of companies eligible for primary offerings on Forms S–3 and F–3 have been significantly mitigated by technological advances affecting the manner by which companies communicate with investors, allowing widespread, direct, and contemporaneous accessibility of company disclosure at little or no cost. Moreover, the scope of heightened disclosure obligations and the liability of smaller public companies under the federal securities laws are sufficiently comparable for these purposes to the largest reporting companies, such that the proposed expansion of Form S–3 and Form F–3 primary offering eligibility should not adversely impact investors. In this regard, to provide that the expansion of eligibility is carried out with appropriate moderation and attention to the continued protection of investors, we have proposed to exclude shell companies from eligibility and to impose a 20% restriction on the amount of securities that can be sold into the market in any period of 12 calendar months by eligible issuers on Forms S–3 and F–3.

In addition to the salutary effects that we anticipate with respect to capital formation, companies may also realize cost efficiencies stemming from the enhanced ability to incorporate by reference disclosure information from their Exchange Act filings. Because Forms S–3 and F–3 allow a company maximum reliance on its Exchange Act filings to satisfy required prospectus disclosure, these registration statements can be more abbreviated than alternative registration forms and are updated automatically by the company's future Exchange Act filings. This translates into a reduction in the time and the cost of preparing and reviewing disclosure, filing documents, and retaining records. We estimate that under the proposal the annual decrease in the compliance burden for companies who previously were ineligible to use Forms S–3 and F–3 for primary offerings to be approximately 39,952 hours of in-house company personnel time (valued at $6,992,000 [87]) and to be approximately $47,942,000 for the services of outside professionals.

The effects of the proposed amendments on competition are difficult to predict, but it is possible that making it easier for smaller public issuers to access the domestic public securities markets will lead to a reallocation of capital, as companies that previously had little choice but to offer their securities in private offerings or in offshore markets because of their S–3 and F–3 ineligibility will now find it cost-effective to offer their securities domestically in primary offerings on Form S–3 and Form F–3. If such a reallocation occurs, it may also impact securities market professionals, such as finders, brokers and agents, who specialize in facilitating private securities offerings. The demand for these services may shift to the public markets, where other professionals, such as investment banks that underwrite public offerings, have a comparative advantage.

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation or have an impact or burden on competition. Commenters are requested to provide empirical data and other factual support for their views, if possible.

V. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Act Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed revisions to the eligibility requirements for the use of registration statements on Forms S–3 and F–3 to register primary offerings of securities.

A. Reasons for the Proposed Action

Currently, many smaller public companies are ineligible to use Forms S–3 and F–3 to register primary offerings of their securities because the size of their public float does not satisfy the $75 million threshold required by these forms. Consequently, they are unable to take advantage of the important benefits enjoyed by eligible companies, the most significant of which is the ability to conduct primary offerings on a delayed and continuous basis. The ability to register securities that may be taken off the shelf as needed, without prior staff review, provides a powerful tool for capital formation because it allows companies the flexibility to take advantage of desired market conditions efficiently and on short notice. As such, eligible companies may be able to raise capital more cheaply, quickly, and on more favorable terms than would otherwise be the case. Without this source of financing, smaller public companies that are not eligible to register primary offerings on Form S–3 or From F–3 currently have fewer, and less favorable, financing options than their larger Form S–3 and F–3-eligible counterparts.

B. Objectives

The proposed amendments aim to amend Forms S–3 and F–3 to extend the benefits of incorporation by reference and shelf registration to more companies, which in turn will facilitate the ability of smaller public companies to access the capital markets.

C. Legal Basis

We are proposing these amendments pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

D. Small Entities Subject to the Proposed Amendments

The Regulatory Flexibility Act defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [88] The Commission's rules define ''small business'' and ''small organization'' for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.[89] Roughly speaking, a ''small business'' and ''small organization,'' when used with reference to an issuer other than an investment company, means an issuer with total assets of $5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers, other than investment companies, that may be considered reporting small entities.[90]

The proposal would affect small entities that are not shell companies and satisfy the registrant eligibility requirements for the use of Form S–3 or Form F–3, which generally pertain to a company's reporting history under the Exchange Act.[91] Based on these registrant eligibility requirements, we estimate that there are approximately 990 small entities that would be affected by the proposal and would therefore become eligible to use Form S–3 or

[87] See n. 80 above.

[88] 5 U.S.C. § 601(6).

[89] Rules 157 under the Securities Act [17 CFR 230.157], 0–10 under the Exchange Act [17 CFR 240.0–10] and 0–10 under the Investment Company Act [17 CFR 270.0–10] contain the applicable definitions.

[90] The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings. See, for example, *Executive Compensation and Related Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (in which the Commission's estimated a total of 2,500 small entities, other than investment companies).

[91] See n. 29 and n. 51 above.

Form F–3 for primary securities offerings.

E. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to the transaction eligibility requirements of Forms S–3 and F–3 would affect only small entities that meet the registrant eligibility requirements of Form S–3 or Form F–3, as applicable, are not shell companies and choose voluntarily to register one or more primary securities offerings on Form S–3 or Form F–3. Because Forms S–3 and F–3 are abbreviated registration forms that can be updated automatically through incorporation by reference of a registrant's Exchange Act filings, we believe use of the forms by eligible small entities would decrease their existing compliance burden. Because the proposal does not affect the information disclosure requirements of Form S–3 or Form F–3, we do not believe that the costs of complying with the amendments for small entities will be disproportionate to that of large entities.[92] We recognize, however, that there will be some additional costs associated with an issuer's need to continually monitor its compliance with the proposed 20% limitation on sales in any period of 12 calendar months, but we believe that any such costs will be insignificant.

For purposes of the Paperwork Reduction Act, we estimate the annual decrease in the paperwork burden for small entities to comply with our proposed collection of information requirements to be approximately 7,854 hours of in-house company personnel time (valued at $1,375,000 [93]) and to be approximately $9,425,000 for the services of outside professionals. To arrive at these estimates, we applied the same methodology to small entities that we described in Section II.C. above for large and small companies combined. Assuming that 990 small entities would be eligible for primary offerings on Forms S–3 and F–3 if the proposal is adopted, we estimated that these entities filed a total of 193 registration statements on Forms S–1, SB–2 and F–1 during the twelve months ending December 31, 2006.[94] We then assumed that these filings on Forms S–1, SB–2 and F–1 would have been made instead on Forms S–3 or Form F–1, as applicable, to the extent that the issuers would not be limited by the proposed 20% restriction on the amount of securities they may offer in any period of 12 calendar months. Therefore, we assume that the Forms S–1, SB–2 and F–1 filed by the subject small entities will decrease from the number filed in 2006 but, because of the proposed 20% restriction on sales, this number will not decrease to 0. Instead, we believe that some Forms S–1, SB–2 and F–1 will continue to be filed annually by these small entities. As such, we have taken the number of Forms S–1, SB–2 and F–1 that were filed by these small entities in calendar year 2006 and decreased this number by 85% for each form, for a total decrease of 165 filings.[95] Therefore, we assume that approximately 165 fewer Forms S–1, SB–2 and F–1 will be filed by all small entities in calendar year 2006. The actual number could be more or less depending on various factors, including future market conditions.

Furthermore, we believe that the 990 small entities that we estimate will be affected by the rule change would have conducted more registered securities offerings had they been able to use Forms S–3 and F–3 because of the benefits of forward incorporation and the ability to utilize shelf registration to maximize market opportunities. We assume that the inability of these small entities to utilize Forms S–3 and F–3 limited their capacity to access the public securities markets and, because of the cost and lack of flexibility associated with Forms S–1, SB–2 and F–1, either did not file registration statements on Forms S–1, SB–2 or F–1, or were limited in the number that they filed. We therefore believe that the annual number of responses on Forms S–3 and F–3 for purposes of the Paperwork Reduction Act will increase by an increment greater than simply the total of 165 fewer registration statements on Forms S–1, SB–2 and F–1 that we estimate will be filed going forward by the 990 small entities who would qualify for primary offerings on Forms S–3 and F–3 as a result of our proposal. We further assume that this increase in Forms S–3 and F–3 will be mitigated to some degree by the proposed 20% restriction on securities sold in any period of 12 calendar months, which may limit the frequency and volume of additional securities offerings on Form S–3 and Form F–3. To reflect this, we have taken the 165 Forms S–1, SB–2 and F–1 that were filed by these small entities in calendar year 2006 and increased this number by 10% for each form, for a total increase of 182 filings.[96] Therefore, we assume that approximately 182 additional Forms S–3 and F–3 will be filed over and above the number of total Forms S–3 and F–3 filed by small entities in calendar year 2006. The actual number could be more or less depending on various factors, including future market conditions.

To calculate the total effect of the proposed amendments on the overall compliance burden for small entities, we subtracted the burden associated with the 165 fewer Forms S–1, SB–2 and F–1 registration statements that we expect will be filed annually by small entities in the future and added the burden associated with our estimate of 182 additional Forms S–3 and F–3 filed annually by small entities as a result of the proposal. We used current Office of Management and Budget estimates in our calculation of the hours and cost burden associated with preparing, reviewing and filing each of these forms.

We estimate that 25% of the burden of preparation of Forms S–3, S–1, SB–2, F–3 and F–1 is carried by the small entity internally and that 75% of the burden is carried by outside professionals retained by the small entity at an average cost of $400 per hour. The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the small entity internally is reflected in hours.

The table below illustrates our estimates concerning the incremental annual compliance burden in hours and cost for Forms S–3, S–1, SB–2, F–3 and F–1 for small entities as a result of this proposal.

[92] It should be noted, however, that General Instruction II.C. of Form S–3 currently requires ''small business issuers'' (as defined in Rule 405 of the Securities Act [17 CFR 230.405]) to refer to the disclosure items in Regulation S–B [17 CFR 228.10 *et seq.*] and not Regulation S–K. Since Regulation S–B disclosure requirements generally are less extensive than Regulation S–K, small business issuers that file on Form S–3 may have a comparatively lesser compliance burden than larger issuers. However, because the Office of Management and Budget does not provide average compliance estimates for Form S–3 that distinguish between filers subject to Regulation S–K and filers subject to Regulation S–B, we have not made such a distinction in this Initial Regulatory Flexibility Analysis.

[93] See n. 80 above.

[94] The total of 193 filings is comprised of 21 Forms S–1; 172 Forms SB–2; and 0 Forms F–1.

[95] This number deducts 85% from the totals for each of the three registration forms, as follows: Form S–1 (85% of 21, rounded up, equals 18); Form SB–2 (85% of 172, rounded up, equals 147); and Form F–1 (85% of 0 equals 0). Adding these together, the combined reduction is equal to 165 filings.

[96] This number adds a 10% premium to the individual totals for each of the three registration forms, as follows: Form S–1 (10% of 18, rounded up, equals 2); Form SB–2 (10% of 147, rounded up, equals 15); and Form F–1 (10% of 0 equals 0). The sum of these increases, which is equal to 17, is then added to the total of 165 Forms S–1, SB–2 and F–1 filed by the subject companies in 2006.

[97] This reflects current Office of Management and Budget estimates.

Form	Estimated change in annual responses (A)	Hours/form[77] (B)	Incremental burden (C)=(A)*(B)	25% Issuer (D)=(C)*0.25	75% Professional (E)=(C)*0.75	$400/hr Professional cost (F)=(E)*$400
S–3	182	459	83,538	20,884.5	62,653.5	$25,061,400
S–1	(18)	1,176	(21,168)	(5,292)	(15,876)	(6,350,400)
SB–2	(147)	638	(93,786)	(23,446.5)	(70,339.5)	(28,135,800)
F–3	0	166	0	0	0	0
F–1	0	1,809	0	0	0	0
Total			(31,416)	(7,854)	(23,562)	(9,424,800)

We encourage written comments regarding this analysis. We solicit comments as to whether the proposed amendments could have an effect that we have not considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of the impact.

F. Duplicative, Overlapping or Conflicting Federal Rules

We believe that there are no Federal rules that conflict with or completely duplicate the proposed amendments.

G. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposal, the Regulatory Flexibility Act requires that we consider the following alternatives:

1. Establishing different compliance or reporting requirements which take into account the resources available to smaller entities;
2. The clarification, consolidation or simplification of disclosure for small entities;
3. Use of performance standards rather than design standards; and
4. Exempting smaller entities from coverage of the disclosure requirements, or any part thereof.

Of these alternatives, only the last appears germane to this proposal. Alternative 3 is not applicable, as the distinction between performance standards and design standards has no bearing on the proposed amendments. Alternatives 1 and 2, because they pertain to establishing different or simplified reporting requirements for smaller entities, also would not seem helpful in this instance because our proposal, if adopted, would reduce the compliance burden on eligible smaller entities. Regarding Alternative 4, we considered relaxing the transaction eligibility requirements for Forms S–3 and F–3 to a greater degree than we are proposing. As discussed above in this release, some have advocated in favor of allowing primary offerings on Form S–3 by all companies that have been reporting under the Exchange Act for at least one year and are current in their Exchange Act reporting at the time of filing. As we stated, however, we decline at this time to propose a less restrictive eligibility requirement. We believe that imposing the 20% limitation on the amount of securities that smaller public companies may sell pursuant to primary offerings on Forms S–3 and F–3, as described, strikes the appropriate balance between helping to facilitate capital formation through the securities markets and our primary objective of investor protection.

H. Solicitation of Comment

We encourage the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entity issuers that may be affected by the proposed revisions to Forms S–3 and F–3;
- The existence or nature of the potential impact of the proposed revisions on small entity issuers discussed in the analysis; and
- How to quantify the impact of the proposed revisions.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed revisions are adopted, and will be placed in the same public file as comments on the proposed amendments.

VI. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[98] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposal would be a ''major rule'' for purposes of the Small Business Regulatory Enforcement Fairness Act. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment, or innovation.

VII. Statutory Authority and Text of the Amendments

The amendments described in this release are being proposed under the authority set forth in §§ 6, 7, 8, 10 and 19(a) of the Securities Act, as amended.

List of Subjects in 17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 is revised to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 77mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend Form S–3 (referenced in § 239.13) by adding General Instruction I.B.6. to read as follows:

Note: The text of Form S–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

[98] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

Form S–3—Registration Statement Under The Securities Act of 1933

* * * * *

General Instructions

*I. Eligibility Requirements for Use of Form S–3 * * **

B. Transaction Requirements * * *

6. *Limited Primary Offerings by Certain Other Registrants.* Securities to be offered for cash by or on behalf of a registrant; *provided that:*

(a) The aggregate market value of securities sold by or on behalf of the registrant pursuant to this Instruction I.B.6. during the period of 12 calendar months immediately prior to, and including, the sale is no more than 20% of the aggregate market value of the voting and non-voting common equity held by non-affiliates of the registrant; and

(b) The registrant is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

Instructions

1. ''Common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). For purposes of computing the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.6., registrants shall use the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of sale. See the definition of ''affiliate'' in Securities Act Rule 405 (§ 230.405 of this chapter).

2. For purposes of computing the aggregate market value of all securities sold by or on behalf of the registrant in offerings pursuant to General Instruction I.B.6. during any period of 12 calendar months, registrants shall aggregate the gross proceeds of such sales; *provided*, that, in the case of derivative securities convertible into or exercisable for shares of the registrant's common equity, registrants shall calculate the aggregate market value of any underlying equity shares in lieu of the market value of the derivative securities. The aggregate market value of the underlying equity shall be calculated by multiplying the maximum number of common equity shares into which the derivative securities are convertible or for which they are exercisable as of a date within 60 days prior to the date of sale, by the same per share market price of the registrant's equity used for purposes of calculating the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to Instruction 1 to General Instruction I.B.6. If the derivative securities have been converted or exercised, the aggregate market value of the underlying equity shall be calculated by multiplying the actual number of shares into which the securities were converted or received upon exercise, by the market price of such shares on the date of conversion or exercise.

3. If the aggregate market value of the registrant's outstanding voting and non-voting common equity computed pursuant to General Instruction I.B.6. equals or exceeds $75 million subsequent to the effective date of this registration statement, then the 20% limitation on sales specified in General Instruction I.B.6(a) shall not apply to additional sales made pursuant to this registration statement on or subsequent to such date and instead the registration statement shall be considered filed pursuant to General Instruction I.B.1.

4. The term ''Form 10 information'' means the information that is required by Form 10, Form 10–SB, or Form 20–F (§ 249.210, § 249.210b, or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

5. The date used in Instruction 2 to General Instruction I.B.6. shall be the same date used in Instruction 1 to General Instruction I.B.6.

6. A registrant's eligibility to register a primary offering on Form S–3 pursuant to General Instruction I.B.6. does not mean that the registrant meets the requirements of Form S–3 for purposes of any other rule or regulation of the Commission apart from Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) of this chapter).

* * * * *

3. Amend Form F–3 (referenced in § 239.33) by adding General Instruction I.B.5. to read as follows:

Note: The text of Form F–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form F–3—Registration Statement Under the Securities Act of 1933

* * * * *

General Instructions

*I. Eligibility Requirements for Use of Form F–3 * * **

B. Transaction Requirements * * *

5. *Limited Primary Offerings by Certain Other Registrants.* Securities to be offered for cash by or on behalf of a registrant; *provided that:*

(a) The aggregate market value of securities sold by or on behalf of the registrant pursuant to this Instruction I.B.5. during the period of 12 calendar months immediately prior to, and including, the sale is no more than 20% of the aggregate market value worldwide of the voting and non-voting common equity held by non-affiliates of the registrant; and

(b) The registrant is not a shell company (as defined in § 230.405 of this chapter) and has not been a shell company for at least 12 calendar months previously and if it has been a shell company at any time previously, has filed current Form 10 information with the Commission at least 12 calendar months previously reflecting its status as an entity that is not a shell company.

Instructions

1. ''Common equity'' is as defined in Securities Act Rule 405 (§ 230.405 of this chapter). For purposes of computing the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to General Instruction I.B.5., registrants shall use the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity as of a date within 60 days prior to the date of sale. See the definition of ''affiliate'' in Securities Act Rule 405 (§ 230.405 of this chapter).

2. For purposes of computing the aggregate market value of all securities sold by or on behalf of the registrant in offerings pursuant to General Instruction I.B.5. during any period of 12 calendar months, registrants shall aggregate the gross proceeds of such sales; *provided,* that, in the case of derivative securities convertible into or exercisable for shares of the registrant's common equity, registrants shall calculate the aggregate market value of any underlying equity shares in lieu of the market value of the derivative securities. The aggregate market value of the underlying equity shall be calculated by multiplying the maximum number of common equity shares into which the derivative securities are convertible or for which they are exercisable as of a date within 60 days prior to the date of sale, by the same per share market price of the registrant's equity used for purposes of calculating the aggregate market value of the registrant's outstanding voting and non-voting common equity pursuant to Instruction 1 to General Instruction I.B.5. If the derivative securities have been converted or exercised, the aggregate market value of the underlying equity shall be calculated by multiplying the actual number of shares into which the securities were converted or received upon exercise, by the market price of such shares on the date of conversion or exercise.

3. If the aggregate market value of the registrant's outstanding voting and non-voting common equity computed pursuant to General Instruction I.B.5. equals or exceeds $75 million subsequent to the effective date of this registration statement, then the 20% limitation on sales specified in General Instruction I.B.5(a) shall not apply to additional sales made pursuant to this registration statement on or subsequent to such date and instead the registration statement shall be considered filed pursuant to General Instruction I.B.1.

4. The term ''Form 10 information'' means the information that is required by Form 10, Form 10–SB, or Form 20–F (§ 249.210, § 249.210b, or § 249.220f of this chapter), as applicable to the registrant, to register under the Securities Exchange Act of 1934 each class of securities being registered using this form. A registrant may provide the Form 10 information in another Commission filing with respect to the registrant.

5. The date used in Instruction 2 to General Instruction I.B.5. shall be the same date used in Instruction 1 to General Instruction I.B.5.

6. A registrant's eligibility to register a primary offering on Form F–3 pursuant to General Instruction I.B.5. does not mean that

the registrant meets the requirements of Form F–3 for purposes of any other rule or regulation of the Commission apart from Rule 415(a)(1)(x) (§ 230.415(a)(1)(x)) of this chapter.

* * * * *

Dated: June 20, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–12301 Filed 6–25–07; 8:45 am]

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Federal Register

Vol. 72, No. 122

Tuesday, June 26, 2007

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, JUNE

30457–30700 1
30701–30954 4
30955–31170 5
31171–31436 6
31437–31710 7
31711–31968 8
31969–32164 11
32165–32516 12
32517–32772 13
32773–33146 14
33147–33382 15
33383–33636 18
33637–33850 19
33851–34160 20
34161–34360 21
34361–34594 22
34595–34982 25
34983–35136 00

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1125 34983
1400 33383

3 CFR

Proclamations:
8150 30951
8151 30953
8152 31165
8153 31167
8154 31169
8155 31967
8156 32771

Executive Orders:
13159 (See Notice of June 19, 2007) 34159
13219 (See Notice of June 22, 2007) 34981
13304 (See Notice of June 22, 2007) 34981
13405 (See Notice of June 14, 2007) 33381
13435 34591

Administrative Orders:
Notices:
Notice of June 14, 2007 33381
Notice of June 19, 2007 34159
Notice of June 22, 2007 34981
Memorandums:
Memorandum of June 12, 2007 34977
Presidential Determinations:
No. 85-14 of July 1, 1985 (Amended by No. 07-22 of June 5, 2007) 31711
No. 92-41 of August 17, 1992 (See 07-22 of June 5, 2007) 31711
No. 98-32 of June 19, 1998 (See 07-22 of June 5, 2007) 31711
No. 07-22 of June 5, 2007 31711
No. 2007-20 of June 1, 2007 34973
No. 2007-21 of June 1, 2007 34975

5 CFR

531 .....33147, 34361
550 33147

7 CFR

24 31437
28 30457
60 33851
301 .....30458, 32165, 34161, 34595
305 34163
319 .....30460, 30462, 34163
400 31437
989 33851
1215 32517

Proposed Rules:
60 33917
301 34181
305 .....30979, 33166
319 .....30979, 33166
354 32223
457 .....31196, 31199
905 33918
916 33919
917 33919
923 .....33918, 33922
981 31759
1212 .....30924, 30940
1240 30924

8 CFR

Proposed Rules:
212 35088
235 35088

9 CFR

94 30468

10 CFR

Ch. I 33386
170 31402
171 31402
820 31904
835 31904

Proposed Rules:
2 32018
436 33696

11 CFR

104 31438

Proposed Rules:
100 31473

12 CFR

32 31441
215 30470
229 34596
551 30473
915 33637

Proposed Rules:
226 32948
615 34191

13 CFR

115 34597

14 CFR

Ch. I 34999
1 .....31662, 31713
23 .....31444, 31446, 31969
25 33148

39 .....30474, 30701, 30955, 30956, 30959, 30961, 30967, 30968, 31171, 31174, 31971, 31973, 31976, 31978, 31982, 31984, 31988, 32773, 32775, 32776, 32778, 32780, 32782, 32785, 32787, 32788, 33639, 33642, 33852, 33854, 33856, 33859, 33867, 33871, 33872, 33876, 33877, 34363
71 .....31714, 33151, 33644, 33645
91.....31662
95.....32167
97 .....31662, 32168, 32791, 35006
121 .....30946, 31449, 31662
125.....31662
129.....31662
135.....30946, 31662
136.....31449
158.....31714
Ch. III 34999
Proposed Rules:
1.....32816
23.....33925, 34644
25 .....32021, 32023, 33925
33.....33925
35.....33925
39 .....30996, 30999, 31001, 31003, 31202, 31204, 31206, 31209, 31761, 32025, 32027, 32230, 32563, 32565, 33166, 33409, 33411, 33415, 33701, 33926, 33929, 34198, 34646, 34648
71 .....30498, 30499, 30500, 31477, 33168
73.....31211
101.....32816
400.....32816
401.....32816

15 CFR

280.....30703
736.....31716
742.....33646
743.....33646
744.....33646
748.....33646
750.....33646
758.....33646
774.....31450
Proposed Rules:
744.....31005
772.....31005

17 CFR

200.....33881
240.....33564
249b.....33564
Proposed Rules:
18.....34413
21.....34417
239.....35118

18 CFR

40.....31452
Proposed Rules:
260.....31217
284.....31217

19 CFR

10.....31990, 34365
12.....31176
24.....31719, 31990
113.....31719
128.....31719
162.....31990
163.....31990, 34365
178.....31990, 34365

20 CFR

404.....33662

21 CFR

74.....33664
111.....34752, 34959
510.....30970
522.....31177
558.....33386
888.....32170
1271.....33667
Proposed Rules:
2.....32030

22 CFR

9.....30971
62.....33669
121.....31452
Proposed Rules:
41.....35088
53.....35088
62.....31008, 34419
171.....33932

23 CFR

Proposed Rules:
661.....31013

24 CFR

Proposed Rules:
5.....33844
92.....33844
908.....33844
1000.....31944

26 CFR

1 .....30974, 32172, 32792, 32794, 33387, 34600
301 .....30974, 32794, 34176
602 .....32172, 32794, 34600
Proposed Rules:
1 .....31021, 31478, 31483, 32828, 33169, 33562, 33703, 33706, 33805, 34650
20.....31487
54.....30501
301.....34199, 34204

28 CFR

511.....31178
Proposed Rules:
16.....34205
26.....31217

29 CFR

1910.....31453
Proposed Rules:
1910.....30729
4006.....33562
4007.....33562
4022.....33152
4044.....33152

30 CFR

75.....34609
920.....33153
Proposed Rules:
251.....33417
917.....33177
943.....32049

31 CFR

103.....00000
363.....30977
537.....34376

32 CFR

21.....34983
22.....34983
25.....34983
32.....34983
33.....34983
34.....34983
37.....34983
75.....33677
Proposed Rules:
285.....33180
Ch. XVII 30734

33 CFR

100 .....30477, 30479, 32518, 33677
110.....34377
117 .....30481, 30483, 31725, 32004, 32005, 33156, 33881
165 .....30483, 31181, 32006, 32181, 32520, 32522, 32524, 33156, 33158, 33160, 33163, 33388, 33391, 33393, 33679, 33681, 33683, 33685, 33688, 33882, 33884, 33886, 33888, 33890, 33892, 33894, 33896, 33899, 34379, 34381, 34383, 34385, 34387, 34390, 34392, 34610, 34612, 34614, 34616, 34618, 34620, 34622, 34625, 34627, 35013
Proposed Rules:
100.....32567
117.....33423
137.....32232
165 .....33181, 33184, 33186, 33690

34 CFR

Proposed Rules:
674.....32410
682.....32410
685.....32410

36 CFR

51.....32188
223.....31437
Proposed Rules:
1190.....34652
1191.....34652
1195.....34074
1196.....34653

37 CFR

201.....33690
212.....33690

38 CFR

2.....34394
75.....34395
Proposed Rules:
36.....30505

39 CFR

111.....31726
501.....33163
3000.....33164
3001.....33164
3002.....33164
3003.....33164
3004.....33164
Proposed Rules:
3001.....34424

40 CFR

51.....31727, 32526
52 .....30485, 30490, 30704, 31883, 31457, 31749, 32190, 32526, 32529, 32531, 33395, 33397, 33400, 33692, 35015, 35018
53.....32193
58.....32193
60.....32710
81 .....30485, 30490, 32190
82.....32212
94.....33694
180 .....32533, 33901, 33907, 34401
261.....31185
300.....31752
Proposed Rules:
51 .....31372, 31491, 31771
52 .....30509, 30521, 31372, 31491, 31492, 31493, 31495, 31778, 31781, 32246, 32257, 32569, 33425, 33933, 33937, 34207, 35022
53.....32266
58.....32266
60.....34209
61.....34209
78.....31771
81 .....30509, 30521, 31495, 32246, 32257, 33937
82.....32269
97.....31771
180 .....31220, 31221, 32570
261.....33284
271.....31237
745.....31022

42 CFR

136.....30706
489.....30706
Proposed Rules:
52.....34655
405.....34425
411.....31507
412.....31507
413.....31507, 34425
417.....34425
484.....33425
489.....31507
1001.....33430

43 CFR

12.....33383
42.....33383
43.....33383
421.....31755
423.....31755

44 CFR

64.....34630
65 .....31460, 31461, 31463, 31466
67.....32008
Proposed Rules:
67.....31540, 33432

47 CFR

1.....33913

2.....31190
20.....31192
64.....31948
73.....31471
80.....31192
90.....33914
Proposed Rules:
2.....32582
9.....33948
15.....33955
20.....33948
64.....31782
73.....32589
76.....31244
90.....32582
95.....32582

48 CFR

409.....31437
432.....31437
433.....31437
719.....32540
752.....32540
9901.....32809
9903.....32546, 32809
Proposed Rules:
639.....35023
652.....35023
9903.....32829

49 CFR

393.....32011, 33562
571.....34409
573.....32014
577.....32014
579.....32014
Proposed Rules:
367.....31048
571.....30739

50 CFR

17.....00000
22.....31132
224.....31756
229.....34632
300.....30711, 30714
635.....31688, 33401
648 .....30492, 31194, 31757, 32549, 32813, 34411
660.....31756
679 .....31472, 31758, 32559, 33408, 33695, 34179
Proposed Rules:
13.....31141
17 .....31048, 31250, 31256, 31264, 32450, 32589, 33715, 33808, 34215, 34657, 35025
18.....30670
20.....31789
21.....31268, 33188
22.....31141, 31268
224 .....30534, 32605, 34661
300.....32052, 33442
635.....33442
665.....33442
679.....31548, 33732
697.....32830, 33955

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 26, 2007

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Compression-ignition marine engines at or above 30 liters per cylinder; emissions control; deadline change; published 4-27-07

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

Ohio; published 4-27-07

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 6-11-07

British Aerospace; published 5-22-07

Dornier Luftfahrt GmbH; published 5-22-07

Reims Aviation S.A.; published 5-22-07

Turbomeca; published 5-22-07

Standard instrument approach procedures; published 6-26-07

TREASURY DEPARTMENT

Currency and foreign transactions; financial reporting and recordkeeping requirements:

Bank Secrecy Act; implementation—

Casinos; reportable currency transactions; exemptions; published 6-26-07

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (sweet) grown in Washington; comments due by 7-2-07; published 6-20-07 [FR E7-11820]

Nectarines and peaches grown in California; comments due by 7-2-07; published 6-20-07 [FR E7-11822]

Onions grown in South Texas; comments due by 7-6-07; published 5-7-07 [FR E7-08626]

AGRICULTURE DEPARTMENT

Grain Inspection, Packers and Stockyards Administration

Grade standards:

Soybeans; comments due by 7-2-07; published 5-1-07 [FR E7-08291]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Construction and service contracts; use of products containing recovered materials; comments due by 7-2-07; published 5-3-07 [FR 07-02168]

Military recruiting and Reserve Officer Training Corps program access to institutions of higher learning; comments due by 7-6-07; published 5-7-07 [FR E7-08662]

ENERGY DEPARTMENT

Loan guarantees for projects that employ innovative technologies; comments due by 7-2-07; published 5-16-07 [FR E7-09297]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Locomotives engines and marine compression-ignition engines less than 30 liters per cylinder; comments due by 7-2-07; published 4-3-07 [FR 07-01107]

Air programs:

Outer Continental Shelf regulations—

California; consistency update; comments due by 7-2-07; published 5-31-07 [FR E7-10457]

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

Indiana; comments due by 7-2-07; published 5-31-07 [FR E7-09825]

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

Iowa; comments due by 7-2-07; published 5-31-07 [FR E7-10490]

Missouri; comments due by 7-2-07; published 5-31-07 [FR E7-10231]

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

Pennsylvania; comments due by 7-2-07; published 6-1-07 [FR E7-10584]

Hazardous waste program authorizations:

Ohio; comments due by 7-6-07; published 6-6-07 [FR E7-10856]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Chloroneb, etc.; comments due by 7-2-07; published 5-2-07 [FR E7-08373]

Food packaging treated with pesticides; comments due by 7-6-07; published 6-6-07 [FR E7-10693]

Glyphosate; comments due by 7-2-07; published 5-2-07 [FR E7-08000]

Toxic substances:

Lead; renovation, repair, and painting program; hazard exposure reduction; comments due by 7-5-07; published 6-5-07 [FR E7-10797]

Water programs:

Drinking water contaminant candidate lists; primary contaminants; regulatory determinations; comments due by 7-2-07; published 5-1-07 [FR E7-07539]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Wireless E911 location accuracy and E911 IP-enabled service providers requirements; comments due by 7-5-07; published 6-20-07 [FR E7-11404]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Construction and service contracts; use of products containing recovered materials; comments due by 7-2-07; published 5-3-07 [FR 07-02168]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Hospice wage index for fiscal year 2008; comments due by 7-2-07; published 5-1-07 [FR 07-02120]

Inpatient rehabilitation facility prospective payment system (2008 FY); update; comments due by 7-2-07; published 5-8-07 [FR 07-02241]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:

Food labeling—

Irradiation in the production, processing and handling of food; comments due by 7-3-07; published 4-4-07 [FR 07-01636]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Detroit River, Detroit, MI; comments due by 7-2-07; published 6-15-07 [FR E7-11535]

St. Lawrence River, Clayton, NY; comments due by 7-1-07; published 6-22-07 [FR E7-12066]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Government National Mortgage Association (Ginnie Mae):

Mortgage-Backed Securities Program; payments to securityholders, book-entry procedures, and financial reporting; comments due by 7-6-07; published 5-7-07 [FR E7-08499]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Hine's emerald dragonfly; comments due by 7-2-07; published 5-18-07 [FR 07-02500]

Rio Grande cutthroat trout; comments due by 7-6-07; published 5-22-07 [FR E7-09590]

Importation, exportation, and transportation of wildlife:

Marine mammals—

Chukchi Sea et al., AK; Pacific walruses and polar bears; incidental take during year-round oil and gas industry

exploration activities; comments due by 7-2-07; published 6-1-07 [FR E7-10509]

LABOR DEPARTMENT

Mine Safety and Health Administration

Coal mine safety and health:

Underground mines—

Abandoned areas; sealing; comments due by 7-6-07; published 5-22-07 [FR 07-02535]

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Reports and guidance documents; availability, etc.:

Cable and satellite statutory licenses; operation of and continued necessity; report to Congress; comments due by 7-2-07; published 4-16-07 [FR E7-07207]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Construction and service contracts; use of products containing recovered materials; comments due by 7-2-07; published 5-3-07 [FR 07-02168]

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

National Intelligence, Office of the Director

Freedom of Information Act; implementation; comments due by 7-5-07; published 6-4-07 [FR E7-10420]

PERSONNEL MANAGEMENT OFFICE

Employment:

Adverse actions; comments due by 7-2-07; published 5-1-07 [FR E7-08061]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 7-6-07; published 6-6-07 [FR E7-10865]

Boeing; comments due by 7-2-07; published 5-16-07 [FR E7-09390]

Gulfstream; comments due by 7-6-07; published 6-6-07 [FR E7-10869]

McDonnell Douglas; comments due by 7-2-07; published 6-6-07 [FR E7-10864]

MORAVAN a.s.; comments due by 7-2-07; published 5-31-07 [FR E7-10237]

Class E airspace; comments due by 7-6-07; published 5-22-07 [FR E7-09759]

Low altitude area navigation routes; comments due by 7-6-07; published 5-22-07 [FR E7-09773]

LIST OF PUBLIC LAWS

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S. 676/P.L. 110–38

To provide that the Executive Director of the Inter-American Development Bank or the Alternate Executive Director of the Inter-American Development Bank may serve on the Board of Directors of the Inter-American Foundation. (June 21, 2007; 121 Stat. 230)

S. 1537/P.L. 110–39

To authorize the transfer of certain funds from the Senate Gift Shop Revolving Fund to the Senate Employee Child Care Center. (June 21, 2007; 121 Stat. 231)

Last List June 21, 2007

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