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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Parts 2, 11, 14, 16, 20, 22, 70, 71, 75, 90, 95, 96, 97, 98, 99

Department of Labor Regulatory Review and Update

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Final rule; technical amendments.

SUMMARY: The Department of Labor (DOL) is amending existing regulations to update obsolete non-substantive or nomenclature references in the Code of Federal Regulations (CFR). This action is intended to improve the accuracy of the agency's regulations and does not impose any new regulatory or technical requirements.

DATES: *Effective Date:* July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Kathleen Franks, U.S. Department of Labor, Room S–2312, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693–5959.

SUPPLEMENTARY INFORMATION: DOL's strategic outcome goal 4.2 measures the agency's success in creating a regulatory structure that promotes compliance flexibility and reduces regulatory burden. As part of this strategic goal, DOL is conducting an ongoing review of its regulations governing labor standards, pensions, health care, and worker safety to ensure that references in the CFR are accurate and current.

This final rule corrects or removes obsolete non-substantive or nomenclature references in the CFR. For example, this rule changes references to superseded laws, adds CFR citations for OMB Circulars, and updates cross-references to standards established under other authorities such as the simplified acquisition threshold cross-referenced in 29 CFR part 95 and Federal audit thresholds in 29 CFR parts 96 and 99.

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Notice of Proposed Rulemaking is unnecessary since the agency is merely updating non-substantive and nomenclature references.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulations. The agency has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 350(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, pursuant to 5 U.S.C. 553(b)(A), since these changes are interpretive, procedural in nature, or relate to agency organization. Because this final rule does not make substantive amendments, the Department of Labor has determined that delaying the effective date of the rule is unnecessary and good cause exists under 5 U.S.C. 553(b)(B) to make this rule effective immediately upon publication in the **Federal Register**.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not classified as a ''rule'' under Chapter 8 of the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

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Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

29 CFR Part 97

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

29 CFR Part 99

Accounting, Administrative practice and procedures, Grant programs, Hospitals, Intergovernmental relations, Loan programs, Nonprofit organizations, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, DOL amends subtitle A of title 29, Code of Federal Regulations, as follows:

PART 2—GENERAL REGULATIONS

■ 1. The authority citation for 29 CFR part 2 continues to read as follows:

Authority: 5 U.S.C. 301, Executive Order 13198, 66 FR 8497, 3 CFR 2001 Comp., p. 750; Executive Order 13279, 67 FR 77141, 3 CFR 2002 Comp., p. 258.

§ 2.6 [Amended]

■ 2. In § 2.6(a), remove the words ''General Accounting Office'' and add, in their place, the words ''Government Accountability Office'' and in § 2.6(b), add the words ''and Management'' after the words ''Assistant Secretary for Administration''.

PART 11—DEPARTMENT OF LABOR NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) COMPLIANCE PROCEDURES

■ 3. The authority citation for 29 CFR part 11 continues to read as follows:

Authority: 42 U.S.C 4321 *et seq.*, Executive Order 11514, 40 CFR parts 1500–1508.

§ 11.2 [Amended]

■ 4. In § 11.2, remove the words ''the Employment and Training Administration (ETA) (through one of its major programs, the Job Corps)'' and add, in their place, the words ''the Office of Job Corps'' and remove the words ''Comprehensive Employment and Training Act (29 U.S.C. 801, et. seq.)'' and add, in their place, the words ''Workforce Investment Act of 1998 (29 U.S.C. 2801, et seq.)''.

§ 11.10 [Amended]

■ 5. In § 11.10(c)(1), remove the words ''U.S. Employment Service'' and add, in their place, the words ''Office of Workforce Investment''.

PART 14—SECURITY REGULATIONS

■ 6. The authority citation for 29 CFR part 14 continues to read as follows:

Authority: E.O. 12356 of April 2, 1982 (47 FR 14874).

§ 14.3 [Amended]

■ 7. In § 14.3, revise paragraph (a) to read as set forth below; and, in paragraph (b)(2), remove ''1356'' and add, in its place, ''12356''.

§ 14.3 DOL Classification Review Committee.

* * * * *

(a) Composition of committee. The members of this Committee are:

Chairperson—Deputy Assistant Secretary for Security and Emergency Management, OASAM.

Member—Administrative Officer, Office of the Solicitor.

Member—Director, Office of Foreign Relations, Bureau of International Labor Affairs.

Advisor—DOL Document Security Officer.

* * * * *

§ 14.4 [Amended]

■ 8. In § 14.4(a), remove the word ''Under'' and add, in its place, the word ''Deputy''; and, in paragraph (i), remove the words ''General Services Administration'' and add, in their place, the words ''National Archives and Records Administration''.

§ 14.20 [Amended]

■ 9. In § 14.20(d), add the word ''Labor'' between the words ''International Affairs''.

§ 14.21 [Amended]

■ 10. In § 14.21, remove ''1985'' and add, in its place, ''1958''; and, add the word ''Labor'' between the words ''International Affairs''.

PART 16—EQUAL ACCESS TO JUSTICE ACT

■ 11. The authority citation for 29 CFR part 16 continues to read as follows:

Authority: Pub. L. 96–481, 94 Stat. 2327 (5 U.S.C. 504).

§ 16.104 [Amended]

■ 12. In § 16.104(a)(4) heading, remove the words ''Office of Civil Rights'' and add, in their place, the words ''Civil Rights Center''; in paragraph (a)(5)(i), remove the words ''Comprehensive Employment and Training Act at 29 U.S.C. 818'' and add, in their place, the words ''Workforce Investment Act at 29 U.S.C. 2936''; and, in the same paragraph, remove the word ''CETA'' and add, in its place, the word ''WIA''.

§ 16.107 [Amended]

■ 13. In § 16.107(c), remove ''$75.00'' and add, in its place, ''$125.00''.

PART 20—FEDERAL CLAIMS COLLECTION

■ 14. The authority citation for 29 CFR part 20 continues to read as follows:

Authority: 31 U.S.C. 3711 *et seq.*; Subpart D is also issued under 5 U.S.C. 5514; Subpart E is also issued under 31 U.S.C. 3720A.

§§ 20.75, 20.76 [Amended]

■ 15. Remove the words ''General Accounting Office'' and add, in their place, the words ''Government Accountability Office'' in the following places:

■ a. Section 20.75(c) in two places; and

■ b. Section 20.76(g).

PART 22—PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 16. The authority citation for 29 CFR part 22 continues to read as follows:

Authority: Pub. L. 99–509, Secs. 6101–6104, 100 Stat. 1874, 31 U.S.C. 3801–3812.

■ 17. Revise § 22.2(l) and (q)(3) to read as follows:

§ 22.2 Definitions.

* * * * *

(l) *Investigating official* means the Inspector General of the Department of Labor or an officer or employee of the Office of the Inspector General designated by the Inspector General and serving in a Senior Executive Service position.

* * * * *

(q) * * *

(3) Serving in a Senior Executive Service position.

* * * * *

PART 70—PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

■ 18. The authority citation for 29 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552, as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix; E.O. 12600, 52 FR 23781, 3 CFR, 1988 Comp., p. 235.

Appendix A to Part 70—[Amended]

■ 19. Amend Appendix A to Part 70 as follows:

■ a. In paragraph (b)(1), remove the words ''Director, Office of Participant Assistance & Communications, Employee Benefits Security Administration (EBSA)'' and add, in

their place, the words ''Director, Office of Participant Assistance, Employee Benefits Security Administration (EBSA)''; and, revise the entry ''Employment and Training Administration'' and the accompanying list numbered 1–25 as set forth below.

■ b. In paragraph (b)(2) to Appendix A, for the Employee Benefits Security Administration Regional Director or District Supervisor revise entries 2, 10, and 13 as set forth below.

■ c. In paragraph (b)(2) to Appendix A, amend the entry for the Regional Administrators, Veterans' Employment and Training Service (VETS) by removing Regions I through X and adding in their place entries 1 through 6 as set forth below.

The revisions read as follows:

Appendix A to Part 70—Disclosure Officers

* * * * *

(b) * * *

(1) * * *

Employment and Training Administration

1. Assistant Secretary for Employment and Training, ETA.
2. Deputy Assistant Secretary, Workforce Investment System, ETA.
3. Administrator, Office of Workforce Investment, ETA.
4. Administrator, Office of Workforce Security, ETA.
5. Administrator, Office of National Response, ETA.
6. Director, Division of Trade Adjustment Assistance, ETA.
7. Administrator, Office of Field Operations, ETA.
8. Regional Administrator, Boston, ETA.
9. Regional Administrator, Philadelphia, ETA.
10. Regional Administrator, Atlanta, ETA.
11. Regional Administrator, Dallas, ETA.
12. Regional Administrator, Chicago, ETA.
13. Regional Administrator, San Francisco, ETA.
14. Deputy Assistant Secretary, Administration & National Activity, ETA.
15. Administrator, Office of Foreign Labor Certification, ETA.
16. Administrator, Office of Apprenticeship, ETA.
17. Regional Director, Office of Apprenticeship, Boston, ETA.
18. Regional Director, Office of Apprenticeship, Philadelphia, ETA.
19. Regional Director, Office of Apprenticeship, Atlanta, ETA.
20. Regional Director, Office of Apprenticeship, Dallas, ETA.
21. Regional Director, Office of Apprenticeship, Chicago, ETA.
22. Regional Director, Office of Apprenticeship, San Francisco, ETA.
23. Administrator, Office of Policy Development & Research, ETA.
24. Administrator, Office of Financial & Administrative Management, ETA.
25. Director, Office of Financial and Administrative Services, ETA.
26. Director, Office of Grants and Contracts Management, ETA.
27. Chief, Division of Contract Services, ETA.
28. Chief, Division of Federal Assistance, ETA.
29. Director, Office of Human Resources, ETA.
30. Director, Office of Equal Employment Opportunity, ETA.
31. Director, Office of Special Programs & Emergency Preparedness, ETA; and
32. Administrator, Office of Performance & Technology, ETA.

(2) * * *

Employee Benefits Security Administration Regional Director or District Supervisor

* * * * *

2. Regional Director, 33 Whitehall Street, Suite 1200, New York, NY 10004.

* * * * *

10. Regional Director, Two Pershing Square Building, 2300 Main Street, Suite 1100, Kansas City, MO 64108.

* * * * *

13. Regional Director, 90 7th Street, Suite 11–300, San Francisco, CA 94103.

* * * * *

Regional Administrators, Veterans' Employment and Training Service (VETS)

1. J.F. Kennedy Federal Building, Government Center, Room E–315, Boston, Massachusetts 02203.
2. The Curtis Center, Suite 770 West, 170 S. Independence Mall West, Philadelphia, PA 19106–2205.
3. Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T85, Atlanta, Georgia 30303.
4. 230 South Dearborn, Room 1064, Chicago, Illinois 60604.
5. 525 Griffin Street, Room 858, Dallas, Texas 75202.
6. 90 Seventh Street, Suite 2–600, San Francisco, California 94103.

PART 71—PROTECTION OF INDIVIDUAL PRIVACY AND ACCESS TO RECORDS UNDER THE PRIVACY ACT OF 1974

■ 20. The authority citation for 29 CFR part 71 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 552a as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix.

§ 71.51 [Amended]

■ 21. In § 71.51(a)(5), remove the words ''Directorate of Civil Rights'' and add, in their place, the words ''Civil Rights Center''; and in paragraph (a)(34) remove the words ''Division of Civil Rights'' and add, in their place, the words ''Division of Civil Rights and Labor Management''.

■ 22. Revise Appendix A to Part 71 to read as follows:

Appendix A to Part 71—Responsible Officials

(a)(1) The titles of the responsible officials of the various independent agencies in the Department of Labor are listed below. This list is provided for information and to assist requesters in locating the office most likely to have responsive records. The officials may be changed by appropriate designation. Unless otherwise specified, the mailing addresses of the officials shall be: U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210–0002. When addressing communications to an office or division within a Department of Labor agency, include the agency and sub-agency name.

Administrative Review Board (ARB)

Chairperson

Office of the Assistant Secretary for Policy (OASP)

Assistant Secretary for Policy
Deputy Assistant Secretary

Bureau of Labor Statistics (BLS)

Commissioner
Associate Commissioner, Office of Administration
The mailing address for responsible officials in the Bureau of Labor Statistics is: Rm. 4040—Postal Square Bldg., 2 Massachusetts Ave., NE., Washington, DC 20212–0001.

Benefits Review Board (BRB)

Chief Administrative Appeals Judge

Employee Benefits Security Administration (EBSA)

Director, Office of Participant Assistance

Employees' Compensation Appeals Board (ECAB)

Chairperson

Employment Standards Administration (ESA)

Assistant Secretary for Employment Standards
Director, Equal Employment Opportunity Unit

Office of Management, Administration and Planning

Director, Office of Management, Administration and Planning

Office of Workers' Compensation Programs

Director, Office of Workers' Compensation Programs
Deputy Director, Office of Workers' Compensation Programs
Special Assistant to the Director
Director for Division of Planning, Policy, and Standards
Director for Federal Employees' Compensation
Director for Longshore and Harbor Workers' Compensation
Director for Coal Mine Workers' Compensation
Director for Energy Employees Occupational Illness Compensation

Wage and Hour Division

Administrator
Deputy Administrator
Deputy National Office Program Administrator
Director, Office of Enforcement Policy
Deputy Director, Office of Enforcement Policy
Director, Office of Planning and Analysis
Director, Office of Wage Determinations
Director, Office of External Affairs

Office of Federal Contract Compliance Programs

Deputy Assistant Secretary for Federal Contract Compliance Programs
Deputy Director, Office of Federal Contract Compliance Programs
Director, Division of Policy, Planning and Program Development
Deputy Director, Division of Policy, Planning and Program Development
Director, Division of Program Operations
Deputy Director, Division of Program Operations
Director, Division of Management and Administrative Programs

Office of Labor-Management Standards

Deputy Assistant Secretary for Labor-Management Standards

Employment and Training Administration (ETA)

Assistant Secretary of Labor
Deputy Assistant Secretary, Workforce Investment System
Administrator, Office of Workforce Investment
Administrator, Office of Workforce Security
Administrator, Office of National Response
Director, Division of Trade Adjustment Assistance
Administrator, Office of Field Operations
Regional Administrator, Boston
Regional Administrator, Philadelphia
Regional Administrator, Atlanta
Regional Administrator, Dallas
Regional Administrator, Chicago
Regional Administrator, San Francisco
Deputy Assistant Secretary, Administration & National Activity
Administrator, Office of Foreign Labor Certification
Administrator, Office of Apprenticeship
Regional Director, Office of Apprenticeship, Boston
Regional Director, Office of Apprenticeship, Philadelphia
Regional Director, Office of Apprenticeship, Atlanta
Regional Director, Office of Apprenticeship, Dallas
Regional Director, Office of Apprenticeship, Chicago
Regional Director, Office of Apprenticeship, San Francisco
Administrator, Office of Policy Development & Research
Administrator, Office of Financial & Administrative Management
Director, Office of Financial and Administrative Services
Director, Office of Grants and Contracts Management
Chief, Division of Contract Services
Chief, Division of Federal Assistance
Director, Office of Human Resources
Director, Office of Equal Employment Opportunity
Director, Office of Special Program & Emergency Preparedness
Administrator, Office of Performance & Technology

Bureau of International Labor Affairs (ILAB)

Deputy Undersecretary, Office of the Deputy Undersecretary

Office of Job Corps (OJC)

National Director
Regional Director, Boston
Regional Director, Philadelphia
Regional Director, Atlanta
Regional Director, Chicago
Regional Director, Dallas
Regional Director, San Francisco

Mine Safety and Health Administration (MSHA)

Director of Office of Standards, Regulations, and Standards
The mailing address for the responsible official in the Mine Safety and Health Administration is: 1100 Wilson Boulevard, Arlington, Virginia 22209.

Office of the Administrative Law Judges (OALJ)

Chief Administrative Law Judge
Legal Counsel
The mailing address for the Office of Administrative Law Judges is: Chief, Office of Administrative Law Judges, 800 K Street, NW., Suite N–400, Washington, DC 20001–8002.

Office of Adjudicatory Services (OAS)

Executive Director

Office of the Assistant Secretary for Administration and Management (OASAM)

Deputy Assistant Secretary for Operations
Deputy Assistant Secretary for Budget and Performance Planning
Deputy Assistant Secretary for Security and Emergency Management
Director, Business Operations Center
Director, Civil Rights Center
Director, Human Resources Center
Director, Information Technology Center
Director, Departmental Budget Center
Director, Center for Program Planning and Results

Office of the Chief Financial Officer (OCFO)

Chief Financial Officer
Associate Deputy Secretary for Adjudication

Office of Congressional and Intergovernmental Affairs (OCIA)

Assistant Secretary
Deputy Assistant Secretary

Office of Disability Employment Policy (ODEP)

Assistant Secretary
Deputy Assistant Secretary
Director, Policy and Research
Director, Operations

Office of the Inspector General (OIG)

Disclosure Officer

Office of Public Affairs (OPA)

Assistant Secretary
Deputy Assistant Secretary

Office of the Secretary of Labor (OSEC)

Secretary of Labor, Attention: Assistant Secretary for Administration and Management

Office of Small Business Programs (OSBP)

Director

Office of the Solicitor of Labor (SOL)

Deputy Solicitor

Occupational Safety and Health Administration (OSHA)

Assistant Secretary
Deputy Assistant Secretary (2)
Director, Office of Communications
Director, Office of Equal Employment Opportunity
Director, Directorate of Administrative Programs
Director, Directorate of Construction
Director, Directorate of Cooperative and State Programs
Director, Directorate of Enforcement Programs
Director, Directorate of Evaluation and Analysis
Director, Directorate of Information Technology
Director, Directorate of Science, Technology and Medicine
Director, Directorate of Standards and Guidance
Director, Directorate of Training and Education
The mailing address for OSHA's Directorate of Training and Education is 2020 South Arlington Heights Road, Arlington Heights, Illinois 60005–4102.
Regional Administrator, Boston
Regional Administrator, New York
Regional Administrator, Philadelphia
Regional Administrator, Atlanta
Regional Administrator, Chicago
Regional Administrator, Dallas
Regional Administrator, Kansas City
Regional Administrator, Denver
Regional Administrator, San Francisco
Regional Administrator, Seattle

Veterans' Employment and Training Service (VETS)

Assistant Secretary
Deputy Assistant Secretary
Director, Office of Agency, Management and Budget

Women's Bureau

Director
National Office Coordinator

(2) The titles of the responsible officials in the *regional offices* of the various independent agencies are listed below. Unless otherwise specified, the mailing address for these officials by region, shall be:

Region I

U.S. Department of Labor, John F. Kennedy Federal Building, Boston, Massachusetts 02203

Region II

201 Varick Street, New York, New York 10014

Region III

Gateway Building, 3535 Market Street, Philadelphia, Pennsylvania 19104
Curtis Center, 170 South Independence Mall West, Philadelphia, PA 19106–3305 (BLS only) This also is an OSHA address.

Region IV

U.S. Department of Labor, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303

Region V

Kluczynski Federal Building, 230 South Dearborn Street, Chicago, Illinois 60604
1240 East Ninth Street, Room 851, Cleveland, Ohio 44199 (FEC only)

Region VI

525 Griffin Square Building, Griffin & Young Streets, Dallas, Texas 75202

Region VII

City Center Square Building, 1100 Main Street, Kansas City, Missouri 64105–2112 (For BLS only: contact Region VI.)

Region VIII

1999 Broadway Street, Denver, Colorado 80202 (For BLS only: contact Region VI.)

Region IX

San Francisco Federal Building, 90–7th Street, San Francisco, California 94103

Region X

1111 Third Avenue, Seattle, Washington 98101–3212 (For BLS only: contact Region IX.)

Employee Benefits Security Administration (EBSA)

Regional Director or District Supervisor
Regional Director, J.F.K. Federal Bldg., Room 575, Boston, Massachusetts 02203
Regional Director, 33 Whitehall Street, Suite 1200, New York, NY 10004
Regional Director, The Curtis Center, 170 S. Independence Mall West, Suite 870 West, Philadelphia, PA 19106
District Supervisor, 1335 East-West Highway, Suite 200, Silver Spring, MD 20910
Regional Director, 61 Forsyth Street, S.W., Room 7B54, Atlanta, Georgia 30303
District Supervisor, 8040 Peters Road, Building H, Suite 104, Plantation, Florida 33324
Regional Director, 1885 Dixie Highway, Suite 210, Ft. Wright, Kentucky 41011
District Supervisor, 211 West Fort Street, Suite 1310, Detroit, Michigan 48226–3211
Regional Director, 200 West Adams Street, Suite 1600, Chicago, Illinois 60606
Regional Director, Two Pershing Square Building, 2300 Main Street, Suite 1100, Kansas City, MO 64108
District Supervisor, Young Federal Building, 1222 Spruce Street, Room 6310, St. Louis, MO 63103
Regional Director, 525 Griffin Street, Room 900, Dallas, Texas 75202
Regional Director, 90 7th Street, Suite 11–300, San Francisco, CA 94103
District Director, 1111 Third Avenue, Room 860, Seattle, Washington 98101–3212
Regional Director, 1055 E. Colorado Boulevard, Suite 200, Pasadena, CA 91106

Employment Standards Administration (ESA)

Regional Administrator for Wage and Hour, Regional Director for Federal Contract Compliance Programs, Regional Director for the Office of Workers' Compensation Programs, District Director, Office of Workers' Compensation Programs, Employment Standards Administration

Wage and Hour Division, ESA

Northeast Region

The Curtis Center, Suite 850, 170 S. Independence Mall West, Philadelphia, PA 19106

Southeast Region

U.S. Department of Labor, Atlanta Federal Center, Room 7M40, 61 Forsyth Street, SW., Atlanta, GA, 30303

Midwest Region

230 South Dearborn Street, Suite 530, Chicago, Illinois 60604

Southwest Region

525 Griffin Street, Suite 800, Dallas, TX 75202

Western Region

71 Stevenson Street, Suite 930, San Francisco, California 94105

Office of Federal Contract Compliance Programs, ESA

JFK Federal Building, Room E–235, Boston, Massachusetts 02203
201 Varick Street, Room 750, New York, New York 10014
Curtis Center Suite 750 West, 170 S. Independence Mall West, Philadelphia, PA 19106
61 Forsyth Street, SW, Suite 7B75, Atlanta, Georgia 30303
Klucynski Federal Building, Room 570, 230 South Dearborn Street, Chicago, Illinois 60604
Federal Building, Room 840, 525 South Griffin Street, Dallas, Texas 75202
71 Stevenson Street, Suite 1700, San Francisco, California 94105–2614

Office of Workers' Compensation Programs, District Directors

National Office

800 North Capitol Street NW., Room 800, Washington, DC 20211 (FECA Only)

FAB Offices

800 N. Capitol Street, Room 565, Washington, DC 20211 (EEOIC Only)
400 West Bay Street, Room 722, Jacksonville, FL 32202 (EEOIC Only)
1001 Lakeside Avenue Suite 350, Cleveland, OH 44114 (EEOIC Only)
1999 Broadway, Suite 1120, Denver, CO 80202 (EEOIC Only)
719 Second Avenue, Suite 601, Seattle, WA 98104 (EEOIC Only)

Northeast Region

201 Varick Street, Seventh Floor, Room 750, New York, NY 10014 (FECA and LHWCA only)
201 Varick Street, Seventh Floor, Room 740, New York, New York 10014 (FECA and LHWCA only)
John F. Kennedy, Federal Building, Room E–260, Boston, Massachusetts 02203 (FECA and LHWCA Only)

Philadelphia Region

Curtis Center, Suite 780 West, 170 S. Independence Mall West, Philadelphia, PA 19106 (FECA only)
Curtis Center, Suite 715 East, 170 S. Independence Mall West, Philadelphia, PA 19106 (FECA only)
Penn Traffic Building, 319 Washington Street, Johnstown, Pennsylvania 15901 (BLBA only)
100 North Wilkes Barre Blvd., Suite 300A, Wilkes-Barre, Pennsylvania 18702 (BLBA only)
Wellington Square, 1225 South Main Street, Suite 405, Greensburg, Pennsylvania 15601 (BLBA only)
Federal Building, 31 Hopkins Plaza, Room 410B, Baltimore, Maryland 21201 (LHWCA Only)
Federal Building, 200 Granby Mall, Room #212, Norfolk, Virginia 23510 (LHWCA only)
Federal Building, 500 Quarrier Street, Suite 110, Charleston, West Virginia 25301 (BLBA Only)
Federal Building, 425 Juliana Street, Suite 3116, Parkersburg, West Virginia 26101 (BLBA Only)

Jacksonville Region

400 West Bay Street, Suite 943, Jacksonville, FL 32202 (FECA, EEOIC and LHWC)
400 West Bay Street, Room 826, Jacksonville, FL 32202 (FECA only)
164 Main Street, Fifth Floor, Suite 508, Pikeville, Kentucky 41501 (BLBA only)
400 West Bay Street, Room 63A, Jacksonville, Florida 32202 (LHWCA only)
400 West Bay Street, Room 722, Jacksonville, Florida 32202 (DEEOIC only)

Midwest Region

230 South Dearborn Street, 8th Floor, Room 800, Chicago, Illinois 60604 (FECA)
1240 East Ninth Street, Room 851, Cleveland, Ohio 44199 (FECA Only)
1160 Dublin Road, Suite 300, Columbus, Ohio 43215 (BLBA Only)
City Center Square, 1100 Main Street, Suite 750, Kansas City, Missouri 64105 (FECA Only)
North Point Tower, 1001 Lakeside Ave, Suite 350, Cleveland, OH 44114 (EEOIC Only)

Southwest Region

525 South Griffin Street, Room 407, Federal Building, Dallas, Texas 75202 (FECA and DLHWC)
525 South Griffin Street, Room 100, Federal Building, Dallas, Texas 75202 (FECA Only)
P.O. Box 30728 New Orleans, Louisiana 70190 (LHWCA Only)
8866 Gulf Freeway, Suite 140, Houston, Texas 77017 (LHWCA Only)
1999 Broadway, Suite 600, Denver, Colorado 80202 (FECA and BLBA Only)
1999 Broadway, Suite 1120, Denver, Colorado 80202 (DEEOIC)

Pacific Region

71 Stevenson Street, Room 1705, San Francisco, California 94105 (LHWCA and FECA)
71 Stevenson Street, Room 305, San Francisco, California 94105 (LHWCA and FECA)
401 E. Ocean Boulevard, Suite 720, Long Beach, California 90802 (LHWCA Only)
300 Ala Moana Boulevard, Room 5–135, Honolulu, Hawaii 96850 (LHWCA Only)
1111 Third Avenue, Suite 620, Seattle, Washington 98101 (LHWCA only)
1111 Third Avenue, Suite 650, Seattle, Washington 98101 (FECA only)
719 Second Avenue, Suite 601, Seattle, Washington 98101 (DEEOIC only)

Employment and Training Administration (ETA)

Region I

U.S. Department of Labor, John F. Kennedy Federal Building, Room E–350, Boston, Massachusetts 02203

Region II

The Curtis Center 170 South Independence Mall West, Suite 825 East, Philadelphia, PA 19106–3315

Region III

Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Room 6M12, Atlanta, Georgia 30303

Region IV

A. Maceo Smith Federal Building 525 S. Griffin Street, Room 317, Dallas, TX 75202

Region V

John Kluczynski Federal Building, 230 South Dearborn Street, Room 628, Chicago, Illinois 60604

Region VI

71 Stevenson Street, Room 830, San Francisco, California 94119–3767

Office of Job Corps

Boston Region

John F. Kennedy Federal Building E–350, Boston, Massachusetts 02203

Philadelphia Region

The Curtis Center, Suite 815 East, 170 South Independence Mall West, Philadelphia, Pennsylvania, 19106

Atlanta Region

62 Forsyth Street, Room 6T95, Atlanta, Georgia 30303

Chicago Region

Federal Building, 230 South Dearborn Street, Room 676, Chicago, Illinois 60604

Dallas Region

525 Griffin Street, Room 403, Dallas, Texas 75202

San Francisco Region

71 Stevenson Street, Suite 1015, San Francisco, California 94105

Office of the Assistant Secretary for Administration and Management (OASAM)

Region I

Regional Administrator—John F. Kennedy Federal Building E 215, Boston, MA 02203

Region II

Regional Administrator—201 Varick Street, Room 815, New York, NY 10014

Region III

Regional Administrator—The Curtis Center, Suite 600 East, 170 S. Independence Mall West, Philadelphia, PA 19106–3305

Region IV

Regional Administrator—Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Room 6B65, Atlanta, GA 30303

Region V

Regional Administrator—230 South Dearborn Street, 10th Floor, Chicago, IL 60604

Region VI

Regional Administrator—525 Griffin Street, Room 744, Dallas, TX 75202

Region VII

Regional Administrator—1100 Main Street, Suite 850, Kansas City, MO 64105–2112

Region IX

Regional Administrator—71 Stevenson Street, Suite 515, San Francisco, CA 94105

Region X

Regional Administrator—1111 3rd Avenue, Suite 815, Seattle, WA 98101–3212

Occupational Safety and Health Administration (OSHA)

Regional Administrator—John F. Kennedy Federal Building, Room E–340, Boston, Massachusetts 02203

Area Director

Federal Office Building, 450 Main Street, Room 613, Hartford, Connecticut 06103
1057 Broad Street, 4th Floor, Bridgeport, Connecticut 06604
639 Granite Street, 4th Floor, Braintree, Massachusetts 02184
1441 Main Street, Room 550, Springfield, Massachusetts 01103–1493
Valley Office Park, 13 Branch Street, Methuen, Massachusetts 01844
E.S. Muskie Federal Building, 40 Western Avenue, Room G–26, Augusta, Maine 04330
202 Harlow Street, Room 240, Bangor, Maine 04401
53 Pleasant Street, Room 3901, Concord, New Hampshire 03301
Federal Office Building, 380 Westminster Mall, Room 543, Providence, Rhode Island 02903
Regional Administrator—201 Varick Street, Room 670, New York, New York 10014

Area Director

500 Route 17 South, 2nd Floor, Hasbrouck Heights, New Jersey 07604
Marlton Executive Park, Building 2, 701 Route 73 South, Suite 120, Marlton, New Jersey 08053
1030 St. Georges Avenue, Plaza 35, Suite 205, Avenel, New Jersey 07001
299 Cherry Hill Road, Suite 103, Parsippany, New Jersey 07054
201 Varick Street, Room 908, New York, New York 10014
1400 Old Country Road, Suite 208, Westbury, New York 11590
45–17 Marathon Parkway, Little Neck, New York 11362
401 New Karner Road, Suite 300, Albany, New York 12205–3809
3300 Vickery Road, North Syracuse, New York 13212
130 South Elmwood Avenue, Room 500, Buffalo, New York 14202–2465
660 White Plains Road, 4th Floor, Tarrytown, New York 10591–5107
Triple S Building, 1510 F.D. Roosevelt Avenue, Suite 5B, Guaynabo, Puerto Rico 00968
Regional Administrator—The Curtis Center—Suite 740 West, 170 South Independence Mall West, Philadelphia, PA 19106–3309
919 Market Street, Mellon Bank Building, Suite 900, Wilmington, Delaware 19801–3319
1099 Winterson Road, Suite 140, Linthicum, Maryland 21090–2218
U.S. Custom House, Room 242, Second & Chestnut Street, Philadelphia, Pennsylvania 19106–2902
Federal Building, 1000 Liberty Avenue, Room 1428, Pittsburgh, Pennsylvania 15222–4101
1128 State Street, Suite 200, Erie, Pennsylvania 16501
The Stegmaier Building, Suite 410, 7 North Wilkes-Barre Boulevard, Wilkes-Barre, Pennsylvania 18702–5241
850 North 5th Street, Allentown, Pennsylvania 18102–1731
Progress Plaza, 49 North Progress Avenue, Harrisburg, Pennsylvania 17109–3596
Federal Office Building, 200 Granby Street, Room 614, Norfolk, Virginia 23510–1819
405 Capitol Street, Suite 407, Charleston, West Virginia 25301–1727
Regional Administrator—Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T50, Atlanta, Georgia 30303

Area Director

950 22nd Street North, Suite 1050, Birmingham, Alabama 35203
1141 Montlimar Drive, Suite 1006, Mobile, Alabama 36609
8040 Peters Road, Building H–100, Fort Lauderdale, Florida 33324
Ribault Building, Suite 227, 1851 Executive Center Drive, Jacksonville, Florida 32207
5807 Breckenridge Parkway, Suite A, Tampa, Florida 33610–4249
2400 Herodian Way, Suite 250, Smyrna, Georgia 30080–2968
450 Mall Boulevard, Suite J, Savannah, Georgia 31406
La Vista Perimeter Office Park, 2183 N. Lake Parkway, Building 7, Suite 110, Tucker, Georgia 30084–4154
John C. Watts Federal Building, 330 West Broadway, Room 108, Frankfort, Kentucky 40601–1922
3780 I–55 North, Suite 210, Jackson, Mississippi 39211–6323
4407 Bland Road, Suite 210, Raleigh, North Carolina 27609
Strom Thurman Federal Building, 1835 Assembly Street, Room 1472, Columbia, South Carolina 29201–2453
2002 Richard Jones Road, Suite C–205, Nashville, Tennessee 37215–2809
Regional Administrator—John Kluczynski Federal Building, 230 South Dearborn Street, Room 3244, Chicago, Illinois 60604

Area Director

1600 167th Street, Suite 9, Calumet City, Illinois 60409
701 Lee Street, Suite 950, Des Plaines, Illinois 60016
365 Smoke Tree Plaza, North Aurora, Illinois 60542
11 Executive Drive, Suite 11, Fairview Heights, Illinois 62208
2918 W. Willow Knolls Road, Peoria, Illinois 61614
46 East Ohio Street, Room 423, Indianapolis, Indiana 46204
315 West Allegan, Room 207, Lansing, Michigan 48933
Federal Office Building, 1240 East 9th Street, Room 899, Cleveland, Ohio 44199
Federal Office Building, 200 N. High Street, Room 620, Columbus, Ohio 43215
420 Madison Avenue, Suite 600, Toledo, Ohio 43604
36 Triangle Park Drive, Cincinnati, Ohio 45246
1648 Tri Parkway, Appleton, Wisconsin 54914
Henry S. Reuss Building, Room 1180, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203
1310 W. Clairemont Avenue, Eau Claire, Wisconsin 54701
4802 East Broadway, Madison, Wisconsin 53716
Regional Administrator—A. Maceo Smith Federal Building, 525 S. Griffin Street, Room 602, Dallas, TX 75202

Area Director

10810 Executive Center Drive, Danville Building 2, Suite 206, Little Rock, Arkansas 72211
9100 Bluebonnet Centre Blvd., Suite 201, Baton Rouge, Louisiana 70809
55 North Robinson, Suite 315, Oklahoma City, Oklahoma 73102–9237
8344 East R.L. Thornton Freeway, Suite 420, Dallas, Texas 75228
La Costa Green Building, 1033 La Posada, Suite 375, Austin, Texas 78752–3832
Wilson Plaza, 606 N. Carancahua, Suite 700, Corpus Christi, Texas 78476
Federal Office Building, 1205 Texas Avenue, Room 806, Lubbock, Texas 79401
Houston North Area Office, 507 North Sam Houston Parkway East, Suite 400, Houston, Texas 77060
17625 El Camino Real, Suite 400, Houston, Texas 77058
8713 Airport Freeway, Suite 302, Fort Worth, Texas 76180–7610
4849 North Mesa Street, Suite 200, El Paso, Texas 79912–5936
Regional Administrator—City Center Square, 1100 Main Street, Suite 800, Kansas City, Missouri 64105

Area Director

210 Walnut Street, Room 815, Des Moines, Iowa 50309–2015
271 W. 3rd Street North, Room 400, Wichita, Kansas 67202
6200 Connecticut Avenue, Suite 100, Kansas City, Missouri 64120
911 Washington Avenue, Room 420, St. Louis, Missouri 63101
Overland—Wolf Building, 6910 Pacific Street, Room 100, Omaha, Nebraska 68106
Regional Administrator—1999 Broadway, Suite 1690, Denver, Colorado 80202

Area Director

7935 East Prentice Avenue, Suite 209, Greenwood Village, Colorado 80011–2714
1391 Speer Boulevard, Suite 210, Denver, Colorado 80204–2552
2900 Fourth Avenue North, Suite 303, Billings, Montana 59101
1640 East Capitol Avenue, Bismarck, North Dakota 58501
Regional Administrator—90 7th Street, Suite 18–100, San Francisco, California 94103
Regional Administrator—1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212

Area Director

222 W. 7th Avenue, Box 22, Anchorage, Alaska 99513
1150 North Curtis Road, Suite 201, Boise, Idaho 83706
1220 Southwest 3rd Avenue, Room 640, Portland, Oregon 97204
505 106th Avenue NE, Suite 302, Belleview, Washington 98004

Veterans' Employment and Training Service (VETS)

Regional Administrators

Boston Regional Office

J.F. Kennedy Federal Building, Government Center, Room E–315, Boston, Massachusetts 02203

Philadelphia Regional Office

The Curtis Center, Suite 770 West, 170S. Independence Mall West, Philadelphia, PA 19106–2205

Atlanta Regional Office

Atlanta Federal Center, 61 Forsyth Street, SW., Room 6T85, Atlanta, Georgia 30303

Chicago Regional Office

230 South Dearborn, Room 1064, Chicago, Illinois 60604

Dallas Regional Office

525 Griffin Street, Room 858, Dallas, Texas 75202

San Francisco Regional Office

90 Seventh Street Suite 2–600, San Francisco, California 94103

PART 75—DEPARTMENT OF LABOR REVIEW AND CERTIFICATION PROCEDURES FOR RURAL INDUSTRIALIZATION LOAN AND GRANT PROGRAMS UNDER THE CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT

■ 23. The authority citation for 29 CFR part 75 continues to read as follows:

Authority: Sec. 118, Pub. L. 92–419, 86 Stat. 663 (7 U.S.C. 1932).

§ 75.1 [Amended]

■ 24. In § 75.1(a), add the word ''(USDA)'' after the words ''U.S. Department of Agriculture''; and, in paragraph (c) remove the words '', with the objective of complying with the intent of Congress that most applications will be acted upon''.

§ 75.11 [Amended]

■ 25. Amend § 75.11 as follows:
■ a. In paragraphs (a)(1)(ii), (a)(1)(iii), (a)(2), (b)(1)(ii), and (b)(1)(iii), remove the word ''FHA'' and add, in its place, the word ''RD'';
■ b. In paragraph (b)(2) remove the words ''State Employment Security Agencies'' and add, in their place, the words ''State workforce agencies''; and
■ c. In paragraph (b)(1)(iv) remove the word ''reports'' and add, in its place, the word ''Reports''.

§§ 75.1, 75.11 [Amended]

■ 26. Amend §§ 75.1, and 75.11 as follows:
■ a. In § 75.1(b) and § 75.11(a), remove the words ''Manpower Administration (MA)'' and add, in their place, the words ''Employment and Training Administration (ETA)''.
■ b. In § 75.1(a) and § 75.11(b)(3), remove the words ''Farmers Home Administration'' and add, in their place, the words ''Rural Development Administration''.
■ c. In § 75.1(c) in two places and in § 75.11(b)(6), remove the words ''the Department of Agriculture'' and add, in their place, the word ''USDA''.
■ d. In § 75.1(b), (c), and § 75.11, (b)(2) and (b)(5), remove the number ''60'' and add, in its place, the number ''30''.
■ e. In § 75.1(a) in two places, and § 75.11(a)(1), (a)(2) in three places, (a)(3) in two places, (a)(4), (b)(1) introductory text, (b)(1)(iv), (b)(2), and (b)(5) in two places, remove the word ''FmHA'' and add, in its place, the word ''RDA''.
■ f. In § 75.11(a)(1) introductory text, (a)(1)(iii), (a)(2), (a)(3) in three places, (a)(4), (b)(1) introductory text in two places, (b)(1)(iv), (b)(2) in four places, (b)(3), (b)(4), and (b)(5), remove the word ''MA'' and add, in its place, the word ''ETA''.

PART 90—CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

■ 27. The authority citation for 29 CFR part 90 continues to read as follows:

Authority: 19 U.S.C 2320; Secretary's Order No. 3–2007, 72 FR 15907.

§ 90.2 [Amended]

■ 28. In § 90.2, remove the definition of ''Deputy Director''.

§§ 90.2, 90.11, 90.18, 90.31 [Amended]

■ 29. Remove the words ''601 D Street, NW., Washington, DC 20213, and add, in their place, the words ''200 Constitution Avenue, NW., Washington DC 20210'' in the following places:

■ a. Section 90.2;
■ b. Section 90.11(c);
■ c. Section 90.18(a); and
■ d. Section 90.31(a).

§§ 90.2, 90.11, 90.12, 90.17, 90.18, 90.21, 90.31, 90.32, 90.33 [Amended]

■ 30. Remove the words ''Office of Trade Adjustment Assistance'', and add, in their place, the words, ''Division of Trade Adjustment Assistance'' in the following places:
■ a. Section 90.2 in four places;
■ b. Section 90.11(c);
■ c. Section 90.12;
■ d. Section 90.17(a);
■ e. Section 90.18(a)
■ f. Section 90.21(a);
■ g. Section 90.31(a) in two places and in (b);
■ h. Section 90.32(a); and
■ i. Section 90.33(c).

§§ 90.13, 90.14, 90.19 [Amended]

■ 31. In § 90.13(a)(2), (d), § 90.14 (a), (b), (d), and § 90.19(c), remove the words ''or Deputy Director''.

§ 90.11 [Amended]

■ 32. In § 90.11(c), remove the words ''State Employment Security Agency'' and add, in their place, the words ''State workforce agency''.

§ 90.34 [Amended]

■ 33. In § 90.34, remove the words ''State Employment Security Agencies'' and add, in their place, the words ''State workforce agencies''.

§ 90.35 [Removed and reserved]

■ 34. Remove and reserve § 90.35.

PART 95—GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS, AND WITH COMMERCIAL ORGANIZATIONS, FOREIGN GOVERNMENTS, ORGANIZATIONS UNDER THE JURISDICTION OF FOREIGN GOVERNMENTS, AND INTERNATIONAL ORGANIZATIONS

■ 35. The authority citation for 29 CFR part 95 is revised to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–110, as amended, as codified at 2 CFR part 215.

§ 95.2 [Amended]

■ 36. In § 95.2(ii), remove the words ''small purchase threshold'' and add, in their place, the words ''simplified acquisition threshold'', and remove the words ''currently $25,000'' and add, in their place, the words ''currently $100,000, subject to adjustment for inflation''.

§§ 95.25, 95.27 [Amended]

■ 37. In § 95.25(c)(6) and § 95.27, remove the words ''Circular A–21,'' and add, in their place, the words ''Circular A–21 (codified at 2 CFR part 220),'' and remove the words ''Circular A–122,'' and add, in their place, the words ''Circular A–122 (codified at 2 CFR part 230),''.

§ 95.27 [Amended]

■ 38. In § 95.27, remove the words ''Circular A–87'', and add, in their place, the words ''Circular A–87 (codified at 2 CFR part 225),''.

■ 39. Revise § 95.28 to read as follows:

§ 95.28 Period of availability of funds.

(a) Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by DOL.

(b) Where an expenditure period is specified, a grantee may charge to the award only the accrued expenditures incurred during the expenditure period.

§ 95.44 [Amended]

■ 40. Amend § 95.44 as follows:

■ a. In paragraph (b)(5), remove the words ''and Minority Affairs'' and add, in their place, the word ''Programs'';

■ b. In paragraphs (e)(2), (e)(3), (e)(4) and (e)(5), remove the words ''small purchase threshold'' and add, in their place, the words ''simplified acquisition threshold''; and

■ c. In paragraph (e)(2), remove ''$25,000'' and add, in its place, ''$100,000, subject to adjustment for inflation''.

§§ 95.46, 95.48, Appendix A to Part 95 [Amended]

■ 41. In § 95.46, § 95.48(a), (b), and (d), and paragraph 8 of Appendix A to Part 95, remove the words ''small purchase threshold'' and add, in their place, the words ''simplified acquisition threshold''.

§ 95.48, Appendix A to Part 95 [Amended]

■ 42. In § 95.48(e) and the introductory text of Appendix A to Part 95, remove the words ''small purchases'' and add, in their place, the words ''simplified acquisitions''.

§ 95.71 [Amended]

■ 43. In § 95.71(b), add the words ''and/or accrued expenditures'' after the word ''obligations''.

PART 96—AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

■ 44. The authority citation for 29 CFR part 96 is revised to read as follows:

Authority: 31 U.S.C. 7501 *et seq.* and OMB Circular No. A–133, as amended.

§ 96.54 [Amended]

■ 45. In § 96.54 introductory text, after the words ''fiscal year'', add the words ''or $500,000 for fiscal years ending after December 31, 2003''.

§ 96.63 [Amended]

■ 46. Amend § 96.63 as follows:
■ a. In paragraph (b)(4), remove the second reference to ''Secretary'' and add, in its place, the words ''Administrative Review Board (the Board)''; and, remove the fourth reference to ''Secretary'' and add, in its place, the word ''Board''; and
■ b. In paragraph (b)(5) heading, remove the words ''Review by the Secretary of Labor'' and add, in their place, the words ''Review by the Administrative Review Board''; and, remove the first reference in the text to ''Secretary'' and add, in its place, the words ''Administrative Review Board''.

PART 97—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

■ 47. The authority citation for 29 CFR part 97 continues to read as follows:

Authority: 5 U.S.C. 301; OMB Circular A–102.

§ 97.4 [Amended]

■ 48–49. Amend § 97.4 as follows:
■ a. In paragraph (a)(3)(i), remove the words ''Aid to Needy Families with Dependent Children'' and add, in their place, the words ''Temporary Assistance for Needy Families''; and,
■ b. In paragraph (a)(10), remove the words ''Veterans Administration's'' and add, in their place, the words ''Department of Veterans Affairs'''.

§ 97.22 [Amended]

■ 50. Revise § 97.22(b) to read as follows:

§ 97.22 Allowable costs.

* * * * *

(b) *Applicable cost principles.* For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart

lists the kinds of organizations and the applicable cost principles.

For the costs of a—	Use the principles in—
State, local or Indian tribal government	OMB Circular A–87 (as codified at 2 CFR part 225).
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 (as codified at 2 CFR part 230) as not subject to that circular.	OMB Circular A–122 (as codified at 2 CFR part 230).
Educational institutions	OMB Circular A–21 (as codified at 2 CFR part 220).
For-profit organization other than a hospital and an organization named in OMB Circular A–122 (as codified at 2 CFR part 230) as not subject to that circular.	48 CFR part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to the Federal agency.

§ 97.26 [Amended]

■ 51. In § 97.26(b), remove the words ''expends $300,000 or more (or other amount as specified by OMB)'' and add, in their place, the words ''expends $300,000 or more (or $500,000 or more for fiscal years ending after December 31, 2003 or such other amount as specified by OMB)'', and, in § 97.26(b)(1) and (b)(2), remove the words ''Circular A–110,'' and add, in their place, ''Circular A–110 (as codified at 2 CFR part 215),''.

§ 97.36 [Amended]

■ 52. In § 97.36(d)(1), remove the words ''set at $100,000'' and add, in their place, ''set at $100,000, subject to adjustment for inflation''.

§ 97.42 [Amended]

■ 53. In § 97.42(f), after the words ''apply to records'' insert the words ''owned and possessed by the grantee.''.

PART 98—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

■ 54. The authority citation for 29 CFR part 98 continues to read as follows:

Authority: 5 U.S.C. 301, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 NOTE); E.O. 11738, 3 CFR, 1973 Comp., p. 799; E.O. 12549, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 3 CFR, 1989 Comp., p. 235.

§ 98.530 [Amended]

■ 55. In § 98.530(a), remove ''*http://epls.arnet.gov*'' and add, in its place, ''*http://www.epls.gov*'' and, in § 98.530(b), remove ''(202) 783–3238'' and add, in its place, ''(202) 512–1800, or (866) 512–1800 (toll free)''.

PART 99—AUDITS OF STATES, LOCAL GOVERNMENTS AND NON-PROFIT ORGANIZATIONS

■ 56. The authority citation for 29 CFR part 99 is revised to read as follows:

Authority: Public Law 104–156, 110 Stat. 1396 (31 U.S.C. 7500 et seq.) and OMB Circular A–133, as amended.

■ 57. In § 99.200(a) and (b), after the words ''Federal awards'', add the words ''(or $500,000 for fiscal years ending after December 31, 2003)'', and revise paragraph (d) to read as set forth below:

§ 99.200 Audit requirements.

* * * * *

(d) *Exemption when Federal awards expended are less than $300,000 (or $500,000 for fiscal years ending after December 31, 2003).* Non-Federal entities that expend less than $300,000 a year in Federal awards (or $500,000 for fiscal years ending after December 31, 2003) are exempt from Federal audit requirements for that year, except as noted in § 99.215(a), but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).

* * * * *

§ 99.230 [Amended]

■ 58. In § 99.230(b)(2), after the words ''Federal awards expended are less than $300,000 per year'', add the words ''(or $500,000 for fiscal years ending after December 31, 2003)''.

■ 59. Revise § 99.305(a) to read as follows:

§ 99.305 Auditor selection.

(a) *Auditor procurement.* In procuring audit services, auditees shall follow the procurement standards prescribed by OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments;'' 29 CFR part 97, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;'' OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations;'' (codified at 2 CFR part 215); or the FAR (48 CFR part 42), as applicable. (OMB Circulars are available on-line at *http://www.whitehouse.gov/omb/circulars/index.html.*) Whenever possible, auditees shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, in procuring audit services as stated in OMB Circular A–102, OMB Circular A–110 (2 CFR part 215), or the FAR (48 CFR part 42), as applicable. In requesting proposals for audit services, the objectives and scope of the audit should be made clear. Factors to be considered in evaluating each proposal for audit services include the responsiveness to the request for proposal, relevant experience, availability of staff with professional qualifications and technical abilities, the results of external quality control reviews, and price.

* * * * *

§§ 99.400, 99.520 [Amended]

■ 60. In § 99.400(d)(4) and § 99.520(b)(1)(i) and (d)(2)(ii), after the number ''$300,000'', add the words ''(or $500,000 for fiscal years ending after December 31, 2003)''.

Dated: June 27, 2007.

Susan Howe,

Deputy Assistant Secretary for Policy.

[FR Doc. E7–12765 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 989

Environmental Impact Analysis Process (EIAP); Correction

AGENCY: Department of the Air Force, DoD.

ACTION: Final rule; technical corrections.

SUMMARY: This document contains technical correction amendments to the Air Force EIAP regulation codified at 32 CFR Part 989. The rule relates to the Air Force process for compliance with the National Environmental Policy Act (NEPA) and Executive Order (E.O.)

12114, Environmental Effects Abroad of Major Federal Actions.

DATES: *Effective Date:* July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Bush (HQ USAF/A7CI), 1260 Air Force Pentagon, Washington, DC 20330–1260, (703) 604–5264.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of these amendments integrated environmental analysis and aligned environmental document approval levels with the Air Force decision-making process. It also expanded Air Force environmental participants and responsibilities of the Environmental Planning Function (EPF) and the proponent of an action.

Administrative Procedure Act: The Air Force has determined that the Administrative Procedure Act, 5 U.S.C. 553, does not require notice of proposed rulemaking or an opportunity for public participation in connection with these corrections. In this regard, the Air Force notes that such notice and opportunity for comment is unnecessary because these amendments are related solely to agency organization, procedure and practice, and make technical corrections. Accordingly, the Air Force finds good cause to make these amendments effective immediately upon publication in the **Federal Register**. 5 U.S.C. 553(b)(B), 553(d)(3).

Need for Amendments

Amendments were needed to clarify the requirements of 32 CFR 989.

List of Subjects in 32 CFR Part 989

Environmental impact statements, Reporting and recordkeeping requirements.

■ Accordingly, the Department of the Air Force makes the following technical corrections to 32 CFR part 989.

PART 989—ENVIRONMENTAL IMPACT ANALYSIS PROCESS (EIAP)

■ 1. The authority citation for part 989 continues to read as follows:

Authority: 10 U.S.C. 8013.

■ 2. In § 989.3, make the following technical corrections:
■ a. In paragraph (a)(1), revise ''SAF/MIQ'' to read ''SAF/IEE'';
■ b. In paragraph (a)(2), revise ''SAF/MI'' to read ''SAF/IE'';
■ c. In paragraph (a)(4)(ii), revise ''AFLS/JAJT'' to read ''AFLOA/JAJT'';
■ d. In paragraph (c)(1), revise ''Air Force Center for Environmental Excellence'' to read ''Air Force Center for Engineering and the Environment'' and ''AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC)'' to read ''AFCEE Technical Directorate, Built Infrastructure Division (AFCEE/TDB)'';
■ e. In paragraph (c)(2)(iv), revise ''USAF/ILEB'' to read ''USAF/A7CI'';
■ f. In paragraph (d)(7), second sentence, revise ''USAF/ILEB'' to read ''USAF/A7CI'';
■ g. Revise paragraph (f);
■ h. In paragraph (g)(3), revise ''AFLSA/JAJT'' to read ''AFLOA/JAJT''; and
■ i. In paragraph (g)(4), revise ''AFLSA/JACE'' to read ''AFLOA/JACE''.

The revision reads as follows:

§ 989.3 Responsibilities.

* * * * *

(f) *Environment, Safety, and Occupational Health Council (ESOHC).* The ESOHC provides senior leadership involvement and direction at all levels of command in accordance with AFI 90–801, Environment, Safety, and Occupational Health Councils, 25 March 2005.

* * * * *

§ 989.4 [Amended]

■ 3. In § 989.4, in paragraph (h), second sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

§ 989.5 [Amended]

■ 4. In § 989.5, make the following technical corrections:
■ a. In paragraph (d), revise ''SAF/MIQ'' to read ''SAF/IEE.'' Correct ''ANGRC/CEV'' to read ''NGB/A7CV''.
■ b. In paragraph (d), revise ''USAF/ILEB'' to read ''USAF/A7CI''.

§ 989.13 [Amended]

■ 5. In § 989.13, in paragraph (c), revise ''USAF/ILEB'' to read ''USAF/A7CI''.

§ 989.14 [Amended]

■ 6. In § 989.14, make the following technical corrections:
■ a. In paragraph (h), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ b. In paragraph (h), revise ''SAF/MIQ'' to read ''SAF/IEE'' in the two places it appears.
■ c. In paragraph (i), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ d. In paragraph (j), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.

§ 989.17 [Amended]

■ 7. In § 989.17, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.

§ 989.18 [Amended]

■ 8. In Sec. 989.18, paragraph (a), third to last sentence, revise ''USAF/ILEV'' to read ''HQ USAF/A7CI''.

§ 989.19 [Amended]

■ 9. In § 989.19, make the following technical corrections:
■ a. In paragraph (a), last sentence, revise ''USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ b. In paragraph (a), revise ''AFCEE/EC'' to read ''AFCEE/TDB'' in the last sentence.
■ c. In paragraph (b), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI'' in the three places it appears.
■ d. In paragraph (c)(2), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI.'' in the two places it appears.
■ e. In paragraph (c)(2), last sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

§ 989.20 [Amended]

■ 10. In § 989.20, make the following technical corrections:
■ a. In paragraph (a), first and second sentences, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI'' in the two places it appears.
■ b. In paragraph (a), first sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

§ 989.21 [Amended]

■ 11. In § 989.21, make the following technical corrections:
■ a. In paragraph (a), first sentence, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ b. In paragraph (a), first sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.
■ c. In paragraph (c), last sentence, revise ''explain why'' to read ''explain why not''

§ 989.22 [Amended]

■ 12. In § 989.22, make the following technical corrections:
■ a. In paragraph (b), second to last sentence, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ b. In paragraph (d), last sentence, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.

§ 989.26 [Amended]

■ 13. In § 989.26, paragraph (f), first and second sentences, revise ''SAF/MIQ'' to read ''SAF/IEE'' in the two places it appears.

§ 989.29 [Amended]

■ 14. In § 989.29, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.

§ 989.32 [Amended]

■ 15. In § 989.32, revise ''AFCEE/EC'' to read ''AFCEE/TDB''.

§ 989.34 [Amended]

■ 16. In § 989.34, make the following technical corrections:
■ a. In paragraph (a), last sentence, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.

■ b. In paragraph (a), last sentence, revise ''SAF/MIQ'' to read ''SAF/IEE.''
■ c. In paragraph (b), third sentence, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI.''
■ d. In paragraph (b), third sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

§ 989.36 [Amended]

■ 17. In § 989.36, make the following technical corrections:
■ a. In first sentence, revise ''NEPA'' to read ''EIAP'' at its first occurrence.
■ b. In first sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

§ 989.38 [Amended]

■ 18. In § 989.38, make the following technical corrections:
■ a. In paragraph (b), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ b. In paragraph (c), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ c. In paragraph (c), revise ''AFCEE/EC'' to read ''AFCEE/TDB''.
■ d. In paragraph (d), revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI'' in the four places it appears.

Appendix A to Part 989 [Amended]

■ 19. In Appendix A, make the following technical corrections:
■ a. In U.S. Government Agency Publications, revise ''(DoDD) 4715.1, Environmental Security'' to read ''DoDD 4715.1E, Environment, Safety, and Occupational Health''.
■ b. In U.S. Government Agency Publications, revise ''DoDD 5000.1, Defense Acquisition'' to read ''Department of Defense Directive DoDD 5000.1, The Defense Acquisition System''.
■ c. In Abbreviations and Acronyms, Change acronym definition for ''AFCEE'' from ''Air Force Center for Environmental Excellence'' to read ''Air Force Center for Engineering and the Environment''.
■ d. In Abbreviations and Acronyms, revise ''AFCEE/EC'' to read ''AFCEE/TDB''. Change acronym definition from ''AFCEE Environmental Conservation and Planning Directorate (AFCEE/EC)'' to read ''AFCEE Technical Directorate, Built Infrastructure Division (AFCEE/TDB)''.
■ e. In Abbreviations and Acronyms, revise ''AFLSA/JACE'' to read ''AFLOA/JACE''.
■ f. In Abbreviations and Acronyms, revise ''AFLSA/JAJT'' to read ''AFLOA/JAJT''.
■ g. In Abbreviations and Acronyms, revise ''HQ USAF/ILE'' to read ''HQ USAF/A7C''.
■ h. In Abbreviations and Acronyms, revise ''SAF/MI'' to read ''SAF/IE.'' Change acronym definition from ''Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment'' to ''Assistant Secretary of the Air Force for Installations, Environment & Logistics''.
■ i. In Abbreviations and Acronyms, revise ''SAF/MIQ'' to read ''SAF/IEE.'' Change acronym definition from ''Assistant Secretary of the Air Force for Manpower, Reserve Affairs, Installations, and Environment'' to ''Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health (ESOH)''.
■ j. In Terms, under ''BMPs'' revise ''40 CFR 1508.22'' to read ''32 CFR 989.22''.

Appendix B to Part 989 [Amended]

■ 20. In Appendix B, make the following technical corrections:
■ a. In paragraph A3.1.1, revise ''AFLSA/JAJT'' to read ''AFLOA/JAJT''.
■ b. In paragraph A3.1.2, revise ''AFLSA/JAJT'' to read ''AFLOA/JAJT''.

Appendix C to Part 989 [Amended]

■ 21. In Appendix C, make the following technical corrections:
■ a. In paragraph A3.1.3, last sentence, revise ''HQ USAF/ILEVP'' to read ''HQ USAF/A7CI.''
■ b. In paragraph A3.1.3, last sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.
■ c. In paragraph A3.2.2.1, revise ''HQ USAF/ILEB'' to read ''HQ USAF/A7CI''.
■ d. In paragraph A3.2.3.3. revise ''The name and telephone number of a person to contact for more information'' to read ''The name, address, and telephone number of the Air Force point of contact''.
■ e. In paragraph A3.5.1., revise ''AFLSA/JAJT'' to read ''AFLOA/JAJT''.
■ f. In paragraph A3.5.1., revise ''military trial judge'' to read ''hearing officer''.
■ g. In paragraph A3.5.1., revise ''military trial judge'' to read ''hearing officer''.
■ h. In paragraph A3.8, third to last sentence, revise ''SAF/MIQ'' to read ''SAF/IEE''.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer, Department of the Air Force.

[FR Doc. E7–13253 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 122 and 125

[EPA–HQ–OW–2002–0049; FRL–8336–9]

RIN 2040–AD62

National Pollutant Discharge Elimination System—Suspension of Regulations Establishing Requirements for Cooling Water Intake Structures at Phase II Existing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Suspension of final rule.

SUMMARY: This action suspends the requirements for cooling water intake structures at Phase II existing facilities, pending further rulemaking. The Phase II regulation addressed existing power utilities that use a cooling water intake structure to withdraw cooling water from waters of the United States at a rate of 50 million gallons per day (MGD) or greater.

DATES: Effective July 9, 2007, 40 CFR 122.21(r)(1)(ii) and (5), 125.90(a), (c) and (d) and 125.91 through 125.99 in Subpart J are suspended.

FOR FURTHER INFORMATION CONTACT: Janet Goodwin at (202) 566–1060, *goodwin.janet@epa.gov* or Deborah Nagle at (202) 564–1185, *nagle.deborah@epa.gov*.

SUPPLEMENTARY INFORMATION: This action suspends the Phase II regulations with the exception of 40 CFR 125.90 (b), for cooling water intake structures.

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action are classified under NAIC 22111.

Affected categories and entities include:

Category	Examples of regulated entities
Electric Utilities	Electric Power Generating Facilities.
State governments ..	Department of Environmental Protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is affected by this action, you should carefully examine the definition in § 125.91. If you have questions regarding the applicability of this action

to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Table of Contents

I. Legal Authority
II. Background
III. This Action
IV. Statutory and Executive Order Reviews

I. Legal Authority

EPA is issuing this suspension of the Phase II rule pursuant to 5 U.S.C. 553(b) and (d), which authorizes administrative agencies to issue administrative suspensions immediately, where good cause justifies the action. Public comment on this suspension is unnecessary, as a decision issued by the U.S. Court of Appeals for the Second Circuit (Second Circuit), *Riverkeeper, Inc.* v. *EPA*, 475 F.3d 83 (2d Cir. 2007), precludes EPA from applying the Phase II rule unless and until EPA takes further action and today's suspension action merely carries out the effect of that decision on the Phase II rule. Additionally, the decision has resulted in uncertainty among the regulated community and permitting agencies about how to proceed with ongoing permitting proceedings given the uncertainty as to the status of the Phase II rule. This suspension provides a clear statement by the Agency that the existing Phase II requirements (with the exception of one provision unaffected by the *Riverkeeper* decision that reaches beyond the Phase II rule, addressed below) are suspended and are not legally applicable.

II. Background

On February 16, 2004, EPA took final action on regulations governing cooling water intake structures at certain existing power producing facilities under section 316(b) of the Clean Water Act (Phase II rule). 69 FR 41576 (July 9, 2004). The final Phase II rule applies to existing facilities that are point sources that, as their primary activity, both generate and transmit electric power or generate electric power for sale to another entity for transmission; use or propose to use cooling water intake structures with a total design intake flow of 50 MGD or more to withdraw cooling water from waters of the United States; and use at least 25 percent of the water withdrawn exclusively for cooling purposes (see 40 CFR 125.91).

Under the Phase II rule, EPA established performance standards for the reduction of impingement mortality and entrainment (see 40 CFR 125.94). The performance standards consist of ranges of reductions in impingement mortality and/or entrainment. These performance standards were determined to reflect the Best Technology Available (BTA) for minimizing adverse environmental impacts at facilities covered by the Phase II rule.

These regulations were challenged by industry and environmental stakeholders. On judicial review, the Second Circuit decision (*Riverkeeper, Inc.* v. *EPA*, 475 F.3d 83, (2d Cir., 2007)) remanded several provisions of the Phase II rule on various grounds. The provisions remanded to EPA include:

- EPA's determination of the BTA under section 316(b);
- The rule's performance standard ranges;
- The cost-cost and cost-benefit compliance alternatives;
- The Technology Installation and Operation Plan provision;
- The restoration provision; and
- The ''independent supplier'' provision.

With several significant provisions of the Phase II rule affected by the decision, and with the need to provide timely direction to stakeholders about the continuing application of the Phase II rule, EPA's Assistant Administrator for Water issued a memorandum on March 20, 2007, which announced EPA's intention to suspend the Phase II rule. This memorandum also discussed the anticipated issuance of this **Federal Register** suspension document.

III. This Action

EPA is suspending § 122.21(r)(1)(ii) and (5), and Part 125 Subpart J with the exception of § 125.90(b). This suspension is appropriate for several reasons.

First, the Second Circuit's decision remanded key provisions of the Phase II requirements, including the determination of BTA and the performance standard ranges. This suspension responds to the Second Circuit's decision, while the Agency considers how to address the remanded issues.[1]

In addition, the decision has a significant impact on the regulated community and permitting agencies. Both groups have sought Agency guidance on how to proceed to establish cooling water intake structure permit requirements for facilities subject to the Phase II rule in light of this decision. These stakeholders support suspending the Phase II requirements until the Agency has considered and resolved the issues raised by the Second Circuit's remand. Permit requirements for cooling water intake structures at Phase II facilities should be established on a case-by-case best professional judgment (BPJ) basis.

Pursuant to 5 U.S.C. 553(b) and (d), EPA has determined for good cause that notice and public comment procedures are unnecessary. As noted, the Second Circuit's decision found key provisions of the Phase II rule to be inconsistent with the Clean Water Act and remanded most of the rule to the Agency. As a result, under the decision, EPA is precluded from applying the rule unless and until it takes further action to address the decision. Thus, today's action simply effectuates the legal status quo and public comment is therefore unnecessary.

Notably, EPA by this action is not suspending 40 CFR 125.90(b). This retains the requirement that permitting authorities develop BPJ controls for existing facility cooling water intake structures that reflect the best technology available for minimizing adverse environmental impact. This provision directs permitting authorities to establish section 316(b) requirements on a BPJ basis for existing facilities not subject to categorical section 316(b) regulations. Establishing requirements in this manner is consistent with the CWA, case law, and the March 20, 2007 memorandum's direction to do so. Phase II facilities are not subject to categorical requirements under Subpart J while this suspension is in effect, and therefore this provision applies in lieu of those requirements. In addition, this provision applies to other types of existing facilities subject to section 316(b) requirements (e.g., existing facilities addressed in EPA's section 316(b) Phase III rule). Moreover, this provision is an analogue to the provision in the 316(b) Phase I new facility rule providing for BPJ permitting where a facility is not subject to categorical requirements under Subpart I. See 40 CFR 125.80(c). Finally, this provision was not addressed, and is therefore not affected, by the Second Circuit's decision in *Riverkeeper*. Retaining it is therefore consistent with the approach EPA took in response to a judicial remand of its original section 316(b) regulations. See 44 FR 32854, 32956/1 (June 7, 1979) (withdrawing remanded regulations, but leaving intact a provision that had not been remanded).

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 is therefore not subject to review under

[1] In the event that the court's decision is overturned after today's action, the Agency will take appropriate action in response.

the Executive Order. This action does not impose any new requirements and does not impose costs or impacts on the regulated industry and thus does not meet the requirements for Executive Order 12866 review. This action is not subject to the Regulatory Flexibility Act (RFA) since this rule is exempt from notice and comment rulemaking requirements for good cause which is explained in section I. Additionally, this rule will not significantly or uniquely affect small governments. EPA has determined that this rule would not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, this rule is not subject to sections 202, 203, or 205 of the Unfunded Mandates Reform Act of 1999 (Pub. L. 104–4). In addition, the EPA has determined that this action does not have Tribal implications, as specified in Executive Order 13175 (63 FR 67249, November 9, 2000). This action will not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999) because it does not establish any requirements on State or local governments. This regulation is not subject to Executive Order 13045 because it is not economically significant as defined under Executive Order 12866, and because the Agency does not have reason to believe the environmental health and safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; 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 any new information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The existing Information Collection requirements in this regulation were approved by the Office of Management and Budget under OMB control number 2040–0257.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

40 CFR Part 125

Environmental protection, Cooling water intake structure, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: July 2, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, EPA is amending 40 CFR parts 122 and 125 as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 1. The authority citation for part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 *et seq.*

§ 122.21 [Amended]

■ 2. Section 122.21 (r)(1)(ii) is suspended.

■ 3. Section 122.21(r)(5) is suspended.

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

■ 4. The authority citation for part 125 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.* unless otherwise noted.

§ 125.90 [Amended]

■ 5. Section 125.90(a), (c) and (d) are suspended.

■ 6. Sections 125.91 through 125.99 are suspended.

[FR Doc. E7–13202 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–0467; FRL–8337–2]

RIN NA2040

Withdrawal of Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is proposing to amend the Federal regulations to withdraw its 1992 federally promulgated marine copper and cyanide chronic aquatic life water quality criteria for Washington State, thereby enabling Washington to implement its current EPA-approved chronic numeric criteria for copper and cyanide that cover all marine waters of the State.

In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States, including Washington, and two Territories that had not fully complied with the Clean Water Act (CWA). These regulations are known as the ''National Toxics Rule'' or ''NTR.'' On November 18, 1997, Washington adopted revised chronic marine aquatic life criteria for copper and cyanide, the only two marine aquatic life priority toxic pollutants in the NTR applicable to Washington. These revisions included a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA approved these criteria on February 6, 1998. On August 1, 2003, Washington adopted revisions to its water quality standards, including a chronic marine criterion for cyanide for all marine waters except the Puget Sound. EPA approved this criterion on May 23, 2007. Since Washington now has marine copper and cyanide chronic aquatic life criteria effective under the CWA that EPA has approved as protective of Washington's designated uses, EPA is proposing to amend the NTR to withdraw the federally promulgated criteria.

DATES: This rule is effective on September 7, 2007 without further notice, unless EPA receives adverse comment by August 8, 2007. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule, or the relevant provisions of this rule, will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2007–0467, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ow-docket@epa.gov.*
- Mail to either: Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, U.S. EPA, Region 10, OWW–131, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA–HQ–OW–2007–0467.

• Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20004 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA–HQ–OW–2007–0467. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2007–0467. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at two Docket Facilities. The OW Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at U.S. EPA, 1200 Sixth Avenue, Seattle, WA 98101. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553–0775.

FOR FURTHER INFORMATION CONTACT: Becky Lindgren, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (telephone: 206–553–1774 or e-mail: *lindgren.becky@epa.gov*) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0446 or e-mail: *fabiano.claudia@epa.gov*).

SUPPLEMENTARY INFORMATION: This section is organized as follows:

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J. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations)
K. Congressional Review Act

I. Why Is EPA Using a Direct Final Rule?

EPA is publishing this rule without a prior proposed rule because the Agency views this action as noncontroversial and anticipates no adverse comment. Because the public had the opportunity to comment on Washington State's adoption of marine copper and cyanide aquatic life criteria, EPA does not anticipate any adverse comments on the withdrawal of Washington from the NTR, located at 40 CFR 131.36 (57 FR 60848), for those criteria. For this reason, EPA is taking this action in a direct final rule. However, in the ''Proposed Rules'' section of the **Federal Register**, EPA is publishing a separate notice that will serve as a parallel proposed rule to withdraw the same Federal marine aquatic life water quality criteria for toxic pollutants applicable to Washington in the event that adverse comments are received on all or distinct provisions of this direct final rule.

If EPA receives any adverse comment regarding any or all provisions of this direct final rule, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule, or the relevant provisions of this direct final rule, will not take effect. In that event, EPA would address all public comments in any subsequent final rule based on the parallel proposed rule. Any provisions of this direct final rule that are not timely withdrawn by EPA will become effective on September 7, 2007, notwithstanding adverse comment on any other provision. EPA will not institute a second comment period on this direct final rule. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

II. General Information

A. What Entities May Be Affected by This Action?

This direct final rule, if made final, will withdraw federally promulgated marine copper and cyanide aquatic life water quality criteria for waters in Washington State. Entities discharging copper or cyanide pollutants to the marine surface waters of Washington could be affected by this rulemaking since water quality standards are used in determining National Pollutant Discharge Elimination System (NPDES) permit limits, CWA section 404 dredge and fill permits, and other activities requiring CWA section 401 certification.

Categories and entities that may ultimately be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in Washington State.
Municipalities	Discharges from publicly-owned facilities such as publicly-owned treatment works and water filtration facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding NPDES-regulated entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility may be affected by this action, you should carefully examine today's proposed rule. If you have questions regarding the applicability of this action to the particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

III. Background

A. What Are the Applicable Federal Statutory and Regulatory Requirements?

In 1992, EPA promulgated a final rule (known as the ''National Toxics Rule'', or ''NTR'') to establish numeric water quality criteria for toxic pollutants for 12 States and two Territories (hereinafter referred to as ''States'') that had failed to comply fully with section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848, 60910, December 22, 1992). Section 303(c)(2)(B) required States to adopt numeric water quality criteria for those priority toxic pollutants for which EPA had published recommended water quality criteria pursuant to Section 304(a) of the Act. The criteria that EPA promulgated in the NTR were based on EPA's then current Section 304(a) recommended water quality criteria. The NTR criteria are codified at 40 CFR 131.36 and became the applicable water quality criteria in those 14 States for CWA purposes on February 5, 1993.

As described in the preamble to the final NTR, when a State adopts, and EPA approves, numeric water quality criteria, thus meeting the requirements of section 303(c)(2)(B) of the CWA, EPA will issue a rule amending the NTR to withdraw the Federal criteria for that State. See 57 FR 60860. If the State's criteria are no less stringent than the promulgated Federal criteria, EPA will withdraw its criteria without notice and comment because additional comment on the criteria is unnecessary. However, if a State adopts criteria that are less stringent than the federally promulgated criteria, but that in the Agency's judgment fully meet the requirements of the Act, EPA will provide an opportunity for public comment before withdrawing the federally promulgated criteria. See 57 FR 60860.

B. Why Is EPA Withdrawing Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington?

On November 18, 1997, Washington adopted revisions to its surface water quality standards. Washington adopted a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA Region 10 approved these criteria on February 6, 1998, finding that they were consistent with the CWA and EPA's implementing regulations at 40 CFR part 131. On August 1, 2003, Washington adopted revisions to its water quality standards, including a revised chronic cyanide criterion for all marine waters except the Puget Sound. EPA Region 10 approved this revised criterion on May 23, 2007, finding that it was consistent with the CWA and EPA's implementing regulations at 40 CFR part 131. By adopting chronic numeric criteria for copper and cyanide that are applicable to all marine waters of the State, Washington has complied with the requirements of section 303(c)(2)(B) of the CWA, which requires that states adopt numeric criteria for toxic pollutants for which EPA has published recommended water quality criteria and the discharge or presence of which in the affected waters could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses. This fact, plus EPA's approval of Washington's numeric criteria as protective of designated uses, makes the federally promulgated criteria no longer necessary for compliance with the CWA. Therefore, EPA has determined that the federally promulgated criteria are no longer needed and is proposing to withdraw the federally promulgated criteria for Washington.

C. What Are the Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington That EPA Is Withdrawing?

In this action, EPA is withdrawing Washington from the NTR for those

marine cyanide and copper chronic criteria that the State has adopted and EPA has approved. Table 1 provides a summary of the marine copper and cyanide chronic aquatic life values under the NTR, Washington's 1997 criteria, and EPA's current recommended 304(a) criteria.

1. Chronic Marine Aquatic Life Criterion for Cyanide Applicable to All Waters Except Puget Sound

Washington has adopted, and EPA has approved, a marine aquatic life criterion for cyanide of 1 microgram per liter (µg/l) chronic applicable to all marine waters except the Puget Sound. This criterion is identical to the federally promulgated cyanide criterion in the NTR, which is 1 µg/l for the chronic value. This criterion is also identical to EPA's Section 304(a) recommended water quality criterion. Because Washington's criterion is identical to, i.e., no less stringent than, the federally promulgated criterion in the NTR, the Federal criterion is no longer necessary for compliance with the CWA, and EPA is withdrawing it with this action. See 57 FR 60860.

2. Chronic Marine Aquatic Life Criterion for Cyanide Applicable to Puget Sound

Washington has adopted and EPA has approved a chronic site-specific marine aquatic life criterion for cyanide. The chronic site-specific cyanide criterion is 2.8 µg/l and is only applicable to the waters within the borders of Puget Sound (the waters east of a line from Point Roberts to Lawrence Point to Green Point to Deception Pass, and south from Deception Pass and of a line from Partridge Point to Point Wilson). This value is less stringent than the cyanide value promulgated in the NTR and less stringent than the value listed as part of EPA's current recommended CWA section 304(a) criteria. Despite this fact, EPA worked closely with Washington in developing the chronic site-specific cyanide criterion, reviewing the test methodology and resulting data, and approved the criterion on February 6, 1998. See EPA Region 10 approval of Washington State's site-specific criteria for the Puget Sound, February 6, 1998.

The Federal water quality standards regulation at 40 CFR 131.11 requires states to adopt water quality criteria protective of applicable designated uses. Section 131.11(b)(1) states that states should, in adopting criteria, establish numerical values based on Section 304(a) Guidance, Section 304(a) Guidance modified to reflect site-specific conditions, or other scientifically defensible methods. Regarding cyanide, Washington established site-specific chronic numeric criterion based on EPA's CWA section 304(a) Guidance modified to reflect site-specific conditions in the Puget Sound, which EPA approved on February 6, 1998.

Site-specific criteria, as with all water quality criteria, must be based on a sound scientific rationale and ensure protection of the applicable designated use. Washington's site-specific marine cyanide criterion for Puget Sound was based on modifying EPA's methodology for deriving aquatic life criteria by using species found in Puget Sound. In developing the site-specific criteria for Puget Sound, Washington substituted toxicity information from all species in the Cancer genus found within Puget Sound for the toxicity data representing an exclusively east coast species of crab (Cancer irroratus). In reviewing the methodology utilized by Washington in performing this substitution, EPA found that it was scientifically defensible because it used the same scientific methodology followed in the development of EPA's own section 304(a) recommended chronic criteria for cyanide, and because the methodology Washington used in developing the site-specific criterion used all the same genus that were recommended in EPA's *Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses* (EPA, 1985, PB85–227049). Therefore, as described in EPA's February 6, 1998 approval letter, EPA approved the State's site-specific criterion based on EPA's conclusion that these criterion were scientifically defensible, as well as protective of aquatic life in the Puget Sound.

Consequently, Washington now has a chronic marine aquatic life water quality criterion for cyanide that meets the requirements of the statute and federal regulation. As such, the deficiencies leading to EPA's promulgation of this criterion in the NTR for the State have been remedied and the federal regulatory provisions applying this criterion to the Puget Sound in Washington is no longer needed for compliance with the CWA.

3. Chronic Marine Aquatic Life Criterion for Copper Applicable to All Waters

Washington has adopted, and EPA has approved, marine aquatic life criterion for copper of 3.1 µg/l chronic. The value promulgated in the NTR for the copper chronic criterion is 2.4 µg/l. The Washington State criterion for copper is, therefore, less stringent than the value promulgated in the NTR. However, Washington's criterion for copper is equal to EPA's most recent CWA section 304(a) recommended criterion for the protection of aquatic life for copper, which EPA updated in 1995.

EPA derived the section 304(a) recommended chronic criterion for the protection of aquatic life for copper using up-to-date scientific information. Under CWA section 304(a), EPA periodically publishes updated ambient water quality criteria recommendations to reflect the latest data and scientific information about the relationship between pollutant concentrations and environmental and human health effects. EPA's national recommended water quality criteria serve as guidance to states and authorized tribes in adopting water quality standards under the CWA. After December 1992, when EPA promulgated a copper criterion for Washington as part of the NTR using the Agency's then current section 304(a) criteria recommendations, new data on the toxicity of copper to aquatic organisms in marine waters became available. Thus, EPA updated its national CWA section 304(a) recommended chronic marine aquatic life criterion for copper in 1995 to reflect this new scientific data. On November 18, 1997, Washington State adopted a marine copper aquatic life criterion equivalent to EPA's revised CWA section 304(a) recommended marine copper chronic aquatic life criteria. Washington did this in order to incorporate the latest scientific knowledge into its State water quality standards.

EPA also relies on its section 304(a) recommended water quality criteria when EPA promulgates water quality standards for a State. EPA did this in 2000 when it promulgated acute and chronic criteria for copper in California. Those water quality standards were based on EPA's updated 1995 recommended water quality criteria for copper. See 40 CFR 131.38.

As described in EPA's February 6, 1998 approval, Washington State's chronic marine aquatic life criterion for copper met the requirements of 40 CFR 131.11, which provides that states may adopt criteria based on EPA's CWA section 304(a) recommended criteria. Based on the science supporting EPA's recommended water quality criteria, EPA concluded that Washington's chronic marine aquatic life criterion for copper is protective of the applicable aquatic life designated uses. While Washington's chronic marine aquatic life criterion for copper is less stringent than the corresponding value in the NTR, in its February 6, 1998 approval, EPA concluded that Washington's

chronic marine aquatic life water quality criterion for copper is protective of Washington's designated uses and meets the requirements of the CWA and federal regulation. As such, the deficiencies leading to EPA's promulgation of this criterion in the NTR for the State have been remedied and the federal regulatory provisions applying this criterion to the Puget Sound in Washington is no longer needed. Therefore, EPA is removing Washington from the NTR for chronic marine copper aquatic life criterion with this action.

TABLE 1.—SUMMARY OF MARINE CHRONIC COPPER AND CYANIDE AQUATIC LIFE CRITERIA

Chemical	1992 NTR values (Chronic (μg/L))	1997 Revised Washington values (Chronic (μg/L))	EPA's current recommended 304(a) criteria (Chronic (μg/L))
Copper	2.4	3.1	3.1
Cyanide	1	1*	1

*The Puget Sound site-specific criterion is 2.8 μg/L chronic and is applicable only to waters which are east of a line from Point Roberts to Lawrence Point to Green Point to Deception Pass and south from Deception Pass and of a line from Partridge Point to Point Wilson (these are the borders of Puget Sound).

IV. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review)

This action withdraws Federal requirements applicable to Washington and imposes no regulatory requirements or costs on any person or entity, does not interfere with the action or planned action of another agency, and does not have any budgetary impacts or raise novel legal or policy issues. Thus, it has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it is administratively withdrawing Federal requirements that are no longer needed in Washington. It does not include any information collection, reporting or recordkeeping requirements. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049, EPA ICR number 1530.12. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Tribal, or local governments or the private sector because it imposes no enforceable duty on any of these entities. Thus, this rule is not subject to the requirements of UMRA sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA section 203.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule imposes no regulatory requirements or costs on any State or local governments, therefore, it does not have federalism implications under Executive Order 13132.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule imposes no regulatory requirements or costs on any Tribal government. It does not have substantial direct effects on Tribal governments, the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not economically significant and EPA has no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) since Washington's criteria apply to all marine waters in the State, EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA section 304(a) recommended criteria, that Washington's State-adopted and EPA-approved criteria are protective of human health and aquatic life.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2) and will be effective on September 7, 2007.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: July 2, 2007.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 131 is amended as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

■ 2. Section 131.36 is amended by revising the table in paragraph (d)(14)(ii) to read as follows:

§ 131.36 Toxic criteria for those states not complying with Clean Water Act Section 303(c)(2)(B).

* * * * *

(d) * * *

(14) * * *

(ii) * * *

Use classification	Applicable criteria
Fish and Shellfish; Fish.	These classifications are assigned the criteria in: Column D2—all.
Water Supply (domestic).	These classifications are assigned the criteria in: Column D1—all.
Recreation	This classification is assigned the criteria in: Column D2—Marine waters and freshwaters not protected for domestic water supply.

* * * * *

[FR Doc. E7–13207 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
Town of Mapleton, Maine Docket No.: FEMA–B–7708				
Maine	Town of Mapleton	Aroostook River	Downstream of Mapleton Corporate Limit	+433

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
			Upstream of Mapleton Corporate Limit	+435
		Clayton Brook	Approximately 1,000 feet downstream of old Railroad Grade.	+471
			Approximately 2,000 feet upstream of Hughes Road	+583
		Hanson Brook	Confluence with Hanson Lake	+504
			Just upstream of Bagley Road	+515
		Hanson Lake	Hanson Lake	+504
		Libby Brook	Confluence with North Branch Presque Isle.	+524
			Upstream of Mapleton Corporate Limit	+584
		North Branch Presque Isle Stream.	Confluence with Presque Isle Stream	+440
			Upstream of Town of Mapleton Corporate Limit.	+527
		Presque Isle Stream	Just downstream of confluence with Arnold Brook.	+440
			Upstream of Mapleton Corporate Limit	+448
		Tea Kettle Brook	Confluence of North Branch Presque Isle Stream.	+468
			Just upstream of Pulcifur Road	+470
		Unnamed Brook	Confluence with North Branch Presque Isle Stream.	+458
			Just upstream of Creasy Ridge Road	+508

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Mapleton

Maps are available for inspection at 103 Pulcifur Road, P.O. Box 500, Mapleton, ME 04757.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Livingston County, Illinois, and Incorporated Areas Docket No.: D–7694			
Vermilion River	Approximately 4H Park Road	+633	Livingston County (Unincorporated Areas).
	Approximately 1,550 feet above 4H Park Road	+633	
	Approximately Manlove Street extended	+641	Livingston County (Unincorporated Areas).
	Approximately 700 feet above Pearl Street extended	+642	
Indian Creek	Approximately 2,775 feet above Road 900N	+666	Livingston County (Unincorporated Areas).
	Approximately Third Street extended	+674	
Gooseberry Creek	Approximately East Livingston Road (Livingston/Grundy County Boundary).	+619	Livingston County (Unincorporated Areas).
	Approximately 1,050 feet downstream of Union Pacific Railroad.	+628	
	Approximately Washington Street	+636	Livingston County (Unincorporated Areas).
	Approximately 150 feet above Fieldman Road (CR–3100N).	+641	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

Livingston County (Unincorporated Areas)

Maps are available for inspection at the Livingston County Regional Planning Commission, 110 West Water Street, Suite 3, Pontiac, IL 61764.

Ashtabula County, Ohio, and Incorporated Areas
Docket No.: D–7800

Lake Erie	Entire Lake Erie coastline within the corporate limits of City of Ashtabula.	+576	City of Ashtabula.
	Entire Lake Erie coastline within the corporate limits of City of Conneaut.	+576	City of Conneaut.
	Entire Lake Erie coastline within the corporate limits of Village of Geneva-On-The-Lake.	+576	Village of Geneva-On-The-Lake.
	Village of North Kingsville—Entire Lake Erie coastline within the corporate limits of Village of North Kingsville.	+576	Village of North Kingsville.
	Entire Lake Erie coastline within the Unincorporated Areas of Ashtabula County.	+576	Ashtabula County (Unincorporated Areas).

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Ashtabula

Maps are available for inspection at 4717 Main Avenue, Ashtabula, OH 44004.

City of Conneaut

Maps are available for inspection at 294 Main Street, Conneaut, OH 44030.

City of Geneva

Maps are available for inspection at 44 North Forest Street, Geneva, OH 44041.

Ashtabula County (Unincorporated Areas)

Maps are available for inspection at 25 West Jefferson Street, Jefferson, OH 44047.

Village of Geneva-On-The-Lake

Maps are available for inspection at 25 West Jefferson Street, Jefferson, OH 44047.

Village of Jefferson

Maps are available for inspection at 27 East Jefferson Street, Jefferson, OH 44047.

Village of North Kingsville

Maps are available for inspection at 3541 East Center Street, North Kingsville, OH 44068.

Village of Roaming Shores

Maps are available for inspection at 2500 Hayford Road, Roaming Shores, OH 44084.

Village of Rock Creek

Maps are available for inspection at West Water Street, Rock Creek, OH 44084.

Morrow County, Oregon, and Incorporated Areas
Docket No.: FEMA–B–7705

Blackhorse Canyon	Approximately 480 feet downstream from Arcade Street Bridge.	+1442	City of Lexington.
	Approximately 0.4 miles upstream from SR 74	+1479	
Hinton Creek	Downstream side of Main Street Bridge	+1930	City of Heppner, Morrow County (Unincorporated Areas).
	Approximately 560 feet upstream from SR 74	+2045	
Little Blackhorse Canyon	Approximately 350 feet downstream from SR 74 Culvert	+1872	Morrow County (Unincorporated Areas).
	Approximately 1.0 miles upstream from SR 74	+2120	
Lorraine Canyon	Approximately 130 feet downstream from SR 74	+1093	City of Ione.
	Approximately 720 feet upstream from SR 74	+1159	
Rietmann Canyon	Approximately 250 feet downstream of SR 74 Bridge	+1099	City of Ione.
	Approximately 500 feet upstream of SR 74 Bridge	+1115	
Shobe Creek	Approximately 400 feet downstream from Chase Street Bridge.	+1960	City of Heppner, Morrow County (Unincorporated Areas).
	Approximately 0.4 miles upstream from SR 207	+2162	
Willow Creek	Approximately 2.1 miles downstream from Fuller Canyon Road.	+1793	City of Heppner, Morrow County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 625 feet upstream of Alfalfa Street Bridge	+1977	
	Approximately 1400 feet downstream from Gooseberry Road.	+1069	City of Ione, Morrow County (Unincorporated Areas).
	Approximately 0.8 miles upstream from Gooseberry Road	+1100	
	Approximately 0.9 miles downstream of B Street Bridge ...	+1408	City of Lexington, Morrow County (Unincorporated Areas).
	Approximately 800 feet upstream of B Street Bridge	+1458	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Heppner

Maps are available for inspection at 111 N. Main Street, Heppner, OR 97836.

City of Ione

Maps are available for inspection at City Hall, 385 West 2nd, Ione, OR 97843.

City of Lexington

Maps are available for inspection at City Hall, 150 Main Street, Lexington, OR 97839.

Morrow County (Unincorporated Areas)

Maps are available for inspection at Morrow County Planning Department, 205 NE 3rd Street, Irrigon, OR 97844.

Fall River County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–7702

Fall River	Confluence with Cheyenne River	+3,046	City of Hot Springs, Fall River County (Unincorporated Areas).
	Approximately 0.25 miles upstream of Battle Mountain Avenue.	+3,476	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Fall River County (Unincorporated Areas)

Maps are available for inspection at: County Courthouse, 906 North River Street, Hot Springs, South Dakota.

City of Hot Springs

Maps are available for inspection at: City Hall, 303 North River Street, Hot Springs, South Dakota.

Henrico County, Virginia, and Incorporated Areas
Docket Nos.: FEMA–B–7460 and FEMA–B–7709

Allens Branch	Approximately at the confluence with Chickahominy River	+197	Henrico County (Unincorporated Areas).
	Approximately 250 feet downstream from the I–295 Ramp	+214	
Chickahominy River	Approximately at Creighton Road	+77	Henrico County (Unincorporated Areas).
	Approximately 1900 feet downstream from Shady Grove Road.	+218	
Copperas Creek	Approximately at the confluence with Tuckahoe Creek	+144	Henrico County (Unincorporated Areas).
	Approximately 150 feet downstream from Waterford Way East.	+220	
Tributary 2	Approximately at the confluence with Copperas Creek	+160	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Ridgefield Parkway.	+206	
Fourmile Creek	Approximately at the confluence with James River	+11	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Doran Road	+92	
Tributary 7	Approximately at the confluence with Fourmile Creek	+85	Henrico County (Unincorporated Areas).
	Approximately 775 feet upstream from the Footbridge	+88	
Gillies Creek Tributary 1	Approximately at the confluence with Gillies Creek	+121	Henrico County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 250 feet downstream from South Kalmia Avenue.	+154	
Harding Branch	Approximately at the confluence with Tuckahoe Creek	+148	Henrico County (Unincorporated Areas).
	Approximately 2500 feet upstream from Park Terrace Drive.	+240	
Tributary 1	Approximately at the confluence with Harding Branch	+168	Henrico County (Unincorporated Areas).
	Approximately 1000 feet upstream from the confluence with Harding Branch.	+171	
Heckler Village Tributary 1	Approximately at the confluence with Gillies Creek	+109	Henrico County (Unincorporated Areas).
	Approximately 1100 feet upstream from Colwyck Drive	+145	
Tributary 2	Approximately at the confluence with Gillies Creek	+138	Henrico County (Unincorporated Areas).
	Approximately 1600 feet upstream from Wynfield Terrace	+158	
Horsepen Branch	Approximately at the confluence with Upham Brook	+174	Henrico County (Unincorporated Areas).
	Approximately 300 feet upstream from Devers Road	+218	
James River	Approximately 2100 feet southeast of the intersection of Osborne Landing and Kingsland Road.	+16	Henrico County (Unincorporated Areas).
	Approximately 1250 feet northwest of the intersection of Stancraft Way and Old Osborne Turnpike.	+32	
Meredith Branch	Approximately at the confluence with Chickahominy River	+186	Henrico County (Unincorporated Areas).
	Approximately 500 feet downstream from Broad Meadows Road.	+230	
North Run	Approximately at the confluence with Upham Brook	+120	Henrico County (Unincorporated Areas).
	Approximately 400 feet upstream from the confluence with Upham Brook.	+120	
Rooty Branch	Approximately 600 feet downstream from Nuckols Road	+221	Henrico County (Unincorporated Areas).
	Approximately 1800 feet upstream from Nuckols Road	+233	
Tributary A to Gillies Creek Tributary 1.	Approximately at the confluence with Gillies Creek Tributary 1.	+146	Henrico County (Unincorporated Areas).
	Approximately 1200 feet upstream from Yates Lane	+158	
Tributary A to Gillies Creek Tributary 1.	Approximately at the confluence with Tributary A to Gillies Creek Tributary 1.	+150	Henrico County (Unincorporated Areas).
	Approximately 750 feet south from Nine Mile Road	+160	
Allens Branch	Approximately at the confluence with Chickahominy River	+197	Henrico County (Unincorporated Areas).
	Approximately 250 feet downstream from the I–295 Ramp	+214	
Chickahominy River	Approximately at Creighton Road	+77	Henrico County (Unincorporated Areas).
	Approximately 1900 feet downstream from Shady Grove Road.	+218	
Copperas Creek	Approximately at the confluence with Tuckahoe Creek	+144	Henrico County (Unincorporated Areas).
	Approximately 150 feet downstream from Waterford Way East.	+219	
Tributary 2	Approximately at the confluence with Copperas Creek	+160	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Ridgefield Parkway/Cambridge Drive.	+206	
Fourmile Creek	Approximately at the confluence with James River	+11	Henrico County (Unincorporated Areas).
	Approximately 2000 feet upstream from Doran Road	+92	
Tributary 7	Approximately at the confluence with Fourmile Creek	+85	Henrico County (Unincorporated Areas).
	Approximately 775 feet upstream from the Footbridge	+88	
Gillies Creek Tributary 1	Approximately at the confluence with Gillies Creek	+121	Henrico County (Unincorporated Areas).
	Approximately 250 feet downstream from South Kalmia Avenue.	+154	
Harding Branch	Approximately at the confluence with Tuckahoe Creek	+148	Henrico County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 2000 feet upstream from Park Terrace Drive.	+241	
Tributary 1	Approximately at the confluence with Harding Branch	+168	Henrico County (Unincorporated Areas).
	Approximately 1000 feet upstream from the confluence with Harding Branch.	+171	
Heckler Village Tributary 1	Approximately at the confluence with Gillies Creek	+109	Henrico County (Unincorporated Areas).
	Approximately 1100 feet upstream of Wynfield Terrace	+145	
Tributary 2	Approximately at the confluence with Gillies Creek	+138	Henrico County (Unincorporated Areas).
	Approximately 1600 feet upstream from Wynfield Terrace	+158	
Horsepen Branch	Approximately at the confluence with Upham Brook	+174	Henrico County (Unincorporated Areas).
	Approximately 300 feet upstream from Devers Road	+218	
James River	Approximately 5550 feet southeast of the intersection of Osborne Landing and Kingsland Road.	+16	Henrico County (Unincorporated Areas).
	Approximately 1250 feet northwest of the intersection of Stancraft Way and Old Osborne Turnpike.	+32	
Jordans Branch	Approximately at 2550 feet downstream of Interstate 64	+160	Henrico County (Unincorporated Areas).
	Approximately at 710 feet upstream of the Monument Avenue.	+208	
Meredith Branch	Approximately at the confluence with Chickahominy River	+186	Henrico County (Unincorporated Areas).
	Approximately 500 feet downstream from Broad Meadows Road.	+230	
North Run	Approximately at the confluence with Upham Brook	+120	Henrico County (Unincorporated Areas).
	Approximately 400 feet upstream from the confluence with Upham Brook.	+120	
Rooty Branch	Approximately 600 feet downstream from Yates Lane	+221	Henrico County (Unincorporated Areas).
	Approximately 1800 feet upstream from Nuckols Road	+233	
Tributary A to Gillies Creek Tributary 1.	Approximately at the confluence with Gillies Creek Tributary 1.	+145	Henrico County (Unincorporated Areas).
	Approximately 1200 feet upstream from Yates Lane	+158	
Tributary A to Gillies Creek Tributary 1.	Approximately at the confluence with Tributary A to Gillies Creek Tributary 1.	+150	Henrico County (Unincorporated Areas).
	Approximately 750 feet south from Nine Mile Road	+160	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Henrico County (Unincorporated Areas)

Maps are available for inspection at Henrico West End Government Center, 4301 E. Parham Rd., Richmond, VA 23228.

Kitsap County, Washington, and Incorporated Areas
Docket No.: FEMA–B–7705

Clear Creek	Downstream side of NW Bucklin Hill Road	+13	Kitsap County (Unincorporated Areas).
	Approximately 60 feet downstream of NW Mountain View Road.	+180	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Kitsap County (Unincorporated Areas)

Maps are available for inspection at Department of Public Works, 614 Division Street, Administrative Building, Port Orchard, WA 98366.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 27, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–13181 Filed 7–6–07; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 72, No. 130
Monday, July 9, 2007

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

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Federal Credit Union Bylaws

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule; Notice of extension of comment period.

SUMMARY: The NCUA Board recently issued a proposed rule to reincorporate the Federal Credit Union (FCU) Bylaws into NCUA regulations that provided a 60-day comment period. 72 FR 30984 (June 5, 2007). NCUA received a request to extend the comment period and the NCUA Board has decided to extend the comment period for an additional two weeks.

DATES: Comments must be received by August 20, 2007.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Web Site: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include ''[Your name] Comments on FCU Bylaws'' in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9 a.m. and 3 p.m. To make an appointment, call (703) 518–6546 or send an e-mail to *OGC Mail @ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Wirick, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION: At its May meeting, the NCUA Board issued a proposed rule to reincorporate the FCU Bylaws into NCUA regulations. 72 FR 30984 (June 5, 2007). NCUA received a request to extend the comment period on the proposed rule for two weeks. Although the Board wants to proceed expeditiously with reincorporation of the Bylaws, it believes a two-week extension will facilitate submission of comments without causing undue delay to the rulemaking process. Accordingly, the comment period for the proposed rule reincorporating the FCU Bylaws into NCUA regulations is extended until August 20, 2007.

By the National Credit Union Administration Board on July 2, 2007.

Mary F. Rupp,

Secretary of the Board.

[FR Doc. E7–13273 Filed 7–6–07; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28599; Directorate Identifier 2007–NM–008–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300–600 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> The aim of this AD, is to mandate airworthiness requirements in structural maintenance in accordance with the requirements defined in the AIRBUS A300–600 Airworthiness Limitations Items (ALI) document issue 11, referenced AI/SE–M2/95A.0502/06, approved by EASA on 31 May 2006.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer,

International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

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

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

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–28599; Directorate Identifier 2007–NM–008–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2006–0374, dated December 15, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI describes the unsafe condition as:

> The aim of this AD, is to mandate airworthiness requirements in structural maintenance in accordance with the requirements defined in the AIRBUS A300–600 Airworthiness Limitations Items (ALI) document issue 11, referenced AI/SE–M2/95A.0502/06, approved by EASA on 31 May 2006.
>
> Issue 11 of this document (refer to the Summary of Changes chapter for more details) deals in particular with the introduction of new tasks and the reduction of threshold and interval of some ALI tasks.
>
> Some other clarifications are also brought to some tasks like for example the access, the applicability period or the applicability.
>
> This AD supersedes DGAC AD F–2004–153, as it was mandating A300–600 ALI issue 9.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. Incorporating this revision into the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness is intended to ensure the continued structural integrity of these airplanes. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 138 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $11,040, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–28599; Directorate Identifier 2007–NM–008–AD.

Comments Due Date

(a) We must receive comments by August 8, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300–600 series airplanes, all certified models, all serial numbers, certificated in any category.

Subject

(d) Time Limits/Maintenance Checks.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

The aim of this AD, is to mandate airworthiness requirements in structural maintenance in accordance with the requirements defined in the AIRBUS A300–600 Airworthiness Limitations Items (ALI) document issue 11, referenced AI/SE–M2/95A.0502/06, approved by EASA on 31 May 2006.

Issue 11 of this document (refer to the Summary of Changes chapter for more details) deals in particular with the introduction of new tasks and the reduction of threshold and interval of some ALI tasks.

Some other clarifications are also brought to some tasks like for example the access, the applicability period or the applicability.

This AD supersedes DGAC AD F–2004–153, as it was mandating A300–600 ALI issue 9.

The unsafe condition is fatigue cracking, damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane. Incorporating this revision into the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness is intended to ensure the continued structural integrity of these airplanes.

Actions and Compliance

(f) Unless already done, within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A300–600 Airworthiness Limitation Items Document AI/SE–M2/95A.0502/06, Issue 11, dated April 2006. The tolerance (grace period) for compliance (specified in paragraph 2 of Section B—Program Rules) with Issue 11 of the ALI is within 2,000 flight cycles after the effective date of this AD, provided that none of the following is exceeded:

(1) Thresholds or intervals in the operator's current approved maintenance schedule that are taken from a previous ALI issue, if existing, and are higher than or equal to those given in Issue 11 of the ALI.

(2) 8 months after the effective date of this AD.

(3) 50 percent of the intervals given in Issue 11 of the ALI.

(4) Any application tolerance given in the task description of Issue 11 of the ALI.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, ATTN: Tom Stafford, Aerospace Engineer, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1622; fax (425) 227–1149; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2006–0374, dated December 15, 2006, and Airbus A300–600 Airworthiness Limitation Items Document AI/SE-M2/95A.0502/06, Issue 11, dated April 2006, for related information.

Issued in Renton, Washington, on June 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13211 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27865; Directorate Identifier 2007–CE–039–AD]

RIN 2120–AA64

Airworthiness Directives; Pacific Aerospace Corporation, Ltd Model 750XL Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

To prevent the cockpit door windows separating from their frames, * * *

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

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

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2007–27865; Directorate Identifier 2007–CE–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The Civil Aviation Authority of New Zealand, which is the aviation authority for New Zealand, has issued AD DCA/750XL/10, dated March 29, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

To prevent the cockpit door windows separating from their frames, * * *

The MCAI requires you to inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame. If disbonding is evident, you must do the required modification.

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

Relevant Service Information

Pacific Aerospace Corporation, Ltd has issued Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276), dated April 18, 2007, and PAC Drawing No. 11–03137 (undated). The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Differences Between This Proposed AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 7 products of U.S. registry. We also estimate that it would take about 40 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $50 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $22,750, or $3,250 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pacific Aerospace Corporation, Ltd: Docket No. FAA–2007–27865; Directorate Identifier 2007-CE–039-AD.

Comments Due Date

(a) We must receive comments by August 8, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 750XL airplanes, all serial numbers, certificated in any category, that have not incorporated Pacific Aerospace Limited Service Letter PACSL/XL/07–1, dated April 18, 2007, with Pacific Aerospace LTD Drawing, 11–03129, Issue B or subsequent, in its entirety.

Subject

(d) Air Transport Association of America (ATA) Code 56: Windows.

Reason

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

To prevent the cockpit door windows separating from their frames, * * * The MCAI requires you to inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame. If disbonding is evident, you must do the required modification.

Actions and Compliance

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

(1) Within the next 50 hours time-in-service (TIS) after the effective date of this AD and thereafter at intervals not to exceed 50 hours TIS, inspect the windscreen and cockpit door windows for signs of disbonding of the adhesive between the transparency and the composite window frame following Pacific Aerospace Corporation, Ltd Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276), dated April 18, 2007, and PAC Drawing No. 11–03137 (undated). If you find disbonding, before further flight, modify the windscreen and cockpit windows to incorporate mechanical fasteners following Pacific Aerospace Corporation, Ltd Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276), dated April 18, 2007, and PAC Drawing No. 11–03137 (undated).

(2) Within the next 150 hours TIS after the effective date of this AD or the next 6 months after the effective date of this AD, whichever occurs first, modify the windscreen and cockpit windows to incorporate mechanical fasteners following Pacific Aerospace Corporation, Ltd Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276), dated April 18, 2007, and PAC Drawing No. 11–03137 (undated).

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Staff, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Civil Aviation Authority of New Zealand AD DCA/750XL/10, dated March 29, 2007; Pacific Aerospace Corporation, Ltd Pacific Aerospace Limited Mandatory Service Bulletin PACSB/XL/024 (embodiment of modification PAC/XL/0276), dated April 18, 2007; PAC Drawing No. 11–03137 (undated); and Pacific Aerospace Limited Service Letter PACSL/XL/07–1, dated April 18, 2007, with Pacific Aerospace LTD Drawing, 11–03129, Issue B or subsequent, for related information.

Issued in Kansas City, Missouri, on June 29, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13247 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28058; Directorate Identifier 2007-NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG (IAE) V2500 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, V2528–D5 turbofan engines. This proposed AD would require removing certain No. 4 bearing seal components from service at the next shop visit or by an end date determined by the engine model. This proposed AD results from instances of oil loss from the No. 4 bearing compartment. We are proposing this AD to prevent heat damage to high pressure turbine (HPT) and low pressure turbine (LPT) critical life limited hardware such as the HPT stage 1–2 airseal. Damage to the HPT stage 1–2 airseal could cause uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by September 7, 2007.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Colleen M. D'Alessandro, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park,

Burlington, MA 01803; telephone (781) 238–7133; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28058; Directorate Identifier 2007–NE–08–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the DOT Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov.*

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

Between March 1993 and October 2006, we received reports of 24 confirmed instances of oil loss from the No. 4 bearing compartment. Each instance resulted in the oil igniting and caused heat distress damage to HPT and LPT hardware.

International Aero Engines (IAE) attributes the oil loss to two root causes, fractures of the rear No. 4 carbon seal and insufficient oil scavenging. The fractures result from fracture of the HPT stage 1 disk metering plug due to high-cycle fatigue (HCF). Industry confirms five instances of fractured metering plugs between January 2001 and October 2006. Regarding the insufficient oil scavenging, Industry confirms 19 instances of distress of the HPT, the LPT, or both, caused by oil flooding the No. 4 bearing compartment between March 1993, and October 2006.

We have monitored industry's investigation, field actions, and service experience with this problem. However, we conclude that proposed corrective actions are inadequate. These conditions, if not corrected, could result in heat damage to critical life limited hardware such as the HPT stage 1–2 airseal. Damage to the HPT stage 1–2 airseal could cause uncontained engine failure, and damage to the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removing the parts specified in this proposed AD at the next shop visit, but no later than November 2008 for the V2500–A1 model or June 2011 for the—A5 and –D5 models.

Costs of Compliance

We estimate that this proposed AD would affect 686 engines installed on airplanes of U.S. registry. Of those 686 engines, the operators of nineteen V2500–A1 engines, thirty –A5 engines and twenty-one –D5 engines have already complied with the requirements in the proposed AD.

COSTS OF COMPLIANCE PER YEAR BY ENGINE MODEL

Engine Model	Number of engines per year	Total labor cost per year	Total parts cost per year	Total cost per year
V2500–A1	33	$355,080	$7,230,564	$7,585,644
V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5	142	1,368,880	35,790,816	37,159,696
V2525–D5, V2528–D5	5	15,400	276,425	291,825

Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $45,037,165 per year.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines AG (IAE): Docket No. FAA–2007–28058; Directorate Identifier 2007–NE–08–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by September 7, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to IAE V2500–A1, V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, V2533–A5, V2525–D5, V2528–D5 turbofan engines with a part listed by part number (P/N) in this AD installed. These engines are installed on, but not limited to, Airbus A319, A320, A321, and Boeing MD–90 airplanes.

Unsafe Condition

(d) This proposed AD results from instances of oil loss from the No. 4 bearing compartment. We are issuing this AD to prevent heat damage to high pressure turbine (HPT) and low pressure turbine (LPT) critical life limited hardware such as the HPT stage 1–2 airseal. Damage to the HPT stage 1–2 airseal could cause uncontained engine failure, and damage to the airplane.

Compliance

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

V2500–A1 Engines

(f) For V2500–A1 engines, remove the parts listed by P/N in the following Table 1 of this AD at the next shop visit after the effective date of this AD but not later than November 30, 2008. The ATA chapter reference of the IAE V2500–A1 engine manual (E–V2500–1IA) contains information on removing the parts.

TABLE 1.—V2500–A1 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A0830–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A1949–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A2028–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A0830–001	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A2274–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–33	2A0853	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2055	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–35	2A0892–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A0891–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A0594	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A1040	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2181	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A0884	Seal Air, HPT Stage 1.
72–45–13	2A1203	Seal Air, HPT Stage 1.
72–45–13	2A0884–001	Seal Air, HPT Stage 1.
79–22–49	5R8111	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5R8138	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	6A5367	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5A9083	Tube A/O Oil—No. 4 Brg Discon to Discon.
79–22–49	5A9084	Tube A/O Oil—No. 4 Brg Discon to Scav Valve.
79–22–49	5A8573	Tube A/O Oil—Press 'T' To Pressurre Transducer.
79–23–51	1648MK2	Scavenge Valve.

V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 Engines

(g) For V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 engines, remove the parts listed by P/N in the following Table 2 of this AD at the next shop visit after the effective date of this AD but not later than June 30, 2011. The ATA chapter reference of the IAE V2500–A5 engine manual (E–V2500–1IA) contains information on removing the parts.

TABLE 2.—V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, AND V2533–A5 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A0830–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–20	2A1949–01	Tube, Scavenge, No. 4 Bearing Assy.
72–42–33	2A0853	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–35	2A0892–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A0891–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A0594	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A1040	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2354	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A3182	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A1352	Seal Air, HPT Stage 1.
72–45–13	2A3032	Seal Air, HPT Stage 1.
79–22–49	5R8111	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5R8138	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	6A5367	Tube A/O Oil—No. 4 Brg Scav Dif Case to Bif Panel.
79–22–49	5A9083	Tube A/O Oil—No. 4 Brg Discon to Discon.
79–22–49	5A9084	Tube A/O Oil—No. 4 Brg Discon to Scav Valve.
79–22–49	5A8573	Tube A/O Oil—Press 'T' To Pressure Transducer.

(h) For V2522–A5, V2524–A5, V2527–A5, V2527E–A5, V2527M–A5, V2530–A5, and V2533–A5 engines with high pressure turbine (HPT) stage 1 rotor assembly, P/Ns 2A9521–002 and 2A9621–002, the stage 1 HPT hub metering plug, P/N 2A3182, does not need to be removed.

V2525–D5 and V2528–D5 Engines

(i) For V2525–D5 and V2528–D5 engines, remove the parts listed by P/N in the following Table 3 of this AD at the next shop visit after the effective date of this AD but not later than June 30, 2011. The ATA chapter reference of the IAE V2500–D5 engine manual (E–V2500–3IA) contains information on removing the parts.

TABLE 3.—V2525–D5 AND V2528–D5 PARTS TO BE REMOVED

ATA chapter reference	P/N	Nomenclature
72–42–20	2A0367–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–20	2A2873–01	Tube Assy of, Weep, No. 4 Bearing Outer.
72–42–33	2A0851	Support Assy, No. 4 Bearing Seal.
72–42–33	2A2833	Support, No. 4 Bearing, Seal Assy.
72–42–33	2A3537	Support, No. 4 Bearing Seal Assy.
72–42–33	2A2834	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A2930	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3525	Seal Assy, No. 4 Bearing, Front.
72–42–33	2A3538	Seal Assy, No. 4 Bearing, Front.
72–42–35	2A2257–01	Duct Assy, Cooling Air, No. 4 Bearing, Front.

TABLE 3.—V2525–D5 AND V2528–D5 PARTS TO BE REMOVED—Continued

ATA chapter reference	P/N	Nomenclature
72–43–20	2A2056	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A2931	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A3526	Seal Assy, No. 4 Bearing, Rear.
72–43–20	2A0847	Seal Ring Holder.
72–43–20	2A1205–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–43–20	2A3078–01	Duct Assy, Cooling Air, No. 4 Bearing, Rear.
72–45–11	2A3182	Metering Plug, HPT Hub, Stage 1.
72–45–11	2A2354	Metering Plug, HPT Hub, Stage 1.
72–45–13	2A1352	Seal Air, HPT Stage 1.
72–45–13	2A3032	Seal Air, HPT Stage 1.

All Engines

(j) After the effective date of this AD, do not install any part that has a P/N listed in this AD.

Alternative Methods of Compliance

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

Related Information

(l) International Aero Engines non-modification Service Bulletin No. V2500-ENG–72–0541, Revision 1, dated February 26, 2007, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on July 2, 2007.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E7–13256 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28620; Directorate Identifier 2007–NM–090–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes. This proposed AD would require repetitive inspections for cracking of the station (STA) 1241 bulkhead fittings just above the canted pressure deck; a one-time determination of the edge margin at seven fastener positions on each side of the airplane; and related investigative/corrective actions if necessary. This proposed AD results from a report that an operator found a 1.65-inch crack on the STA 1241 bulkhead fitting on the left side of a Boeing Model 747–200F series airplane that had accumulated 17,332 total flight cycles. We are proposing this AD to detect and correct cracking in the STA 1241 bulkhead fittings, which could result in reduced structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by August 23, 2007.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28620; Directorate Identifier 2007–NM–090–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the airworthiness directive (AD) docket on the Internet at *http://dms.dot.gov* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–

5527) is located on the ground floor of the West Building at the street address stated in the **ADDRESSES** section.

Discussion

We have received a report that an operator found a 1.65-inch crack on the station (STA) 1241 bulkhead fitting on the left side of a Boeing Model 747–200F series airplane that had accumulated 17,332 total flight cycles. The crack was at a fastener hole just above the canted pressure deck. The STA 1241 fitting was replaced on this airplane. The STA 1241 bulkhead fittings on Model 747 airplanes are 140-inch long aluminum forgings that extend from stringer 19 down through the pressure deck and attach to the wing rear spar. Cracking in the STA 1241 bulkhead fittings, if not found and repaired, can become large and result in reduced structural integrity of the airplane.

Other Relevant Rulemaking

On January 16, 1990, we issued AD 90–06–06, amendment 39–6490, (55 FR 8374, March 7, 1990), for certain Boeing Model 747 series airplanes listed in Boeing Document No. D6–35999, dated March 31, 1989. That AD requires, among other actions, replacement of the STA 1241 bulkhead splice straps in accordance with Boeing Service Bulletin 747–53–2283, Revision 3, dated November 1, 1989. We issued that AD to prevent structural failure of the affected airplanes. The date of that replacement is used to determine the compliance threshold for certain airplanes affected by this proposed AD.

On March 18, 1992, we issued AD 92–08–02, amendment 39–8213 (57 FR 12869, April 14, 1992), for certain Boeing Model 747 airplanes. That AD requires repetitive inspections of the STA 1241 bulkhead splice straps in accordance with Boeing Service Bulletin 747–53–2283, Revision 3, dated November 1, 1989, and repair if necessary. Boeing Service Bulletin 747–53–2219 is an alternative method of compliance (AMOC) for certain repairs required by that AD. The date of modification in accordance with Boeing Service Bulletin 747–53–2219 is used to determine the compliance threshold for certain airplanes affected by this proposed AD.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2658, dated February 22, 2007. The service bulletin describes procedures for doing repetitive inspections (internal surface high frequency eddy current and external ultrasonic) for cracking of the STA 1241 bulkhead fittings just above the canted pressure deck. The service bulletin also specifies a one-time determination of the edge margin at seven fastener positions on each side of the airplane. If the edge margin of a fastener hole is less than 1.35 times the diameter of the hole, the related investigative/corrective action is contacting Boeing for special inspection data. For any crack found during a repetitive inspection, the corrective action is contacting Boeing for repair data.

The compliance threshold for doing the initial inspection varies according to the configuration of the airplane, and according to the date of previous splice strap replacement or date of previous bulkhead modification as described above under ''Other Relevant Rulemaking.'' The thresholds described in Boeing Alert Service Bulletin 747–53A2658 are as follows:

- For airplanes in the original configuration, or as modified in accordance with Boeing Service Bulletin 747–53–2219 (AMOC for AD 92–08–02): Before the accumulation of 10,000 total flight cycles, or 1,500 flight cycles after the effective date on Boeing Alert Service Bulletin 747–53A2658, whichever occurs later.

- For airplanes modified in accordance with Boeing Service Bulletin 747–53–2283 (AD 90–06–06): Before the accumulation of 5,000 flight cycles since modification in accordance with Boeing Service Bulletin 747–53–2283, or within 1,500 flight cycles after the date on Boeing Alert Service Bulletin 747–53A2658, whichever occurs later.

The compliance time for doing the first repeat inspection varies according to the smallest calculated edge margin at the seven fastener positions on each side of the airplane. The earliest specified range for doing the first repetitive inspection is before the accumulation of 11,500 total flight cycles, or within 1,500 flight cycles since the initial inspection, whichever occurs later. The latest specified range for doing the first repeat inspection is before the accumulation of 15,000 total flight cycles, or within 5,000 flight cycles since the initial inspection, whichever occurs later. Afterward, the repetitive intervals range from intervals not to exceed 1,500 flight cycles, to intervals not to exceed 5,000 flight cycles.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to do certain inspections and repairs, but this proposed AD would require inspection or repair in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

There are about 455 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 133 airplanes of U.S. registry. The proposed actions would take about 14 work hours per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $148,960, or $1,120 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28620; Directorate Identifier 2007–NM–090–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 23, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747SR, and 747SP series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2658, dated February 22, 2007.

Unsafe Condition

(d) This AD results from a report that an operator found a 1.65-inch crack on the station (STA) 1241 bulkhead fitting on the left side of a Boeing Model 747–200F series airplane that had accumulated 17,332 total flight cycles. We are issuing this AD to detect and correct cracking in the STA 1241 bulkhead fittings, which could result in reduced structural integrity of the airplane.

Compliance

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

Inspections and Corrective Action

(f) At the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–53A2658, dated February 22, 2007: Do internal surface high-frequency eddy current and external ultrasonic inspections for cracking of the STA 1241 bulkhead fittings just above the canted pressure deck; determine the edge margin at seven fastener positions on each side of the airplane; and do all applicable related investigative/corrective actions; by doing all of the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2658, dated February 22, 2007, except as provided by paragraphs (f)(1) and (f)(2) of this AD. Do all applicable related investigative/corrective actions before further flight. Repeat the inspections thereafter at the applicable interval specified in paragraph 1.E., ''Compliance'' of the service bulletin.

(1) Where the service bulletin specifies to contact Boeing for appropriate action, before further flight, do the action using a method approved in accordance with the procedures specified in paragraph (g) of this AD.

(2) Where the service bulletin specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

Issued in Renton, Washington, on June 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13263 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28598; Directorate Identifier 2007–NM–036–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, –200PF, and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes. This proposed AD would require installation of an automatic shutoff system for the center tank fuel boost pumps, and installation of a placard in the airplane flight deck if necessary. This proposed AD would also require revisions to the Limitations and Normal Procedures sections of the airplane flight manual to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control. This proposed AD would also require a revision to the Airworthiness Limitations (AWLs) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–20 and No. 28–AWL–26. This proposed AD would also require replacement of the fuel control panel assembly with a modified part, installation of two secondary pump control relays for the center tank fuel pumps, other specified actions, and concurrent modification of the fuel control panel assembly. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent center tank fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet or could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank

explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by August 23, 2007.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Judy Coyle, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6497; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2007–28598; Directorate Identifier 2007–NM–036–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located on the ground floor of the West Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Boeing has found that certain failures will result in the center tank fuel pumps continuing to run after the tank has been depleted. Depending on the failure, pump low pressure may not be annunciated, or power may not be removed from the pump when the pump has been commanded ''OFF.'' Operation of the center tank fuel pump with continuous low pressure could lead to friction sparks or overheating in the fuel boost pump inlet. This condition, if not corrected, could result in a fuel tank explosion and consequent loss of the airplane.

Other Relevant Rulemaking

On September 24, 2002, we issued AD 2002–19–52, amendment 39–12900 (67 FR 61253, September 30, 2002), applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 airplanes, and Model 757 airplanes. That AD requires revising the airplane flight manual (AFM) to advise the flightcrew of certain operating restrictions for maintaining minimum fuel levels, prohibits use of the horizontal stabilizer tank on certain airplanes, and prohibits the installation of certain fuel pumps. That AD requires concurrent removal of the currently required AFM revisions and insertion of new AFM revisions, requires installation of placards to alert the flightcrew to the operating restrictions, and prohibits installation of any un-inspected pumps. That AD permits the AFM revision and placard to be removed under certain conditions. Installation of a placard in accordance with paragraph (e) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with paragraph (h) of this AD.

On November 23, 2002, we issued emergency AD 2002–24–51, amendment

39–12992, applicable to all Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes, Model 747 airplanes, and Model 757 airplanes. (We issued a **Federal Register** version of AD 2002–24–51 on December 23, 2002 (68 FR 10, January 2, 2003).) That AD requires revising the AFM to require the flightcrew to maintain certain minimum fuel levels in the center fuel tanks and, for certain airplanes, to prohibit the use of the horizontal stabilizer fuel tank and certain center auxiliary fuel tanks. Accomplishing the actions specified in paragraphs (g), (h), (i), and (j) of this proposed AD would terminate the AFM revision specified in paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes that have the automatic shutoff system installed.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 757–28A0081, dated February 16, 2006, for Model 757–200, –200CB, and –200PF series airplanes; and Boeing Alert Service Bulletin 757–28A0082, dated February 16, 2006, for Model 757–300 series airplanes. These service bulletins describe procedures for installing an automatic shutoff system for the center tank fuel boost pumps. Installation of the automatic shutoff system includes the following actions:

- In the main flight compartment, installing time delay relays in the P33 and P37 relay panels and installing automatic shutoff fuel test switches at the E2–1 rack stanchion.
- At the P11–3 and P11–4 circuit breaker panels in the flight compartment, adding new circuit breakers and replacing the light plate with a new improved light plate.
- Changing certain wire bundles in the P11–3 and P11–4 circuit breaker panels, in the P33 and P37 relay panels, between the P33 relay panel and the P5 overhead panel, between the P37 relay panel and the P5 overhead panel, and between the P11–3 circuit breaker panel and the P33 relay panel.
- Installing new wire bundles between the P33 relay panel and the test switch at the E2–1 rack stanchion and between the P37 relay panel and the test switch at the E2–1 rack stanchion.

We have also reviewed Section 9 of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9, Revision January 2006 (hereafter referred to as ''Revision January 2006 of the MPD''). Subsection G, ''AIRWORTHINESS LIMITATIONS—FUEL SYSTEMS AWLs,'' of Revision January 2006 of the MPD describes new airworthiness limitations (AWLs) for fuel tank systems. The AWLs include:

- AWL inspections, which are periodic inspections of certain features for latent failures that could contribute to an ignition source.
- Critical design configuration control limitations (CDCCLs), which are limitation requirements to preserve a critical ignition source prevention feature of the fuel tank system design that is necessary to prevent the occurrence of an unsafe condition. The purpose of a CDCCL is to provide instruction to retain the critical ignition source prevention feature during configuration change that may be caused by alterations, repairs, or maintenance actions. A CDCCL is not a periodic inspection. Revision January 2006 of the MPD adds new fuel system AWL No. 28–AWL–20, which is a repetitive inspection of the automatic shutoff system for the center tank fuel boost pumps to verify functional integrity.

We have also reviewed Boeing Alert Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007, for Model 757–200, –200CB, –200PF, and –300 series airplanes. This service bulletin describes procedures for replacing fuel control panel assembly part number (P/N) 233N3206–( ) (equipment number M10055) with a modified fuel control panel assembly, installing two secondary override pump control relays for the center tank fuel pumps in the P33 and P37 relays panels, and doing other specified actions. The other specified actions include the following:

- Changing the W2066 wire bundle located between the P5 overhead panel in the flight compartment and the P33 relay panel located in the main equipment center.
- Changing the W2070 wire bundle located between the P5 overhead panel in the flight compartment and P37 relay panel located in the main equipment center.
- Changing the W1230 wire bundle at the P33 relay panel.
- Changing the W1270 wire bundle at the P37 relay panel.
- Doing a functional test of the left and right primary and secondary override pump control relays.
- Doing a pump reversal test of the left and right override fuel pumps.

We have also reviewed Boeing Temporary Revision (TR) 09–006, dated January 2007. Boeing TR 09–006 is published as Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision January 2007 (hereafter referred to as ''Revision January 2007 of the MPD''). Subsection G of Revision January 2007 of the MPD adds new fuel system AWL No. 28–AWL–26, which is a repetitive inspection of the power failed on protection system for the center tank fuel boost pumps to verify functional integrity.

Boeing Alert Service Bulletin 757–28A0105 specifies prior or concurrent accomplishment of BAE Systems Service Bulletin 233N3206–28–03, dated October 4, 2006. The BAE Systems service bulletin describes procedures for modifying the M10055 fuel control panel assembly, P/N 233N3206–( ), to provide protection from ''uncommanded pump ON'' situations. The modification includes rerouting the J2 connector wire bundles from the forward left main pump switch S2 to the left center pump switch S6, rerouting the J3 connector wire bundles from the forward right main pump switch S5 to the right center pump switch S7, and installing new tie clips to secure the rerouted wire bundles.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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

- Installation of an automatic shutoff system for the center tank fuel boost pumps.
- Installation of a placard in the airplane flight deck, if necessary. (Placards are necessary only for ''mixed fleet operation,'' which means that some airplanes in an operator's fleet are equipped with automatic shutoff systems while other airplanes are not.)
- Revisions to the Limitations and Normal Procedures sections of the AFM to advise the flightcrew of certain operating restrictions for airplanes equipped with an automated center tank fuel pump shutoff control.
- Revision to the AWLs section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–20, which would require repetitive inspections of the automatic shutoff system for the center tank fuel boost pumps to verify functional integrity.
- Replacement of fuel control panel assembly P/N 233N3206–( ) with a modified fuel control panel assembly, installation of two secondary override pump control relays for the center tank fuel pumps in the P33 and P37 relays panels, and other specified actions.

• Concurrent modification of the M10055 fuel control panel assembly, P/N 233N3206–( ).

• Revision to the AWLs section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–26, which would require repetitive inspections of the power failed on protection system for the center tank fuel boost pumps to verify functional integrity.

This proposed AD would also allow accomplishing the revision to the AWLs section of the Instructions for Continued Airworthiness in accordance with later revisions of the MPD as an acceptable method of compliance if they are approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Costs of Compliance

There are about 1,094 Model 757–200, –200CB, –200PF, and –300 series airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this proposed AD. The estimated cost of parts in the following table depends on the configuration of an airplane.

ESTIMATED COSTS

Model	Action	Work hours	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
757–200, –200CB, and –200PF, series airplanes.	Installation of the automatic shutoff system.	91	$8,309 to $9,194.	$15,309 to $16,474.	631	$9,836,659 to $10,395,094.
757–300 series airplanes	Installation of the automatic shutoff system.	51	$8,598 to $8,654.	$12,678 to $12,734.	75	$950,850 to $955,050.
757–200, –200CB, –200PF, and –300 series airplanes.	Placard installation, if necessary	1	$10	$90	706	$63,540.
	AFM revision	1	None	$80	706	$56,480.
	Maintenance program revision	1	None	$80	706	$56,480.
	Installation of secondary pump control relays.	29	$2,097	$4,417	706	$3,118,402.
	Concurrent modification of the fuel control panel assembly.	2	$40	$200	706	$141,200.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2007–28598; Directorate Identifier 2007–NM–036–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by August 23, 2007.

Affected ADs

(b) Accomplishing certain paragraphs of this AD terminates certain requirements of AD 2002–24–51, amendment 39–12992.

Applicability

(c) This AD applies to all Boeing Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections of the automatic shutoff system for the center tank fuel boost pumps. Compliance with these inspections is required by 14 CFR 43.16 and 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (p) of this AD. The request should include a description of changes to the required inspections that will ensure acceptable maintenance of the automatic shutoff system.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent center tank fuel pump operation with continuous low pressure, which could lead to friction sparks or overheating in the fuel pump inlet or could create a potential ignition source inside the center fuel tank; these conditions, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable.

TABLE 1.—SERVICE BULLETIN REFERENCES

Airplanes	Action	Service Bulletin
Model 757–200, –200CB, and –200PF series airplanes.	Installation specified in paragraph (g) of this AD.	Boeing Alert Service Bulletin 757–28A0081, dated February 16, 2006.
Model 757–300 series airplanes	Installation specified in paragraph (g) of this AD.	Boeing Alert Service Bulletin 757–28A0082, dated February 16, 2006.
For Model 757–200, –200CB, –200PF, and –300 series airplanes.	Installation specified in paragraph (k) of this AD.	Boeing Alert Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007.

Installation of Automatic Shutoff System for the Center Tank Fuel Boost Pumps

(g) Within 36 months after the effective date of this AD: Install an automatic shutoff system for the center tank fuel boost pumps, by accomplishing all of the actions specified in the applicable service bulletin. If a placard has been previously installed on the airplane in accordance with paragraph (h) of this AD, the placard may be removed from the flight deck of only that airplane after the automatic shutoff system has been installed. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with this paragraph, terminates the placard installation required by paragraph (h) of this AD, for all airplanes in an operator's fleet.

Placard Installation for Mixed Fleet Operation

(h) Concurrently with installing an automatic shutoff system on any airplane in a operator's fleet, as required by paragraph (g) of this AD: Install a placard adjacent to the pilot's primary flight display on all airplanes in the operator's fleet not equipped with an automatic shutoff system for the center tank fuel boost pumps. The placard reads as follows (alternative placard wording may be used if approved by an appropriate FAA Principal Operations Inspector):

''AD 2002–24–51 fuel usage restrictions required.''

Installation of a placard in accordance with paragraph (e) of AD 2002–19–52, amendment 39–12900, is acceptable for compliance with the requirements of this paragraph. Installing an automatic shutoff system on an airplane, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for only that airplane. Installing automatic shutoff systems on all airplanes in an operator's fleet, in accordance with paragraph (g) of this AD, terminates the placard installation required by this paragraph, for all airplanes in an operator's fleet. If automatic shutoff systems are installed concurrently on all airplanes in an operator's fleet in accordance with paragraph (g) of this AD, or if operation according to the fuel usage restrictions of AD 2002–24–51 is maintained until automatic shutoff systems are installed on all airplanes in an operator's fleet, the placard installation specified in this paragraph is not required.

Airplane Flight Manual (AFM) Revision

(i) Concurrently with accomplishing the actions required by paragraph (g) of this AD: Do the actions specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Revise Section 1 of the Limitations section of the Boeing 757 AFM to include the following statement. This may be done by inserting a copy of this AD in the AFM.

''Intentional dry running of a center tank fuel pump (CTR L FUEL PUMP or CTR R FUEL PUMP message displayed on EICAS) is prohibited.''

Note 2: When a statement identical to that in paragraph (i)(1) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

(2) Revise Section 3.1 of the Normal Procedures section of the Boeing 757 AFM to include the following statements. This may be done by inserting a copy of this AD in the AFM.

''Procedures contained on this page are applicable to airplanes equipped with the automatic center tank fuel pump power removal system per Boeing Service Bulletin 757–28A0081 (757–200 Series) or 757–28A0082 (757–300 Series).

CENTER TANK FUEL PUMPS

Center tank fuel pump switches must not be ''ON'' unless personnel are available in the flight deck to monitor low PRESS lights.

For ground operations prior to engine start: The center tank fuel pump switches must not be positioned ON unless the center tank contains usable fuel. With center tank fuel pump switches ON, verify both center tank fuel pump low PRESS lights are illuminated and EICAS CTR L FUEL PUMP and CTR R FUEL PUMP messages are displayed.

For ground operations after engine start and flight operations: The center tank fuel pump switch must be selected OFF when the respective CTR L FUEL PUMP or CTR R FUEL PUMP message displays. Both center tank fuel pump switches must be selected OFF when either the CTR L FUEL PUMP or CTR R FUEL PUMP message displays if the center tank is empty. During cruise flight, both center tank pump switches may be reselected ON whenever center tank usable fuel is indicated.

DE-FUELING AND FUEL TRANSFER

When transferring fuel or de-fueling center or main wing tanks, the center fuel pump low PRESS must be monitored and the fuel pump switches positioned to ''OFF'' at the first indication of low pressure. Prior to transferring fuel or de-fueling, conduct a lamp test of the respective fuel pump low PRESS lights.

De-fueling main wing tanks with passengers onboard is prohibited if main tank fuel pumps are powered. De-fueling center wing tank with passengers onboard is prohibited if the center wing tank fuel pumps are powered with the automatic center tank fuel pump power removal system inhibited. Fuel may be transferred from tank to tank, or the aircraft may be de-fueled with passengers onboard, provided fuel quantity in the tank from which fuel is being transferred from is maintained above 2,000 pounds (900 kilograms).''

Note 3: When statements identical to those in paragraph (i)(2) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

Airworthiness Limitations (AWLs) Revision for AWL No. 28–AWL–20

(j) Concurrently with accomplishing the actions required by paragraph (g) of this AD: Revise the AWLs section of the Instructions for Continued Airworthiness by incorporating AWL No. 28–AWL–20 of Subsection G of the Boeing 757 Maintenance Planning Data (MPD) Document, D622N001–9, Section 9, Revision January 2006, into the MPD. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Installation of Secondary Override Pump Control Relays

(k) Within 60 months after the effective date of this AD: Replace fuel control panel assembly part number 233N3206–( )

(equipment number M10055) with a modified fuel control assembly, install the secondary override pump control relays for the center tank fuel pumps in the P33 and P37 relays panels, and do all other specified actions as applicable, by accomplishing all of the applicable actions specified in the applicable service bulletin. The other specified actions must be accomplished before further flight after installing the secondary override pump control relays.

Concurrent Modification of the M10055 Fuel Control Panel Assembly

(l) For airplanes identified in paragraph 1.A.1. of Boeing Alert Service Bulletin 757–28A0105, Revision 1, dated April 2, 2007, equipped with any fuel control panel assembly identified in paragraph 1.A. of BAE Systems Service Bulletin 233N3206–28–03, dated October 4, 2006: Before or concurrently with accomplishing the actions required by paragraph (k) of this AD, modify the fuel control panel assembly, in accordance with BAE Systems Service Bulletin 233N3206–28–03, dated October 4, 2006.

AWLs Revision for AWL No. 28–AWL–26

(m) Before or concurrently with accomplishing the actions required by paragraph (k) of this AD: Revise the AWLs section of the Instructions for Continued Airworthiness by incorporating AWL No. 28–AWL–26 of Boeing Temporary Revision (TR) 09–006, dated January 2007, into the MPD. Boeing TR 09–006 is published as Section 9 of the Boeing 757 MPD Document, D622N001–9, Revision January 2007. Accomplishing the revision in accordance with a later revision of the MPD is an acceptable method of compliance if the revision is approved by the Manager, Seattle ACO.

Terminating Action for AD 2002–24–51

(n) Accomplishing the actions required by paragraphs (g), (h), (i), and (j) of this AD terminates the AFM limitations required by paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes that have the automatic shutoff system installed, except for the following limitation:

''Warning—Do not reset a tripped fuel pump circuit breaker.''

Except for this limitation, all other AFM limitations required by paragraph (e) of AD 2002–24–51 for Model 757–200, –200CB, –200PF, and –300 series airplanes may be removed from the AFM after accomplishing the actions required by paragraphs (g), (h), (i), and (j) of this AD.

Credit for Actions Done According to Previous Issue of Service Bulletin

(o) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 757–28A0105, dated January 31, 2007, are considered acceptable for compliance with the corresponding actions specified in paragraph (k) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) Installation of TDG Aerospace, Inc. Universal Fault Interrupter (UFI), installed and maintained in accordance with Supplemental Type Certificate (STC) ST01950LA, is approved as an AMOC with paragraphs (a) through (m) of this AD.

Note 4: Information concerning the existence of approved AMOCs with this AD, if any, may be obtained from the Seattle ACO.

Issued in Renton, Washington, on June 25, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–13265 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 2006N–0454]

RIN 0910–AF93

Use of Ozone-Depleting Substances; Removal of Essential-Use Designations; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments on a proposed rule that would amend FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove essential-use designations for certain oral pressurized metered-dose inhalers (MDIs). In the **Federal Register** of June 11, 2007 (72 FR 32030), the agency proposed to remove the essential use designation for MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. Information from the public meeting, which is required by agency regulations, will be considered in finalizing the rulemaking.

DATES: The public meeting will be held on August 2, 2007, from 9 a.m. to 3:30 p.m. Submit written or electronic comments for consideration at the meeting and requests to speak at the meeting by July 25, 2007. Register to attend the meeting by July 25, 2007. Submit written or electronic comments on the proposed rule and this notice by August 10, 2007.

ADDRESSES: The public meeting will be held at FDA, Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20852. You may submit comments, identified by Docket No. 2006N–0454 and RIN number 0910–AF93, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following ways:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted directly to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal or the agency Web site, as described previously in the **ADDRESSES** portion of this document under the *Electronic Submissions* portion of this paragraph.

Instructions: All submissions received must include the agency name and Docket No(s). and Regulatory Information Number (RIN) (if a RIN number has been assigned) for this rulemaking. All comments received may be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read the proposed rule, background documents, or comments received, go to *http://www.fda.gov/ohrms/dockets/*

default.htm and insert the docket number(s) found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

Terry Martin, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5376, e-mail: *theresa.martin@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act, FDA, in consultation with the EPA, is required to determine whether an FDA-regulated product that releases an ODS is an essential use of the ODS. In the **Federal Register** of June 11, 2007 (72 FR 32030) (the proposed rule), we proposed to amend our regulation on the use of ODSs in self-pressurized containers to remove the essential-use designations of MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. You may find copies of the proposed rule on the Division of Dockets Management Web site (see **ADDRESSES**) and the GPO Access Web site at *http://www.gpoaccess.gov/fr/index.html*. If the applicable essential-use designations are all removed, flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil MDIs containing an ODS could not be marketed after the effective date of the final rule removing the essential-use designations.

In proposing to remove the essential-use designation for the seven drugs that are the subject of the proposed rule, we applied the criterion for removing an essential-use designation in § 2.125(g)(2) (21 CFR 2.125(g)(2)) to each drug. Under § 2.125(g)(2), an essential-use designation can be removed if it no longer meets the criteria specified in § 2.125(f) for adding a new essential use. The criteria in § 2.125(f) provides that * * * Substantial technical barriers exist to formulating the product without ODSs; the product will provide an unavailable important public health benefit; and use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit. * * *

We proposed that the removal of the essential-use designations be made effective on December 31, 2009. In the proposed rule we said that depending on the data presented to us in the course of the rulemaking, we may determine that it is appropriate to have different effective dates for removing the essential-use designation for different drugs (72 FR 32030 at 32034).

The provisions in § 2.125(g)(2) that provide the procedures and criteria being used in this rulemaking require that a public meeting be held before an essential use may be removed. This notice announces the meeting that will be held to fulfill that requirement, which will also better inform the decisions we will be making during the rulemaking.

II. Issues and Questions for Discussion and Comment

If you are going to speak at the meeting or submit a written comment, you may address any issue raised in the proposed rule or on any other issue that is relevant to our decision on the proposed rule. You may wish to discuss how the criteria described in section I of this document apply to MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. You may also wish to discuss whether different effective dates are appropriate for different drugs (72 FR 32030 at 32034). We invite discussion of issues on which we specifically asked for comments in the proposed rule, including the following:

- Do the other available therapies provide adequate alternatives for each of the seven drugs from a public health perspective? (72 FR 32030 at 32034)
- Will production of albuterol HFA[1] MDIs be able to meet any increased demand caused by this rulemaking? (72 FR 32030 at 32035)
- Are portable nebulizers suitable therapeutic alternatives for cromolyn MDIs and nedocromil MDIs, and will use of portable nebulizers be important in meeting the needs of patients who are currently using cromolyn MDIs and nedocromil MDIs? (72 FR 32030 at 32037 and 32038)
- Does use of a single MDI containing albuterol and ipratropium in combination provide for better patient outcomes (e.g., fewer exacerbations or increased quality of life) compared to concomitant use of separate albuterol and ipratropium MDIs, and, if these improvements are shown to exist, should they be considered important public health benefits? (72 FR 32030 at 32039)

We consulted with FDA's Pulmonary and Allergy Drugs Advisory Committee (PADAC) at their July 14, 2005, meeting on the essential-use status of MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. During the meeting, several PADAC members expressed opinions that MDIs containing cromolyn and MDIs containing albuterol and ipratropium in combination provide important public health benefits. You may wish to read the transcript of the PADAC meeting (available on the Division of Dockets Management Web site (see **ADDRESSES**)) or the summaries of the discussions at the PADAC meeting in the proposed rule and comment on our tentative findings that MDIs containing cromolyn and MDIs containing albuterol and ipratropium in combination do not provide important public health benefits (72 FR 32030 at 32037 to 32039).

III. Registration, Agenda, and Transcript

There is no fee to register for the meeting, but registration is required and space is limited. Interested parties are therefore encouraged to register early. Limited visitor parking is available for a fee, and the Twinbrook Metro Stop is within walking distance of the meeting site. Early arrival is encouraged, as there will be security screening. You will be asked for government-issued picture identification by the security officers. If you need special accommodations due to a disability, please include this information when registering.

Registration for General Attendees: Registration is required to attend the public meeting. If you wish to attend the meeting, you must register by July 25, 2007, via e-mail to: *theresa.martin@fda.hhs.gov*. Please indicate ''Essential-Use Designation of Seven Drugs'' in the SUBJECT line and provide complete contact information for each attendee (including name, title, affiliation, e-mail address, and phone number(s)). Upon receipt and review for adequacy of information, an e-mail will be sent to confirm registration.

Registration for Speaking Attendees: If you wish to speak at the meeting, you must register by July 25, 2007, via e-mail to: *theresa.martin@fda.hhs.gov*. Please indicate ''Speaker- Essential Use-Designation of Seven Drugs'' in the SUBJECT line. When registering, speakers must provide the following information: (1) The drug product,

[1] ''HFA'' is used in the pharmaceutical industry, and is used here, to refer to the hydrofluoroalklane HFA–134a, a non-ozone-depleting propellant.

topic, or issue to be addressed; (2) the speaker's name, title, company or organization, address, phone number, and e-mail address; and (3) the approximate length of time requested to speak. We encourage consolidation of like-minded presentations to enable a broad range of views to be presented.

Agenda and Transcript: The agenda for the public meeting will be available on FDA's Center for Drug Evaluation and Research (CDER) Web site at: *http://www.fda.gov/cder/meeting/ozone2007.htm*. After the meeting, the agenda, presentations, and transcript will be placed on file in the Division of Dockets Management under Docket No. 2006N–0454 and on CDER's Web site identified previously.

Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 20 working days after the meeting at a cost of 10 cents per page, or on compact disc at a cost of $14.25 each. You may also examine the transcript at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and on the Internet at *http://www.fda.gov/ohrms/dockets/default.htm*.

IV. Comments

Regardless of your attendance at the meeting, you may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments related to the proposed rule by August 10, 2007. All relevant data and information should be submitted with the written comments. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with Docket No. 2006N–0454. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 2, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13300 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 201

[USAID Regulation 1]

RIN 0412–AA–51

Rules and Procedures Applicable to Commodity Transactions Financed by USAID: Miscellaneous Amendments

AGENCY: U.S. Agency for International Development.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Agency for International Development (USAID) proposes to amend its regulation governing commodity transactions that are financed by USAID to:

1. Revise the criteria for noncompetitive procurement for private-sector programs to more closely reflect private-sector practices; 2. revise the commodity and package marking requirements to address the use of the new USAID Identity; 3. revise and add definitions to better specify the terminology used; 4. revise agency organizational names and acronyms to specify the current USAID usage; 5. reinstate § 201.13 coverage on ocean transportation costs because it was inadvertently deleted from prior editions; 6. provide for advertising public-sector procurements over $25,000 in the USAID Procurement Bulletins as the primary means of advertising these procurements to U.S. suppliers (in lieu of advertising public-sector procurements over $100,000 in ''FedBizOpps,'' the successor to ''Commerce Business Daily'') to facilitate prompt public notification of procurement opportunities and minimize government expense in providing notice; 7. make numerous clarifications and editorial amendments to better specify the regulation; and 8. specify the current Paperwork Reduction Act approval expirations, as required by the Act.

DATES: Submit comments on or before September 7, 2007.

ADDRESSES: submit comments by any of the following means:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions there for submitting comments.
- *Fax:* (202) 216–3395.
- *Mail:* USAID, Office of Acquisition and Assistance, Policy Division, Room 7.9–18, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–0001.

Instructions: All submissions must include the title of the proposed action, and Regulatory Information Number (RIN) for this rulemaking. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Kenneth Monsess, Telephone: (202) 712–4913, E-mail: *kmonsess@usaid.gov.*

SUPPLEMENTARY INFORMATION:

Public Participation: Because security screening precautions have slowed the delivery and dependability of surface mail to USAID/Washington, USAID recommends sending all comments to the Federal eRulemaking Portal listed above (all comments must be in writing to be reviewed).

All comments will be made available for public review without change, including any personal information provided, from three days after receipt to finalization of rule at *http://www.Regulations.gov.*

Order of Precedence: The procurement of commodities and commodity-related services by other parties that are financed by USAID pursuant to 22 CFR part 201, as opposed to those that are procured by USAID, are not normally subject to 48 CFR chapters 1 and 7 (the Federal Acquisition Regulation [FAR] and the USAID Acquisition Regulation [AIDAR]). In exceptional circumstances where this part 201 is made applicable, pursuant to § 201.02, to a transaction that is subject to 48 CFR chapters 1 and 7, the latter shall take precedence in areas of conflict except under authority of a FAR or AIDAR deviation pursuant to 48 CFR 1.4 or 48 CFR 701.4; and § 201.02 has been clarified to so state.

Executive Order 12866 determination: This rule is significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget. The rule has been reviewed in accordance with the Regulatory Flexibility Act. USAID has determined that the rule will not have a significant economic impact on a substantial number of small entities, and therefore a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act statement: OMB approvals for information collections under this regulation are addressed in § 201.03 and Appendices A and B to part 201.

List of Subjects in 22 CFR Part 201

Administrative practice and procedure, Commodity procurement, Foreign relations.

For the reasons set out in the preamble, USAID proposes to amend 22 CFR part 201 as follows:

PART 201—RULES AND PROCEDURES APPLICABLE TO COMMODITY TRANSACTIONS FINANCED BY USAID

1. The authority citation continues to read as follows:

Authority: 22 U.S.C. 2381.

Subpart A—Definitions and Scope of This Part

2. Revise § 201.01 to read as follows:

§ 201.01 Definitions.

As used in this part, the following terms shall have the meanings:

(The) Act means the Foreign Assistance Act of 1961, as amended from time to time.

Approved applicant means the individual or organization designated by the borrower/grantee to establish credits with banks in favor of suppliers or to instruct banks to make payments to suppliers, and includes any agent acting on behalf of such approved applicant.

Bank means a banking institution organized under the laws of the United States, or any State, commonwealth, territory, or possession thereof, or the District of Columbia.

Borrower/grantee means the government of any cooperating country, or any agency, instrumentality or political subdivision thereof, or any private entity, to which USAID directly makes funds available by loan or grant.

Commission means any payment or allowance made or agreed to be made by a supplier to any person for the contribution which that person has made to securing the sale for the supplier or which the person makes to securing similar sales on a continuing basis for the supplier.

Commodity means any material, article, supply, goods, or equipment.

Commodity Approval Application means the Application for Approval of Commodity Eligibility (Form USAID 11) which appears as Appendix B to this part 201.

Commodity-related services means delivery services and/or incidental services.

Cooperating country means the country receiving the USAID assistance subject to provisions of this part 201.

Dead freight means freight charges paid by the charterer of vessel for the contracted space, which is left partially unoccupied.

Delivery means the transfer to, or for the account of, an importer of the right to possession of a commodity, or, with respect to a commodity-related service, the rendering to, or for the account of, an importer of any such service.

Delivery service means any service customarily performed in a commercial export transaction which is necessary to effect a physical transfer of commodities to the cooperating country. Examples of such services are the following: export packing, local drayage in the source country (including waiting time at the dock), ocean and other freight, loading, heavy lift, wharfage, tollage, switching, dumping and trimming, lighterage, insurance, commodity inspection services, and services of a freight forwarder. Delivery services may also include work and materials necessary to meet USAID marking requirements.

Demurrage means charge for the failure to remove cargo from equipment within the allowed time. Also, a charge for failure to load or unload a ship within the allowed time

Despatch means an incentive payment paid to a carrier for loading and unloading the cargo faster than agreed. Usually negotiated only in charter parties.

Detention means the penalty paid by the carrier for delay of equipment or a vessel.

Implementing document means any document, including a letter of commitment, issued by USAID which authorizes the use of USAID funds for the procurement of commodities and/or commodity related services and which specifies conditions which will apply to such procurement.

Importer means any person or organization, governmental or otherwise, in the cooperating country who is authorized by the borrower/grantee to use USAID funds under this Regulation for the procurement of commodities, and includes any borrower/grantee who undertakes such procurement.

Incidental services means the installation or erection of USAID-financed equipment, or the training of personnel in the maintenance, operation and use of such equipment.

Incoterms means the standard trade definitions that are most commonly used in international sales contracts. Devised and published by the International Chamber of Commerce, they are found on its Internet Web site: *http://www.iccwbo.org/incoterms/preambles.asp.*

Mission means the USAID Mission or representative in a cooperating country.

Non-vessel-operating common carrier (NVOCC) means a common carrier pursuant to §§ 3(6) and 3(17) of the Shipping Act of 1984 that does not operate any of the vessels by which the ocean transportation is provided, and is a shipper in its relationship with an ocean carrier.

Origin means the country where a commodity is mined, grown, or produced. A commodity is produced when, through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is significantly different in basic characteristics or in purpose of utility from its components.

Purchase contract means any contract or similar arrangement under which a supplier furnishes commodities and/or commodity-related services financed under this part.

Responsible bidder means one who (one) has the technical expertise, management capability, workload capacity, and financial resources to perform the work successfully or the ability to obtain them, (two) has a satisfactory record of integrity and business ethics, and (three) is otherwise qualified and eligible to receive an award under applicable laws and regulations.

Responsive bid means a bid that complies with all the terms and conditions of the invitation for bids without material modification. A material modification is a modification which affects the price, quantity, quality, delivery or installation date of the commodity or which limits in any way responsibilities, duties, or liabilities of the bidder or any rights of the importer or USAID as any of the foregoing have been specified or defined in the invitation for bids.

Schedule B means the ''Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States'' issued and amended from time to time by the U.S. Bureau of the Census, Department of Commerce and available as stated in 15 CFR 30.92.

Source means the country from which a commodity is shipped to the cooperating country, or the cooperating country if the commodity is located therein at the time of the purchase. Where, however, a commodity is shipped from a free port or bonded warehouse in the form in which received therein, *source* means the country from which the commodity was shipped to the free port or bonded warehouse.

State means the District of Columbia or any State, commonwealth, territory or possession of the United States.

Supplier means any person or organization, governmental or otherwise, who furnishes commodities and/or commodity-related services financed under this part 201.

Supplier's Certificate means Form USAID 282 ''Supplier's Certificate and

Agreement with the U.S. Agency for International Development,'' including the ''Invoice and Contract Abstract'' on the reverse of such form (which appears as Appendix A to this part 201), or any substitute form which may be prescribed in the letter of commitment or other pertinent implementing document.

Tariff means a publication setting forth the charges, rates, and rules of transportation companies.

United States means the United States of America, any State(s) of the United States, the District of Columbia, and areas of U.S. associated sovereignty, including commonwealths, territories, and possessions.

USAID means the U.S. Agency for International Development or any successor agency, including when applicable, each USAID Mission abroad.

USAID Geo-Code Table means the official listing of current USAID geographic codes, a mandatory reference in USAID's Automated Directives System, Chapter 260, Geographic Codes, which may be found at: *http://www.usaid.gov/policy/ads/200/260.pdf.*

USAID Geographic Code means a code in the USAID Geo-Code Table which designates a country, a group of countries, or an otherwise defined area. The principal USAID geographic codes used for identifying source, origin and nationality for commodities and services financed by USAID are described in § 228.03 of this chapter.

USAID Identity (Identity) means the official marking for the United States Agency for International Development (USAID) comprised of the USAID logo or seal and new brandmark with the tagline that clearly communicates our assistance is ''from the American people.'' The USAID Identity is available on the USAID Web site at *http://www.usaid.gov/branding* and is provided without royalty, license or other fee.

USAID Regulation 28 means ''Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID,'' published as 22 CFR Part 228.

USAID/W means the USAID in Washington, DC 20523, including any office thereof.

Vessel operating common carrier (VOCC) means an ocean common carrier pursuant to § 3(18) of the Shipping Act of 1984 which operates the vessel by which ocean transportation is provided.

3. Amend § 201.02 to republish paragraph (a) and add paragraph (d) to read as follows:

§ 201.02 Scope and application.

(a) The appropriate implementing documents will indicate whether and the extent to which this part 201 shall apply to the procurement of commodities or commodity-related services or both. Whenever this part 201 is applicable, those terms and conditions of this part will govern which are in effect on the date of issuance of the direct letter of commitment to the supplier; if a bank letter of commitment is applicable, the terms and conditions govern which are in effect on the date of issuance of an irrevocable letter of credit under which payment is made or is to be made from funds made available under the Act, or, if no such letter of credit has been issued, on the date payment instructions for payment from funds made available under the Act are received by the paying bank.

* * * * *

(d) When procurements of commodities and commodity-related services are subject to both this part 201 and to 48 CFR chapters 1 and 7, the latter shall take precedence in instances of conflict, except under authority of a deviation authorized under 48 CFR 1.4 or 48 CFR 701.4.

4. Revise § 201.03 to read as follows:

§ 201.03 Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

(a) OMB has approved the following information collection and record-keeping requirements established by this part 201(OMB Control No. 0412–0514), expiring March 31, 2009:

201.13(b)(1)(a) Ocean Transportation Waivers
201.15(c) Unavailability U.S. Flag Ocean Vessel
201.31(f) Shipping Documents
201.31(g) Notice of Adjustments
201.32(b) Notice of Adjustments
201.32(c) Notice of Loss Payments—Insurance
201.51(c) Bank Charges and Reports
201.52(a) Payment Documents
201.74 Additional Bank Recordkeeping

(b) USAID will use the information requested in these sections to verify compliance with statutory and regulatory requirements and to assist in the administration of USAID-financed commodity programs. The information is required from suppliers in order to receive payment for commodities or commodity-related services. The public reporting burden for this collection of information is estimated to average a half hour per response, including the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

(1) U.S. Agency for International Development, Office of Acquisition and Assistance, Policy Division (M/OAA/P), 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7800; and

(2) Office of Management and Budget, Paperwork Reduction Project (0412–0514), Washington, DC 20503.

Subpart B—Conditions Governing the Eligibility of Procurement Transactions for USAID Financing

5. Amend § 201.11 to revise paragraphs (a), (b), (d) introductory text, and (d)(2) to read as follows:

§ 201.11 Eligibility of commodities.

* * * * *

(a) *Description and condition of the commodity.* The commodity shall conform to the description in the implementing document. Unless otherwise authorized by USAID in writing, the commodity shall be unused, and may not have been disposed of as surplus by any governmental agency.

(b) *Source, origin, and nationality.* The authorized source for procurement shall be a country or countries authorized in the implementing document by name or by reference to a USAID geographic code. The source and origin of a commodity must be an authorized source country. The applicable rules on the source and origin for commodities and on the nationality of suppliers of commodities and commodity-related services are in subparts B, C, and F of part 228 of this chapter.

* * * * *

(d) *Medium of transportation (See §§ 228.21 and 228.22 of this chapter).* Shipment shall not be effected:

(1) * * *

(2) Under any ocean or air charter which has not received prior approval by U.S. Agency for International Development, Office of Acquisition and Assistance, Transportation Division.

* * * * *

6. Amend § 201.13 to revise paragraphs (b), and (e) to read as follows:

§ 201.13 Eligibility of delivery services.

* * * * *

(b) *Transportation costs.*—(1) *Ocean transportation costs.* (i) Unless

otherwise authorized, USAID will finance only those ocean transportation costs which meet the requirements of this paragraph (b)(1).

(A) When Geographic Code 000 is the authorized source for procurement, USAID will finance only those costs incurred on vessels under U.S. flag registry.

(B) When Geographic Code 941 is the authorized source for procurement, USAID will finance only those costs incurred on vessels under flag registry of countries in Code 941 and the cooperating country.

(C) USAID will finance costs incurred on vessels under flag registry of any country not designated as foreign policy restricted if the costs are part of the total cost of a through bill of lading paid to a carrier for the initial carriage on a vessel which is authorized in accordance with paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

(D) When a commodity is shipped out of a free port or bonded warehouse, ocean transportation costs for the shipment to the free port or bonded warehouse are eligible for USAID financing as follows:

(*1*) The commodity was shipped on vessels under the flag registry of a country within the authorized geographic code, if the commodity was shipped in anticipation of USAID financing, or

(*2*) The commodity was shipped on vessels under the flag registry of a country within Geographic Code 935, if the commodity was not shipped in anticipation of USAID financing.

(ii) When an eligible flag vessel is not available for shipment, a supplier may request a waiver of the eligibility requirements, prior to shipment, from:

USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900, (Telephone (202) 712–4283 or (202) 712–5060).

(2) *International air transportation costs.* (i) USAID will finance only those international air transportation costs which meet the requirements of this paragraph (b)(2). For the purposes of this paragraph, *U.S. flag air carrier* means one of a class of air carriers holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. 1371) authorizing operations between the United States and or its territories and one or more foreign countries.

(ii)(A) Under USAID grants and under USAID loans, when the authorized source for procurement is Geographic Code 000, USAID will finance only those costs incurred on U.S. flag carriers unless such service is not available.

(B) Under USAID loans, when the authorized source for procurement is Geographic Code 941, USAID will finance only those costs incurred on United States, cooperating country, or Geographic Code 941 flag air carriers unless such service is not available.

(C) USAID will finance international air transportation costs incurred on aircraft under flag registry of any country not designated foreign policy restricted if the costs are part of the total cost on a through bill of lading paid to an eligible carrier for initial international carriage on an aircraft which is eligible in accordance with paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this section.

(iii)(A) Expenditures for international air transportation furnished by air carriers which are not eligible under the provisions of paragraph (b)(2)(ii) will be financed by USAID only when service by eligible air carriers is unavailable. Criteria for determining when service by eligible air carriers is unavailable are the same as those published at 48 CFR 47.403–1 (Reference: *http://acquisition.gov/far/index.html*) for determining when U.S. flag air carriers are unavailable. Additional guidance on determining when service is unavailable may be obtained from:

USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900, (Telephone (202) 712–4283 or (202) 712–5060).

(B) When service by eligible flag air carriers is unavailable, any Geographic Code 935 air carrier may be used.

(C) In the event the supplier selects an air carrier other than an eligible flag carrier for international air transportation, it must include the following certification on invoices which include such transportation cost:

Certification of unavailability of eligible flag air carriers:

I hereby certify that transportation service by eligible flag air carriers was unavailable for the following reason(s): (state reason(s)).

(3) Other conditions and limitations. Notwithstanding paragraphs (b)(1) and (b)(2) of this section, unless otherwise authorized, USAID will not finance transportation costs:

(i) For shipment beyond the point of entry in the cooperating country except when intermodal transportation service covering the carriage of cargo from point of origin to destination is used, and the point of destination, as stated in the carrier's through bill of lading, is established in the carrier's tariff; or

(ii) On a transportation medium owned, operated or under the control of any country not included in Geographic Code 935; or

(iii) Under any ocean or air charter covering full or part cargo (whether for a single voyage, consecutive voyages, or a time period) which has not received prior approval by USAID, Office of Acquisition and Assistance, Transportation Division; or

(iv) Which are attributable to brokerage commissions which exceed the limitations specified in § 201.65(h) or to address commissions, dead freight, demurrage or detention.

* * * * *

(e) *Suspension and debarment.* In order to be eligible for USAID financing, the costs of any delivery services must be paid to carriers, insurers, or suppliers of inspection services who, prior to approval of the USAID Commodity Approval Application, have neither been suspended nor debarred under part 208 of this chapter, nor included on the ''Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs'' published by the U.S. General Services Administration (Ref; *http://www.epls.gov/*).

7. Amend § 201.14 to revise the last sentence to read as follows:

§ 201.14 Eligibility of bid and performance bonds and guaranties.

* * * Nationality requirements for sureties, insurance companies or banks that issue bonds or guaranties under USAID-financed transactions are set forth in § 228.38(b) of this chapter.

8. Amend § 201.15 to revise the first sentence of paragraph (c) to read as follows:

§ 201.15 U.S. flag vessel shipping requirements.

* * * * *

(c) *Non-availability of U.S. flag vessels.* Upon application of the borrower/grantee or the supplier, USAID, Office of Acquisition and Assistance, Transportation Division, shall determine and advise the applicant whether privately owned U.S. flag vessels are available for any specific shipment of commodities at fair and reasonable rates. * * *

* * * * *

Subpart C—Procurement Procedures; Responsibilities of Importers

9. Amend § 201.22 to revise paragraph (h)(1) to read as follows:

§ 201.22 Procurement under public sector procedures.

* * * * *

(h) *Advertising.*—(1) *Requirements.* For each procurement estimated to exceed $25,000, or equivalent (exclusive

of ocean and air transportation costs), notice of the availability of the invitations for bids, requests for quotations, or specific information about procurements shall be published by the USAID Office of Acquisition and Assistance, Transportation Division, in a Procurement Information Bulletin that is posted on USAID's Internet Web site at: *http://www.usaid.gov/business/ocean/solicitation.logon.html*. The purchaser shall submit three copies of each invitation for bids or request for quotations (if any) to the USAID Mission with its request for advertising. The Mission will forward the request for advertising and the procurement documents to USAID, Office of Acquisition and Assistance, Transportation Division. The request for advertising should be transmitted to arrive at least 45 days prior to the final date for receiving bids or quotations in: USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900 (Telephone (202) 712–4283 or (202) 712–5060). The purchaser may, in addition, advertise in appropriate local, regional, and international journals, newspapers, etc., and otherwise, in accordance with local practice.

* * * * *

10. Amend § 201.23 to revise paragraphs (a), (b), (c), and (e) to read as follows:

§ 201.23 Procurement under private sector procedures.

(a) *General requirements.* Procurements under private sector procedures will normally be carried out by importers using negotiated procurement procedures, unless the importer chooses to follow the procedures in § 201.22. Procurement on a negotiated basis shall be in accordance with good commercial practice. Unless solicitations by the importer for quotations or offers fall within the criteria of paragraph (e) of this section, they shall be made uniformly to a reasonable number of prospective suppliers, including, where feasible, producers of a commodity, and all quotations or offers received, whether or not specifically solicited, shall be given consideration before making an award.

(b) *Publicizing.* To provide suppliers in the United States with an opportunity to participate in furnishing commodities which may be purchased on a negotiated basis under USAID financing, USAID will advertise on its Internet Web site at: *http://www.usaid.gov/business/ocean/solicitation.logon.html* the existence of the program, the commodities traditionally being solicited, and the underlying procedures used in each cooperating country. USAID will not publicize specific proposed purchases which are to be undertaken by private sector importers on a negotiated basis unless specifically requested to do so by the importer in accordance with the provisions of paragraph (c) of this section.

(c) *Notification.* If the importer elects to solicit quotations and offers for specific proposed purchases through publication by USAID, USAID will notify prospective suppliers of the export opportunity through Procurement Information Bulletins. Requests for such notification shall be submitted to: USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900 (Telephone (202) 712–4283 or (202) 712–5060). These requests shall contain the name and contact information for the importer, a full description of the commodities and any commodity-related services required, applicable price and delivery terms and other relevant procurement data, in the English language. The metric system of measurements shall be used for specifications unless USAID determines in writing that such use is impractical or is likely to cause significant inefficiencies or the loss of markets to U.S. firms.

* * * * *

(e) *Procurement under special supplier-importer relationships and special situations.* (1) Solicitation of offers from more than one supplier is not required if:

(i) The importer is the supplier's regularly authorized distributor or dealer;

(ii) The importer is purchasing a registered brand-name commodity from a supplier who is the exclusive distributor of that commodity to the area of the importer;

(iii) The importer has standardized on a particular brand product in order to benefit from compatibility with on-hand equipment through economies in maintenance of spare parts inventories and/or greater familiarity by operating personnel;

(iv) The importer has standardized on a particular brand product in order to benefit from a stronger local dealer organization, better repair facilities, and/or the requirement for a special design or operational characteristics;

(v) A manufacturing importer has standardized on one brand name intermediate good used in production, in order to ensure a standard end-product; or

(vi) The necessary equipment, materials, or spare parts are available from only one source.

(2) USAID may require the importer to furnish, or cause to be furnished, to USAID documentary evidence of the existence of the criteria described in paragraph (e)(1) of this section.

* * * * *

11. The heading for § 201.24 is revised to read as follows:

§ 201.24 Progress and advance payments [applicable only to public sector programs].

* * * * *

12. The heading for § 201.25 is revised to read as follows:

§ 201.25 Bid and performance bonds and guaranties [applicable only to public sector programs].

* * * * *

13. The heading for § 201.26 is revised to read as follows:

201.26 Expenditure of marine insurance loss payments [applicable only to public sector programs].

* * * * *

Subpart D—Responsibilities of Suppliers

14. Amend § 201.31 to revise paragraphs (b)(2), (d) (f), (g), and (i) to read as follows:

§ 201.31 Suppliers of commodities.

* * * * *

(b) * * *

(1) * * *

(2) The source and origin of the commodity complies with the provisions of § 201.11(b) relating to source as required by its contract, letter of credit or direct letter of commitment;

* * * * *

(d) *Marking of shipping containers and commodities.*—(1) *Affixing the USAID Identity and identification numbers.* The supplier of commodities shall be responsible for assuring that all export packaging, whether shipped from the United States or from any other source country, carries the official USAID Identity. Additionally, except as USAID may otherwise prescribe, when the supplier is given notice by the importer that the importer is the government of the cooperating country or any of its subdivisions or instrumentalities, the supplier shall also be responsible for assuring that, in addition to the shipping cartons or other export packaging, all commodities carry the USAID Identity. The USAID financing document number shall be marked on each export shipping carton and box in characters at least equal in height to the shipper's marks. When

commodities are shipped as containerized freight in a reusable shipping container, the container is not considered export packaging within the meaning of this paragraph and the outside of the container need not be marked; however, the cartons, boxes, etc., inside the container must be marked.

(i) *Durability of the USAID Identity.* The USAID Identity shall be affixed by metal plate, decalcomania, stencil, label, tag or other means, depending upon the type of commodity or export packaging and the nature of the surface to be marked. The USAID Identity placed on commodities shall be as durable as the trademark, commodity or brand name affixed by the producer; the USAID Identity on each export packaging unit shall be affixed in a manner which assures that the USAID Identity will remain legible until the units reaches the consignee.

(ii) *Size of the USAID Identity.* The size of the USAID Identity may vary depending upon the size of the commodity and the size of the export packaging, but it shall be at least as large as the trademark, commodity or brand name affixed by the producer and in every case large enough to be clearly legible at a normal viewing distance.

(iii) *Design, color, and other standards for the USAID Identity.* The USAID Identity, including the appropriate Country Sub-Brandmark, shall conform in design and color to the appropriate template provided at *http://www.usaid.gov/branding/templates.html* and affixed in accordance with the USAID Graphic Standards Manual that is provided at *http://www.usaid.gov/branding/gsm.html.*

(2) *Exceptions to requirement for affixing the USAID Identity.* (i) Affixing the USAID Identity is not required on commodities purchased by the private sector; however, suppliers shall affix the USAID Identity and the required identification numbers on the export packaging in compliance with paragraph (d)(1) of this section.

(ii) To the extent the supplier determines that compliance is impracticable, the USAID Identity shall not be required for:

(A) Raw materials shipped in bulk (including grain, coal, petroleum, oil, and lubricants);

(B) Vegetable fibers packaged in bales; and

(C) Semi-finished products which are not packaged in any way.

(3) *Waiver.* If compliance with the marking requirement is found to be impracticable with respect to other commodities not excepted by paragraph (d)(2) of this section, the supplier (or, when appropriate, the borrower/grantee) may request a waiver from USAID (the Regional Assistant Administrator or his/her designee).

(4) *Marking at the port of discharge.* If the supplier is unable to meet the marking requirements before shipment, the supplier may, with USAID concurrence, comply with them at the port of discharge.

(5) *Recourse for noncompliance with marking requirements.* If the supplier fails to comply with the above marking requirements repeatedly or if there are major lapses in compliance, USAID may withdraw approval of the commodity transaction and require refund of any advances.

* * * * *

(f) *Distribution of shipping documents.* The supplier shall make the customary commercial document distribution, as well as any special distribution (*e.g.*, to the USAID Mission in the importing country) which may be specified in the letter of credit, direct letter of commitment or other payment instruction covering the transaction. Prior to presenting the documents specified in § 201.52 for payment, the supplier shall mail not later than 30 days from the date of shipment a legible copy of all rated ocean bill(s) of lading described in § 201.52(a)(4)(i) to:

(1) U.S. Department of Transportation, Maritime Administration, Office of Cargo Preference, 400 Seventh Street, SW., Washington, DC 20590–0001; and

(2) U.S. Agency for International Development, Office of Acquisition and Assistance, Transportation Division (M/OAA/T), 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7900.

(g) *Adjustment refunds, credits, and allowances.* All adjustments in the purchase price in an USAID-financed transaction in favor of the importer arising out of the terms of the contract or the customs of the trade shall be made by the supplier in the form of a dollar payment to USAID. Any such payment shall be transmitted to: USAID, Office of the Chief Financial Officer, M/CFO/CMP, Washington, DC 20523–7700, or to the respective USAID overseas Mission's Office of Financial Management. It shall be accompanied by a statement explaining the adjustment and shall specify the name and address of the importer, the date and amount of the original invoice, and the identification number of the implementing document, if known, under which the original transaction was financed. USAID will advise the borrower/grantee of such adjustment refunds received. Despatch earned by the supplier, other than despatch earned at the port of loading on CIF and CFR shipments, shall be refunded to USAID in accordance with § 201.67(a)(5).

* * * * *

(i) *Termination or modification of USAID financing.*

The supplier shall be responsible for compliance with the provisions of § 201.45 applicable to it.

15. Amend § 201.32 to revise the first sentence of paragraph (b) and paragraph (c) to read as follows:

§ 201.32 Suppliers of delivery services.

* * * * *

(b) Adjustment in the price of delivery services. The supplier of delivery services shall pay to: USAID, Office of the Chief Financial Officer, M/CFO/CMP, Washington, DC 20523–7700, or to the respective USAID overseas Mission's Office of Financial Management, all adjustments in the purchase price in favor of the importer (or person purchasing the ocean transportation services) arising out of the terms of the contract or the customs of the trade. * * *

(c) *Marine insurance reporting requirement.* With respect to any loss payment exceeding $10,000 in value which a supplier of marine insurance makes under a marine insurance policy financed pursuant to this part, the supplier of marine insurance shall, within 15 days of making such payment, report to: USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900, the amount and date of the payment, a description of the commodity, the USAID identification number, name of the carrier, vessel, and voyage number (alternatively, flight or inland carrier run number), date of the bill(s) of lading, the identity and address of the assured, and the identity and address of the assignee of the assured to whom payment has actually been made.

Subpart E—General Provisions Relating to USAID Financing of Commodities and Commodity-Related Services.

16. Amend § 201.42 to revise the section heading to read as follows:

§ 201.42 Re-export of USAID-financed commodities.

* * * * *

Subpart F—Payment and Reimbursement

17. Amend § 201.51 to revise paragraphs (b)(1) introductory text, (b)(1)(vi), (c)(2)(i) introductory text, and (c)(4) to read as follows:

§ 201.51 Methods of financing.

* * * * *

(b) * * *

(1) *Requests for bank letters of commitment.* All requests for bank letters of commitment shall be in the English language and shall be submitted to USAID by the borrower/grantee. They shall contain the following:

* * * * *

(vi) Identification of the items to be financed under the letter of commitment.

* * * * *

(c) * * *

(2) * * *

(i) The monthly statement of advance account established under the letter of commitment showing:

* * * * *

(4) *Report.* The bank shall submit a report showing the financial status of each letter of commitment issued to it by USAID. The content, format and frequency of the report shall be prescribed in the letter of commitment. The report shall be prepared and distributed according to instructions contained in the letter of commitment. The report shall be certified by an authorized signatory of the bank.

* * * * *

18. Amend § 201.52 to revise paragraphs (a)(1), (a)(2)(i)(F), (a)(2)(iii)(A), (a)(2)(iii)(C), (a)(3) introductory text, (a)(3)(i), first sentence of (a)(4) (i), (a)(4) (iii) introductory text, (a)(4) (iii)(B), and first sentence of (a)(8), and add the phrase ''Note to paragraph (a)(3):'' to the undesignated paragraph following (a)(3)(ii) and revise it to read as follows:

§ 201.52 Required documents.

(a) * * *

(1) *Voucher.* Voucher SF 1034 to be prepared by the borrower/grantee, by the approved applicant, by the bank as assignee or agent for the approved applicant, or, in the case of a direct letter of commitment, by the supplier.

(2) * * *

(i) * * *

(F) The delivery terms (*e.g.*, FOB, FAS, CIF or CFR, as specified in the latest edition of Incoterms);

* * * * *

(iii) * * *

(A) The USAID marking requirements set forth in § 201.31(d) have been met or will, with USAID's concurrence, be met at the port of discharge;

(B) * * *

(C) If shipment is effected by ocean vessel, one copy of all bill(s) of lading described in § 201.52(a)(4) has been mailed to:

(*1*) U.S. Department of Transportation, Maritime Administration, Division of National Cargo, 400 Seventh Street, SW., Washington, DC 20590–0001; and

(*2*) U.S. Agency for International Development, Office of Acquisition and Assistance, Transportation Division (M/OP/TC), 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7900.

(3) *Charter party.* A copy of any approved charter party under which shipment is made, submitted:

(i) By the commodity supplier whenever USAID finances any portion of the dollar price of a commodity sale under CFR or CIF delivery terms, or

(ii) * * *

Note to paragraph (a)(3): If shipment is made under a consecutive voyage or time charter and the person or organization seeking reimbursement or payment has previously submitted to USAID a copy of said charter party in support of a prior claim for reimbursement or payment, such person or organization may, in lieu of further submission of the charter party, certify to the fact of prior submission.

(4) *Evidence of shipment.* (i) A copy of the bill(s) of lading (ocean, charter party, air, rail, barge, or truck) or parcel post receipt evidencing shipment from the point of export in the source country or free port or bonded warehouse.* * *

* * * * *

(iii) When the supplier is not responsible under the terms of its agreement with the importer for assuring that the commodities are loaded on board the vessel, such as when delivery terms are FAS port of shipment, the importer may request and USAID, Office of Acquisition and Assistance, Transportation Division, Washington, DC 20523–7900, may authorize the following documents, instead of a bill of lading, to be submitted with a claim for reimbursement or payment for the commodities:

* * * * *

(B) A letter from the consignee addressed to USAID undertaking to arrange for shipment of the goods to the cooperating country and to deliver to: USAID, Office of the Chief Financial Officer, M/CFO/CMP, Washington, DC 20523–7700, or to the respective USAID overseas Mission's Office of Financial Management, within 15 days from the date of shipment, a copy of the bill of lading evidencing shipment to the cooperating country. The bill of lading shall indicate the carrier's complete statement of charges, as in paragraph (a)(4)(i) of this section.

* * * * *

(8) *Commodity approval application (Form AID 11).* One signed original (unless photocopies are authorized in the letter of commitment) of the Commodity Approval Application executed by the commodity supplier and countersigned by USAID. * * *

* * * * *

Subpart G—Price Provisions

19. Amend § 201.62 to revise paragraph (a) to read as follows:

§ 201.62 Responsibilities of borrower/grantee and of supplier.

(a) *Responsibilities of borrower/grantee.* The borrower/grantee shall insure that the importer:

(1) Procures in accordance with the conditions set forth in subpart C as applicable, and

(2) Except as provided otherwise in § 201.22, pays no more than the lowest available competitive price, including transportation cost, for the commodity.

* * * * *

20. Amend § 201.63 to revise paragraphs (f)(1)(i) and (f)(2) to read as follows:

§ 201.63 Maximum prices for commodities.

* * * * *

(f) * * *

(1) * * *

(i) The maximum price FOB or FAS source country eligible for USAID financing under the foregoing provisions of this § 201.63: plus

* * * * *

(2) The purchase price of a commodity FOB or FAS a free port or bonded warehouse shall not exceed the maximum price established in paragraph (f)(1) of this section, minus transportation costs from the free port or bonded warehouse to the cooperating country, calculated on the basis of the prevailing ocean freight rate from the free port or bonded warehouse to the cooperating country for the type and flag of vessel on which the commodity actually moved between those points.

* * * * *

21. Amend § 201.64 to revise first sentence of paragraph (b)(1) and paragraph (c)(2) introductory text to read as follows:

§ 201.64 Application of the price rules to commodities.

* * * * *

(b) *Calculation of commodity prices which involve transportation costs.* (1) In testing the purchase price which includes transportation cost (customarily known as CFR or CIF price) for compliance with the requirements of § 201.63 (a), (c), (d) and (e), USAID will subtract transportation cost as calculated by reference to the freight rate, for the type and flag of vessel on which the commodity was

shipped, prevailing on the date the purchase price is fixed. * * *

* * * * *

(2) When a shipment is FOB or FAS a free port or bonded warehouse, USAID will finance no more than the lower of the following:

* * * * *

22. Amend § 201.67 to revise paragraph (a)(2)(i) introductory text, (a)(5)(i)(A), (a)(5)(i)(B), (a)(5)(ii) and to read as follows:

§ 201.67 Maximum freight charges.

(a) Ocean freight rates.

* * * * *

(2) Maximum charter rates.

(i) USAID will not finance ocean freight under any charter which has not been submitted to and received prior approval by USAID, Office of Acquisition and Assistance, Transportation Division. USAID will not approve a charter if the freight rate exceeds: * * *

* * * * *

(5) *Despatch.*

* * * * *

(A) At the port of unloading on CIF or CFR shipments, or

(B) At the port of loading or unloading on FOB or FAS shipments, to the extent that despatch exceeds demurrage incurred on the same voyage.

* * * * *

(ii) Refunds of despatch, supported by the vessel's signed laytime statement(s), must be transmitted to: USAID, Office of the Chief Financial Officer, M/CFO/CMP, Washington, DC 20523–7700, or to the respective USAID overseas Mission's Office of Financial Management, within 90 days after date of discharge of cargo on which the despatch was earned.

* * * * *

Subpart H—Rights and Responsibilities of Banks

23. Amend § 201.72 to revise paragraph (b)(2) to read as follows:

§ 201.72 Making payments.

* * * * *

(b) * * *

(2) *Source and origin of commodities.* The documents submitted in connection with the claim for reimbursement on commodities may not indicate that the source and origin of the commodities is inconsistent with the USAID geographic code designation contained in the letter of commitment.

* * * * *

25. Revise Appendix A to Part 201 to read as follows:

Invoice and Contract Abstract/Supplier's Certificate and Agreement With the U.S. Agency for International Development (AID 282)

BILLING CODE 6116–01–P

USAID
FROM THE AMERICAN PEOPLE

(OMB No. 0412-0012; Exp. Date 02/28/2007)

INVOICE-AND-CONTRACT ABSTRACT

1. COMMODITY SUPPLIER'S NAME AND ADDRESS	2. FOR USAID USE 3. USAID IMPLEMENTATION NUMBER

4. IMPORTER'S NAME AND ADDRESS

5. VESSEL	6. FLAG	7. PORT OF LOADING

8. COMMODITY INFORMATION

a. Description of commodity and Schedule B No.	b.Gross Weight	c. Measurement

9. INVOICE INFORMATION	10. CONTRACT INFORMATION	11. SUPPLIER INFORMATION	
a. Number	a. Number	a. U.S. Small Business ☐ Yes ☐ No (Complete b)	b. Estimated Value (% of block 9c) Furnished From U.S. Small Businesses %
b. Date	b. Date	c. U.S. Small Disadvantaged Business ☐ Yes ☐ No (Complete d)	d. Estimated Value (% of block 9c) Furnished From U.S. Small Disadvantaged Businesses %
c. Amount After Discount	c. Total Amount		
	d. Source/Origin (Country)	e. U.S. Women-Owned Small Business ☐ Yes ☐ No (Complete f)	f. Estimated Value (% of Block 9c) Furnished From U.S. Women-Owned Small Business %
		g. U.S. Veteran-Owned Small Business ☐ Yes ☐ No (Complete h)	h. Estimated Value (% of Block 9c) Furnished From U.S. Veteran-Owned Small Business %
		i. U.S. Service-Disabled Veteran-Owned Small Business ☐ Yes ☐ No (Complete j)	j. Estimated Value (% of Block 9c) Furnished From U.S. Service-Disabled Veteran-Owned Small Business %

12. INSURANCE INFORMATION		13. TRANSPORTATION INFORMATION	
a. Insured Value	c. ☐ All-Risk Rate ☐ War Risk Rate ☐ Other (Specify) Rate	a. Vessel Type ☐ Bulk ☐ Liner ☐ Tanker ☐ Air	d. Freight Rate
b. Premium		b. B/L or Air Waybill Number	Other Freight Charges
		c. B/L or Air Waybill Date	Total Freight Charges

14. INFORMATION AS TO COMMISSIONS, CREDITS, ALLOWANCES, SIMILAR PAYMENTS, AND SIDE PAYMENTS

a. Recipient's Name	b. Recipient's Address	c. Amount Paid or To Be Paid

15. ADDITIONAL INFORMATION AND REMARKS	16. If Certification On Other Side Is Made By ☐ Carrier Or ☐ Insurer, Type Or Print Name And Address Of Company.
Note to Paying Offices: Forward one(1) copy of the form submission to OSDBU/MRC, USAID/W	

SUPPLIER'S CERTIFICATE AND AGREEMENT WITH THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

The supplier hereby acknowledges that the sum claimed on the accompanying invoice to be due and owing under the terms of the purchase contract identified on the reverse hereof ('said contract') is to be paid, in whole or in part, out of funds made available by the U.S. Agency for International Development (USAID) under the Foreign Assistance Act of 1961, as amended. In consideration of the receipt of such sum, the supplier agrees with and certifies to USAID as follows:

1. The undersigned is the supplier of the commodities or commodity-related services indicated in the Invoice-and-Contract Abstract on the reverse hereof, has complied with the applicable provisions of Regulation 1 (22 CFR Part 201), as in effect on the date hereof is entitled under said contract and under the applicable letter of credit, credit advice, or other payment instructions to payment of the sum claimed, and is executing this Certificate and Agreement to obtain such payment from USAID funds.

2. On the basis of information from such sources as are available to the supplier upon reasonable investigation and to the best of its information and belief, the purchase price is not higher than the maximum price permitted under each of the applicable price rules of subpart G of USAID Regulation 1.

3. The supplier will, upon request of USAID, promptly refund to USAID any amount by which the purchase price exceeds the maximum price permitted under such provisions of subpart G of Regulation 1, plus interest [at rate established in accordance with the Internal Revenue Code, 26 U.S.C. 6621 (a)(2)] from the time of payment to the supplier.

4. The supplier will, upon request of USAID, promptly make appropriate refund to USAID, plus interest from the time of payment to the supplier, in the event of

(a) its nonperformance, in whole or in part, under said contract, or including any failure to pay dispatch or
(b) any breach by it of any of its undertakings in this Certificate and Agreement, or
(c) any false certificate or representation made by it in this Certificate and Agreement or in the Invoice-and-Contract Abstract on the reverse hereof.

5. The amount shown on the reverse hereof in block 9c is net of all trade discounts, whether in the form of payments, credits, or allowances by the supplier or its agent to or for the account of the importer, including quantity and prompt payment discounts allowed other customers under similar circumstances. The supplier will promptly pay to USAID any adjustment refunds, credits, or allowances which hereafter become payable to or for the account of the importer arising out of the terms of said contract or the customs of the trade in compliance with instructions received from USAID.

6. The supplier has complied with the provisions of Section 201.65 of USAID Regulation 1 and has not compensated any person to obtain said contract except to the extent, if any, indicated on the reverse hereof.

7. The supplier or its agent has not given or received and will not give or receive a side payment, "kickback," commission, or any other payment, credit, allowance or benefit of any kind in connection with the said contract or any transaction or series of transactions of which said contract is a part, other than those payments or benefits permitted under Section 201.65 of USAID Regulation 1 and those referred to in paragraphs 1 and 5 above.

8. Any commodity supplied under said contract

(a) is accurately described on the reverse hereof and, unless otherwise authorized by USAID, is new and unused, is not rebuilt or reconditioned, does not contain any rebuilt or reconditioned components, and has not been disposed of as surplus by any government agency; and
(b) on the basis of information from such sources as are available to the supplier upon reasonable investigation, and to the best of its information and belief, meets the requirements of Section 201.11(b) of USAID Regulation 1 as to source, origin and nationality, and limitation on components.

9. If the supplier is the producer, manufacturer, or processor of the commodity, said contract is not a cost-plus-percentage-of-cost contract.

10. The supplier will for a period of not less than three (3) years after the date hereof maintain all business records and other documents which bear on its compliance with any of the undertakings and certifications herein and will, at any time requested by USAID, promptly make such records and documents available to USAID for examination and promptly furnish to USAID additional information in such form as USAID may request concerning the purchase price, the cost to the supplier of the commodities and/or commodity-related services involved, and/or any other facts, data, or business records relating to the supplier's compliance with its undertakings and certifications in this certificate and agreement.

11. The supplier has complied with the provisions contained and referred to in subpart D of USAID Regulation 1.

12. The supplier was not ineligible to act as a supplier or otherwise participate in the USAID financed transactions at the time of approval of the USAID Commodity Approval Application.

13. The commodity supplier certifies that it has submitted a copy of every ocean bill of lading, applicable to the commodities and transactions described on the reverse hereof to: (i) the Maritime Administration, National Cargo Division, 400 Seventh Street, S.W., Washington, D.C. 20590-0001; and (ii) Office of Acquisition and Assistance, Transportation and Commodity Division, USAID, Washington, D.C. 20523-7900 and that such bill(s) of lading state all the carrier's charges including the basis for calculation, such as weight or cubic measurements.

14. The supplier has filled in all applicable portions of the Invoice-and-Contract Abstract on the reverse hereof and certifies to the completeness and correctness of the information shown therein.

PERSONAL CERTIFICATION BY NATURAL PERSON SIGNING THIS CERTIFICATE AND AGREEMENT

The natural person who signs this Certificate and Agreement hereby certifies either that he/she is the supplier or that he/she has actual authority to sign on behalf of the supplier and to bind the supplier with regard to all certifications and agreements contained in this Certificate and Agreement. He/she further certifies, if he/she is not personally the supplier, that he/she is either an employee of the supplier or has a written power of attorney to sign for and bind the supplier. He/she acknowledges signing and submitting this Certificate and Agreement to receive payment from USAID funds and that USAID in making such payment will rely on the truth and accuracy of this Personal Certificate as well as all other representations in this Certificate and Agreement.

The Supplier's Certificate and Agreement and the Personal Certificate herein shall be governed by and interpreted according to the laws of the United States of America.

_____
Type or print name and title of official authorized to sign

_____
Signature of official authorized to sign for (check one) Date

☐ Commodity Supplier ☐ Carrier ☐ Insurer

_____
Place executed (City, County, State, Country)

NOTES: (a) Any amendments of or additions to the printed provisions of this Supplier's Certificate and Agreement are improper and will not be considered a part hereof. (b) False statements herein are punishable by United States Law. (c) The word "Copy" must be written after the signature on all copies other than the original.

INSTRUCTIONS FOR COMPLETING FORM AID 282

PAPERWORK REDUCTION ACT NOTICE. Information furnished will be used to verify compliance with legal requirements, as a basis for recourse in the event of noncompliance, and to monitor participation in USAID programs. It will be disclosed outside USAID only as provided by law. Submission of this information has been determined to be necessary to receive payment from USAID funds pursuant to 22 U.S.C. 2381.

Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You are not required to provide information requested on the a form subject to the Paperwork Reduction Act unless the form displays a valid OMB control number (see OMB control number in upper right-hand corner of page 1). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

U.S. Agency for International Development
Office of Acquisition and Assistance
Policy Division (M/OAA/P)
Washington, D.C. 20523-7801
and
Office of Management and Budget
Paperwork Reduction Project (0412-0012)
Washington, D.C. 20503

Do NOT use the above addresses for submitting the form.

EXECUTION AND SUBMISSION OF FORM. This form is designed for use with the U.S. Standard Master for International Trade. An original and one (1) copy of this form, completed by the following suppliers, as applicable, must accompany each invoice for which payment is requested:

(a) Commodity Supplier – executed by the commodity supplier covering the cost of the commodity, including the cost of any commodity – related service paid by the commodity supplier for its own or the buyer's account;
(b) Transportation Supplier (Carrier) – executed by each carrier or in the case of a through Bill of Lading, the issuing carrier, for the cost of the ocean or air transportation financed by USAID, whether or not the transportation is paid by the commodity supplier;
(c) Insurance Supplier (Insurer) – executed by the insurer (or under the circumstances set forth in Section 201.52(b)(2) of USAID Regulation 1, by an insurance broker or the commodity supplier), whether or not the insurance is paid by the commodity supplier, for the cost of marine insurance financed by USAID when such cost exceeds $50.

The original *must* be signed by a person authorized by the supplier who shall indicate his/her title and certify to his/her authority.

SUBMISSION IN ENGLISH LANGUAGE. The form must be completed in the English language *only* and all amounts of money must be shown in U.S. dollars.

OBTAINING FORMS. The form (as well copies of USAID Regulation 1 referenced in this form) may be obtained in limited quantities from banks holding USAID Letters of Commitment, from district offices of the Department of Commerce, the USAID office in the supplier's country, or the Information and Records Division (M/AS/IRD), U.S. Agency for International Development, Washington, D.C. 20523-2701.The form is also available as a macro on USAID's website at http://www.usaid.gov/forms. The form may be reproduced, providing the reproduction is identical in size and format.

INSTRUCTIONS FOR COMPLETING ENTRIES ON INVOICE-AND-CONTRACT ABSTRACT

GENERAL INSTRUCTIONS

Except as provided in the instructions for specific blocks, suppliers must complete all blocks or enter the letters 'NA' (Not Applicable), as follows:

Commodity Supplier – Complete all Blocks except 12 and 13; however, if the commodity supplier has paid for the transportation and/or insurance for its own or the buyer's account, Blocks 12 and/or 13 will also be completed by the commodity supplier; Block 11 is to be completed only when the address in block 1 is a U.S. address.

Transportation Supplier (Carrier) – Complete Blocks 1 through 8 as well as 13, 14, and 16.

Insurance Supplier (Insurer) – Complete Blocks 1 through 8a as well as 12, 14, and 16.

INSTRUCTIONS FOR INDIVIDUAL BLOCKS

Block 1: Enter the commodity supplier's name and address

BLOCK 2: For USAID use *only*.

BLOCK 3: Enter USAID implementing document number furnished in the Letter of Credit or Importer's instructions. This number will normally be the Letter of Commitment number.

BLOCK 4: ENTER THE IMPORTER'S NAME AND ADDRESS.
Caution: on documents prepared from the Standard Master, such as the Bill of Lading, the corresponding block may call for the name and address of the party to whom the carrier is to give notice of arrival. When such party is not the importer; be sure to enter the importer's name and address.

BLOCK 5: Enter the name of the vessel or airline.

BLOCK 6: Enter the flag of registry of vessel or airplane.

BLOCK 7: Enter the port shown on the Bill of Lading.

BLOCK 8: COMMODITY INFORMATION
a. Enter the description of each commodity and its U.S. Department of Commerce Schedule B number, if available. For multi-item invoices, enter a summary description of the group of items and the appropriate Schedule B number (s), if available.
b. Enter the Bill of Lading/Air Way bill weight.
c. Enter the Bill of Lading/Air Way bill measurement.

BLOCK 9: INVOICE INFORMATION
a. Enter the number of the accompanying invoice to which this abstract relates.
b. Enter the invoice date.
c. Enter the net amount for which the supplier seeks payment *(see paragraphs 5 and 6 of the Supplier's Certificate)*.

BLOCK 10: CONTRACT INFORMATION
a. Enter the contract number.
b. Enter the date of the contract.
c. Enter the total contract amount.
d. Enter the country of source as defined in Section 201.01 of USAID Regulation 1.

BLOCK 11: SUPPLIER INFORMATION
Complete only when a U.S. address is indicated in Block 1. The information is required to enable USAID to compile reports requested by Congress.

a. Indicate whether the supplier is U.S. small business. "U.S. small business" means a concern, including its affiliates, that is: (i) located in the United States and making a significant contribution to the U.S. economy (through payment of taxes and/or use of American products, material and/or labor), (ii) organized for profit, (iii) independently owned and operated, (iv) not dominant in the field of operation in which it has bid on the subject contract, and (v) qualified as a small business under the criteria and size standards in 13 C.F.R. part 121. The size standards are available on the Internet at http://www.sba.gov/size.

For size standard purposes, a product or service shall be classified in only one industry, whose definition best describes the principal nature of the product or service being acquired even though for other purposes it could be classified in more than one. When a contract covers the purchase of multiple products or services that could be classified in two or more industries with different size standards, apply the size standard for the industry accounting for the greatest percentage of the contract price.

b. If the supplier is not a U.S. small business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers of components who are U.S. small businesses.

c. Indicate whether the supplier is a U.S. small disadvantaged business. "Small disadvantaged business" means a business (i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more socially disadvantaged individuals, and (ii) whose management and daily business operations are controlled by one or more such individuals.

"Socially disadvantaged" individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their qualities as individuals.

INSTRUCTIONS FOR COMPLETING FORM AID 282 (cont.)

"Economically disadvantaged individuals" means socially disadvantaged individuals whose ability to compete in the free enterprise system is impaired due to diminished opportunities to obtain capital and credit as compared to others in the same line of business who are not socially disadvantaged. Provided that their individuals net worth does not exceed $750,000 (after taking into account exclusions set forth in 13 C.F.R. 124, 104 (c)(9)), individuals, who certify that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) are rebuttably to be presumed socially and economically disadvantaged.

"Subcontinent Asian Americans" means United States citizens whose origins are in India, Pakistan, Bangladesh, Sri Lanka, Bhutan, Nepal, or the Maldives.

"Asian Pacific Americans" means United States citizens whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands (Republic of Palau), the Northern Mariana Islands, Laos, Cambodia, Taiwan, Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Republic of the Marshall Islands, the Federated States of Micronesia, or Commonwealth of the Northern Mariana Islands.

"Native Americans" means American Indians, Eskimos, Aleuts, and native Hawaiians.

d. If the supplier is not a small disadvantaged business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers of components who are socially and economically disadvantaged enterprises.

e. Indicate whether the supplier is a U.S. women-owned small business. "Women-owned small business" means a business which is at least 51 percent owned by one or more women who are United States citizens and who also control and operate the business.

f. If the supplier is not a U.S. women-owned small business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers of components who are women-owned business.

g. Indicate whether the supplier is a U.S. veteran-owned small business. "U.S. veteran-owned small business" means a U.S. small business that (i) not less than 51 percent of which is owned by one or more U.S. military veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly-owned business, not less than 51 percent of the stock of which is owned by one or more veterans, and (ii) the management and daily business operations of which are controlled by one or more veterans.

h. If the supplier is not a U.S. veteran-owned small business, enter the best estimate of the percentage of the total invoice amount paid or to be paid to subcontractors or suppliers or components that are U.S. veteran-owned small businesses.

i. Indicate whether the supplier is a U.S. service-disabled veteran-owned small business. "Service-disabled veteran-owned small business means:

1. A small business (i) not less than 51 percent of which is owned by one or more service-disabled veterans, or in the case of any publicly-owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans, and (ii) the management and daily business operations of which controlled by one or more service-disabled veterans, or in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

2. "Service-disabled veteran" means a veteran, with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

j. If the supplier is not a U.S. service-disabled veteran-owned small business, enter the best estimate of the percentage of the total invoice amount to be paid to subcontractors or suppliers of components who are U.S. service-disabled veteran-owned small businesses.

BLOCK 12: INSURANCE INFORMATION

COMPLETE BLOCK 12 *only* if the insurance premium exceeds $50.

a. Enter the insured value of the shipment.
b. Enter the total premium.
c. Enter the type of coverage and insurance rate. If "Other" is checked, explain in Block 15.

BLOCK 13: TRANSPORTATION INFORMATION

a. Check vessel type.
b. Enter Bill of Lading or air waybill number.
c. Enter Bill of Lading or air waybill date.
d. Enter the freight rate, other freight charges and the total dollar amount of freight charges after discount.

BLOCK 14: INFORMATION AS TO COMMISSIONS, CREDIT, ALLOWANCES, SIMILAR PAYMENTS AND SIDE PAYMENTS

Enter information on (a) all commissions and other payments, credits, allowances or benefits or any kind, paid or to be paid by the supplier to or for the benefit of its agent, the importer, or the importer's agent as required by Section 201.65 of USAID Regulation 1; and (b) any side payments, not shown on the invoice, made or to be made by the importer to the supplier, in connection with the transaction, as required by Section 201.66 of USAID Regulation 1. If there is insufficient space to furnish the required information in block 14, continue in block 15 or enter "Continued" or "See attached" in block 14a, and attach a separate sheet to the form. If no commissions or other payments, credits, allowances, benefits, or side payments are involved, enter "NONE" in block 14.

BLOCK 16: If the Supplier's Certificate is completed by the carrier or insurer, check the appropriate box and print or type carrier's or insurer's name and address.

DO NOT INCLUDE THE INSTRUCTIONS ON PAGE 3 AND 4 WITH THE SUBMISSION OF THE COMPLETED FORM.

USAID
FROM THE AMERICAN PEOPLE

OMB No. 0412-0004
Expiration Date 10/31/2008

APPLICATION FOR APPROVAL OF COMMODITY ELIGIBILITY (FORM AID 11)

Transaction No. *(Assigned by USAID)* _____

TRANSACTION IDENTIFICATION

1. USAID Letter of Commitment No.	2. Payment Terms			
	U.S Bank Letter of Credit		Name and Address of U.S. Bank (Advising Bank)	Other Payment Terms (If any)
	No.	Date		
_____	_____	_____	_____	_____

3. Import License		4. Supplier's Relationship to Authorized Source Country
No.	Date	☐ Corporation or Partnership Organized under Source Country Laws ☐ Individual: Citizen or Permanent Resident of Source Country ☐ Controlled Foreign Corporation ☐ Other
_____	_____	

5. U.S. Supplier's Name and Address	6. Importer's Name and Address
_____	_____

7. Contract		8. Shipping Plans at Time of Application			
Total Amount (Funded by USAID)	Date	a. Partial Shipment ☐ No ☐ Yes	b. Loading Port	c. Destination Port	d. Month(s) of Shipment
_____	_____	$_____	_____	_____	_____

COMMODITY IDENTIFICATION

9. Schedule B 10-Digit Code(s)	10. Commodity Description, Quantity, Size	11. Unit and Unit Price, or Total FAS or FOB Vessel Price *(Named U.S. Port of Loading)*
(a) _____	_____	_____
(b) _____	_____	_____
(c) _____	_____	_____
(d) _____	_____	_____
(e) _____	_____	_____

12. Commodity Condition:

☐ New and Unused ☐ Used - Not Rebuilt or Reconditioned ☐ Rebuilt ☐ Reconditioned ☐ Other (Specify below)

_____

13. Source of Commodity			14. Components (Parts of the Commodity)		
a. Authorized Area	b. Shipped From	c. Produced In	a. From Other than 13.a Source	b. If 14.a is "Yes", Name Country Imported From	c. Cost Per Unit of 14.b Components
_____	_____	_____	☐ Yes ☐ No	_____	_____

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OMB No. 0412-0004
Expiration Date: 10/31/2008

15. State the Producer Name and Address, if not the Supplier. Remarks and Additional Information, if any.

Deleted: Remarks and Additional Information

16. SUPPLIER'S CERTIFICATIONS

As a condition for securing a determination of commodity eligibility for funds made available by the United States under the Foreign Assistance Act of 1961, as amended, in payment in whole or in part in the transaction described and for the commodity identified on this form, the undersigned, acting on behalf of the supplier whose name appears in block 5 above and authorized to bind the supplier, agrees with and certifies to USAID as follows:

1. The supplier has contracted with the importer named in block 6 for the purchase of the commodity described on this form, and the supplier has either attached to this form a copy of such contract or has furnished in block 2 information concerning a letter of credit confirmed or advised in its favor under a payment obligation assumed by the importer in the contract.

2. The supplier has filled in the applicable portions of this form and certifies to the correctness of the information shown herein.

3. The supplier agrees that the commodity will be shipped and invoiced in accordance with the information shown herein; that if any change in commodity identification takes place after USAID has approved this transaction, the supplier will resubmit this form to USAID for review and further approval for financing in light of the changed commodity; and that this Commodity Approval Application which the supplier proposes to use as a basis for securing payment from USAID funds, is in every respect the original or true copy of the original application approved by USAID. The supplier acknowledges that any commodity, other than a commodity described on this form by the supplier and approved by USAID below, is ineligible for USAID financing with respect to the purchase transaction for which this form must be submitted as a condition for payment.

4. The supplier certifies that it is an individual citizen or lawfully admitted permanent resident of a country included in the authorized source code; a corporation or partnership organized under the laws of a country included in the authorized source code and with a place of business in such country; or a controlled foreign corporation (within the meaning of § 957 et seq. of the Internal Revenue Code) as attested by current information on file with the Internal Revenue Service of the United States (on IRS Form 959, 2952, 3646, or any substitute or successor forms) submitted by shareholders of the corporation, or a joint venture or unincorporated – association consisting entirely of individuals, corporations or partnerships which fix any of the foregoing categories. If the supplier is a controlled foreign corporation without a regular place of business in the United States, the supplier appoints any shareholder or officer thereof agent for the supplier to receive service of process in the United States in connection with any dispute arising between the supplier and USAID and relating to the commodity sale financed by USAID.

5. The supplier has not, at the time of submission of this application, been debarred or suspended by USAID or placed on the "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs," published by the General Services Administration, or the Treasury Department's Consolidated List of Designated Nationals" and thereby rendered ineligible to receive USAID funds. To the best of its knowledge upon reasonable investigation, the supplier has not acquired, nor will it acquire, for resale under USAID financing the goods described on this form from any supplier included on the "Lists of Parties Excluded from Federal Procurement or Non-procurement Programs," or included on the Treasury "Consolidated List of Designated Nationals" or from any affiliate of such a person.

6. The supplier acknowledges that this application, when approved, is not valid for shipments having a delivery date on or after the expiration date shown below.

Type or Printed Name and Title *Signature of Authorized Representative of Supplier* *Date* _____

17. USAID APPROVAL

By the signature and seal which appear below, USAID has given limited approval to the sale described on this form. This approval is limited strictly to a determination that the commodity which the supplier has described is of a description, condition, and source eligible for USAID financing. This approval and determination of commodity eligibility does not represent an approval of the purchase price and does not in any way preclude an USAID refund claim based upon a detailed post-audit of the transaction in accordance with the provisions of USAID Regulation 1 (22 CFR Part 201). USAID expressly reserves such rights as it may have under that Regulation and under such other USAID forms as the supplier may be required to submit by the terms of financing documents and by the terms of Regulation 1.

EXPIRATION DATE _____

APPROVED FOR USAID_____
Authorized Signature

Date _____

18. CERTIFICATE FOR PARTIAL SHIPMENT

I hereby certify that the partial shipment for which payment is being requested from USAID funds is being made under the contract by the original validated form AID 11 of which this is a true copy.

Type or Printed Name and Title *Signature of Authorized Representative of Supplier* *Date*

OMB No. 0412-0004
Expiration Date 10/31/2008

AID 11 (06/06)

GENERAL INSTRUCTIONS

Paperwork Reduction Act Notice. Information furnished will be used to verify compliance with legal requirements, as a basis for recourse in the event of noncompliance, and to monitor participation in USAID programs. If will be disclosed outside USAID only as provided by law. Submission of this information has been determined to be necessary to receive payment from USAID funds pursuant to 22 U.S.C. 2381.

Public reporting burden for this collection of information is estimated to average thirty minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to:

U.S. Agency for International Development
Office of Acquisition and Assistance
Policy Division (M/OAA/P)
Washington, D.C. 20523-7801;
and
Office of Management and Budget
Paperwork Reduction Project (0412-0004)
Washington, D.C. 20503

Requirement for Payment. Section 201.11(k) of USAID Regulation 1 (22 CFR 201)declares that a commodity purchase transaction is eligible for USAID financing only if USAID provides a determination of the commodity eligibility on the Commodity Approval Application. Section 201.52(a) (8) of the Regulation states that to secure payment a supplier must submit the signed original of this form, countersigned by USAID. As appropriate, a reproduced copy of the validated form, certified as provided in the second paragraph following, is required with each subsequent claim for partial shipments made under the original validated form AID-11. Alterations to Block 16 are not acceptable.

Form submission and USAID approval. To secure USAID approval, a supplier must submit the signed and properly executed original and one copy of the form addressed to USAID Commodity Office listed in the letter of credit or direct letter of commitment pursuant to which this approval of commodity eligibility is requested. USAID will indicate its approval in block 18 of the form if the form is properly executed and if USAID has no objection to financing the described commodity. If USAID refuses approval, the Agency will return the form to the supplier with an explanation for refusal. In either case, an identification number will be assigned by USAID in the upper right-hand corner of the form. Any follow-up correspondence between the supplier and USAID should refer to this number. Partial Shipments. In the event a supplier expects to make more than one shipment under a single contract, letter of credit, or collection document, it may either submit a separate form AID-11 covering each shipment, or submit a single form AID-11 covering the entire contract. In the latter case, the original USAID-approved form will be presented to the paying bank with the supplier's first request for payment and a reproduced copy of the approved form, properly certified in block 18, will be presented with each request for payment for subsequent partial shipments. See detailed instructions for block 8.

Duration of USAID Approval. USAID approval remains valid for six (6) months as evidenced by the expiration date entered by USAID in block 17. If the letter of credit is valid for a longer period, upon request from the supplier and submission of a copy of the letter of credit, USAID will provide an approved expiration date corresponding to the expiration date of the letter of credit. If the USAID approval expires prior to delivery, the supplier must reapply for approval, making reference to the transaction number assigned by USAID.

Timing of Submission. Under letter of credit financing the application should be submitted subsequent to receiving confirmation or advice of credit, but prior to shipment. The form may, however, be submitted prior to receipt of such credit provided that an original or true copy of the purchase contract accompanies the application. Under any other method of financing, the application will be submitted following receipt of instructions that the transaction is to be USAID – financed and must be accompanied by an original or true copy of the contract with the importer. The form should not be submitted prior to the time supplier is able to furnish all required information in blocks 12 through 15.

Language. Every commodity description which appears on the form must be stated in English. If a supplier furnishes as an attachment to this form in a contract in a language other than English, an English translation of the commodity description must also be furnished.

Completeness. All numbered blocks MUST be fully and appropriately completed. If the application contains incomplete blocks, it will NOT be processed but will be returned for completion.

Obtaining Forms. The form is available as a macro on USAID's website at http:// www.usaid.gov/forms. Forms may be obtained in limited quantities from banks holding USAID letters of commitment, field offices of the Department of Commerce, the USAID office in the supplier's country, or the Information and Records Division (M/AS/IRD), U.S. Agency for International Development, Washington, D.C. 20523-2701. A supplier may reproduce the form provided the reproduction is identical with the original copy in every respect, including size, and format. A supplier may overprint its name and address in block 5.

INSTRUCTIONS RELATING TO SPECIFIC ITEMS

BLOCK 1: Enter the letter of commitment number. If not available, enter the loan or grant agreement number. USAID cannot act on an application unless one of these numbers is provided.

BLOCK 2: Indicate the method of financing. If by letter of credit, enter the letter of credit number assigned by the U.S. bank, the date the bank issued, advised, or confirmed the letter of credit, and the name and address of the bank concerned. If the application is submitted prior to receipt of this information, enter the words "Firm contract" and attach a copy of the contract.

If the transaction is not to be financed by letter of credit, enter the applicable payment terms (e.g., sight draft collection, open account) and attach a copy of the contract.

BLOCK 3: The importer should provide the supplier with this information. Generally the import license number appears on the letter of credit. If the information is not known or is not available at the time of submission of the application, enter "Unknown." (In some cases it may be necessary for USAID to require this information before approving the application.)

Enter "N/A" (not applicable) if the importer has not been required by its government to secure an import license.

BLOCK 4: Check the appropriate box to indicate the supplier's relationship to a country or area in the authorized source code. This information relates to certification 4 in block 16. If "Other" is checked, furnish explanation of relationship in block 15.

BLOCK 5: Enter name and address.

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BLOCK 7: Enter the purchase price funded by USAID under the contract. Enter contract date or date pro forma invoice was accepted.

BLOCK 8: (a) Check the appropriate box to indicate whether the supplier expects to make partial shipments. If "yes" and a separate application form will be submitted for each partial shipment, enter the value of the shipment to which this application relates. If only one application form will be submitted to cover all partial shipments, omit the dollar value.

(b) Enter the proposed loading port. If only the range of ports is known, enter the range of ports; e.g., North Atlantic, South Atlantic, Gulf, Pacific, Great Lakes. If expected that partial shipments will be made, but only one application form is to be submitted, entries under (b) and (c) will relate to the first shipment only.

(c) Enter the proposed destination port.

(d) Enter the month in which it is expected shipment will be made. In the case of partial shipments, indicate the estimated first and last months of shipments: e.g., April-September.

BLOCKS 9 and 10: Enter the U.S. Department of Commerce Schedule B 10-digit code in block 9 and describe the commodity in block 10, giving size, quantity, and a clear word description of the commodity, including any special formula or other distinguishing characteristics, such as substandard quality (e.g., reject, imperfect, second) which will help to identify it.

If the contract or letter of credit identifies the commodity by other than Schedule B code (e.g., importing country tariff classification), this identification should be furnished as part of the commodity description.

If the commodity description varies significantly within the same Schedule B Code, separate entries must be furnished for each commodity.

BLOCK 11: Enter the unit and unit price, or total, for the commodity on an FAS or FOB basis for the loading port specified in block 8.(b). For other delivery terms, enter a constructive price FAS or FOB vessel; i.e., subtract from a C&F or CIF price estimated ocean freight and accessorial costs necessary to place the commodity in the custody of the ocean carrier.

If the supplier is unable to compute a unit price FAS or FOB vessel, the unit price of the commodity may be shown on the basis of the inland price with estimated inland freight cost, if available, footnoted in an explanatory entry in block 15.

SPECIAL INSTRUCTIONS—MULTIPLE ITEMS: If the shipment (or contract) is made up of commodities bearing differing Schedule B codes, or if the commodity description varies significantly within the same Schedule B code, separate entries must be furnished for each code or description. When there are six or more items to be listed in blocks 9 through 11, a signed and dated accepted contract, order, invoice, or other separate listing of the information may be attached to the original and copy of the form AID 11, provided the full 10-digit Schedule B code, complete and accurate description of the commodity, and FAS or FOB vessel unit price are shown for each. If the information required by blocks 12 through 14 is not common to all commodities listed, appropriate information related to each such commodity is also required to be shown either on the attachment or in the blocks 12 through 14 and related to the appropriate line of the attachment. If an attachment is used in lieu of entry of the information on form AID-11, complete blocks 9 – 11 inclusive, and 12 – 14 inclusive (when applicable) by entering the words "See attachment."

SPECIAL INSTRUCTIONS—BLOCKS 12 through 14: If more than one commodity is listed in block 9, provide information required b blocks 12 through 14 on separate lines in those blocks, identified to the corresponding line on which the commodity is listed in block 9. For example, information concerning a commodity listed on line (c) in block 9 would be identified as line (c) in blocks 12 through 14. When only one form AID-11 is submitted, information in these blocks should be descriptive of the total contract. If a separate form AID-11 is submitted for each shipment under the contract, the information in these blocks should cover only that single shipment.

BLOCK 12: Enter check mark in the appropriate box to indicate the condition of the commodity. If the commodity is other than new and unused, describe the condition in the space below or in block 15. For this purpose, any commodity declared surplus by the U.S. Government agency and any commodity which has been rebuilt or reconditioned or contains components which have been rebuilt or reconditioned are not considered as "unused."

BLOCK 13: See § 201.11 (b) (4) of USAID Regulation 1 (22 CFR 201) for countries and areas included in geographic code numbers.

(a) Enter in block 13(a) the authorized geographic source area stated in the letter of credit or USAID direct letter of commitment.

(b) Enter in block 13(b) the country from which the commodity will be shipped to the importer. If the commodity will be shipped from a free port or bonded warehouse, indicate this fact in block 16 and give location.

(c) Enter in block 13(c) the country in which the commodity has been or will be mined, grown, or produced through manufacturing, processing or assemble.

BLOCK 14: (a) Enter "Yes" in block 14(a) if the commodity includes components imported into the country of production from a country not included in the authorized geographic source area indicated in block 13(a). If such components are not included, enter "no."

(b) If yes is entered in block 14(a), identify in block 14b each country from which components were imported into the country of production.

(c) In block 14(c), enter the total cost, within each unit of the finished product, attributable to components imported from each country indicated in block 14(b). The supplier must thereafter be prepared to demonstrate the accuracy of the information contained in block 14(a), (b) and (c) upon the request of USAID.

BLOCK 15: State the Producer Name and Address, if not the Supplier. This block may also be used to furnish explanation or additional information in connection with any entries on the form. Identify block (and line, as appropriate) to which entry relates.

BLOCK 16: The supplier, or its authorized representative, must manually sign this certification, showing name, title and date signed.

BLOCK 17: For USAID use. Note that USAID approval is not valid for deliveries on and after the expiration date shown in this block.

BLOCK 18: If reproduced copies of this original form are presented with the supplier's request for payment (see fifth paragraph of General Instructions), the supplier or its authorized representative must manually sign this certification in block 18 of the reproduced form, showing name, title and the date signed.

DO NOT INCLUDE THE INSTRUCTIONS ON PAGE 3 AND 4 WITH THE SUBMISSION OF THE COMPLETED FORM.

Page 4

Dated: June 22, 2007.

Michael F. Walsh,

Procurement Executive.

[FR Doc. 07–3309 Filed 7–6–07; 8:45 am]

BILLING CODE 6116–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–109367–06]

26 CFR Part 1

RIN 1545–BF52

Section 1221(a)(4) Capital Asset Exclusion for Accounts and Notes Receivable; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This document provides a notice of a hearing on the proposed regulations under section 1221(a)(4) of the Internal Revenue Code.

DATES: The hearing will be held on Wednesday, August 22, 2007 at 10 a.m.

ADDRESSES: The public hearing is being held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, K. Scott Brown (202) 622–7454; to notify the IRS that you plan to attend the hearing and to be placed on the building access list, Kelly Banks at (202) 622–0392 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On August 7, 2006, the Treasury Department and the IRS published in the **Federal Register** (71 FR 44600) proposed regulations § 1.1221–1(e), under section 1221(a)(4) of the Internal Revenue Code. These regulations clarify the circumstances in which accounts or notes receivable are ''acquired * * * for services rendered'' within the meaning of section 1221(a)(4). A public hearing was held on November 7, 2006, to discuss these regulations. Only two individuals spoke at the hearing.

Additional written comments were received from interested parties after the period for comments closed and the hearing was held. Several of these written comments contained requests for private meetings. Because it is more appropriate to address the concerns raised in the comments publicly, the Treasury Department and the IRS are scheduling a public hearing at which taxpayers will have another opportunity to discuss the proposed regulations. The views expressed at the hearing will be used in the rulemaking process.

Most of the written comments focused on the length of time that the decisions have been outstanding in *Burbank Liquidating Corp.* v. *Commissioner,* 39 T.C. 999 (1963), *acq. sub. nom. United Assocs., Inc.,* 1965–1 C.B. 3, *aff'd in part and rev'd in part on other grounds,* 335 F.2d 125 (9th Cir. 1964), and *Federal National Mortgage Association* v. *Commissioner,* 100 T.C. 541 (1993). The Treasury Department and the IRS request participants at the forthcoming public hearing to focus on whether the interpretation in the proposed regulations is legally correct, and whether the decisions in *Burbank Liquidating* and *Federal National Mortgage Association* correctly applied section 1221(a)(4).

To attend the hearing, taxpayers must notify the IRS by Monday, July 23, 2007. Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing. To notify the IRS that you plan to attend the hearing and for information about having your name placed on the building access list to attend the hearing, see the section in this document entitled **FOR FURTHER INFORMATION CONTACT.**

LaNita Van Dyke,

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

[FR Doc. E7–13255 Filed 7–6–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2007–0032 (Formerly Docket No. OSHA–S031–2006–0665 and OSHA Docket No. S–031)]

RIN 1218–AC09

Explosives; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: OSHA is extending the comment period for its proposed standard on Explosives for an additional sixty (60) days until September 10, 2007.

DATES: Written comments must be submitted (postmarked or sent) by September 10, 2007.

ADDRESSES: You may submit comments, identified by Docket No. OSHA–2007–0032, by any of the following methods:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions.

Fax: If your comments, including attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0032, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., E.T.

Instructions: All submissions must include the Agency name and the docket number for this rulemaking (Docket No. OSHA–2007–0032). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, plus additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: To read or download comments and materials submitted in response to this **Federal Register** notice, go to Docket No. OSHA–2007–0032 at *http://www.regulations.gov* or at the OSHA Docket Office at the address above. All comments and submissions are listed in the *http://www.regulations.gov* index, however, some information (e.g., copyrighted material) is not publicly available to read or download through that Web page. All comments and submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

For information on accessing exhibits referenced in the Explosives proposal, see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* Copies also are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210;

telephone (202) 693–1888. This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries: Kevin Ropp, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999. For technical inquiries: Donald Pittenger, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2255 or fax (202) 693–1663.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

On April 13, 2007, OSHA published a notice of proposed rulemaking to revise the Explosives standard (72 FR 18792). In that notice, the Agency provided the public with ninety (90) days to submit written comments, until July 12, 2007. Several interested persons have requested an extension of the deadline for submitting comments explaining that they needed additional time to gather information and provide a thorough review and response to the proposed standard. OSHA is providing an additional sixty (60) days for the submission of comments. Accordingly, written comments must now be submitted (sent or postmarked) by September 10, 2007. Granting additional time to comment on the proposed rule will allow these and other stakeholders time to provide more thorough comments on the proposed rule, which, in turn, will give OSHA a more complete record.

II. Submission of Comments and Access to Comments

You may submit comments in response to this document (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and the OSHA docket number for this rulemaking (Docket No. OSHA–2007–0032). You may supplement electronic submissions by uploading document files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic comments by name, date, and docket number so OSHA can attach them to your comments.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES** section).

Comments and submissions in response to this **Federal Register** notice are posted without change at *http://www.regulations.gov* (Docket No. OSHA–2007–0032). Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth.

In the Explosives proposal, OSHA referenced a number of supporting materials. Those references are posted in both Docket No. OSHA–S031–2006–0665 (which is available at *http://www.regulations.gov*) and OSHA Docket No. S–031 (which is available at *http://dockets.osha.gov*).

Although all submissions in response to this **Federal Register** notice and all supporting materials cited in the Explosives proposal are listed in the *http://www.regulations.gov* and *http://dockets.osha.gov* indexes, some information (e.g., copyrighted material) is not publicly available to read or download from that Web page. All submissions and supporting materials, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web page to submit comments is available at the Web page's User Tips link. Contact the OSHA Docket Office for information about materials not available through the Web pages and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, also are available at OSHA's Web page at *http://www.osha.gov.*

Authority and Signature

This document was prepared under the authority of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 4, 6, and 8 of the OSH Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 5–2002 (67 FR 65008), Secretary of Labor's Order 5–2007 (72 FR 31160 (6/5/2007)), and 29 CFR part 1911.

Signed at Washington, DC, on July 2, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–13198 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 51

[EPA–HQ–OAR–2005–0163; FRL–8337–5]

RIN 2060–AN28

Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration and Nonattainment New Source Review: Emission Increases for Electric Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of comment period.

SUMMARY: The EPA is announcing an extension of the public comment period on our proposed amendments for the Supplemental Notice of Proposed Rulemaking for Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Emission Increases for Electric Generating Units (May 8, 2007). The EPA is reopening the comment period that originally ends on July 9, 2007. The extended comment period will close on August 8, 2007. The EPA is extending the comment period because of the number of requests we received in a timely manner.

DATES: *Comments.* Comments must be received on or before August 8, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0163, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epamail.epa.gov.*
- Fax: 202–566–1741.
- Mail: Attention Docket ID No. EPA–HQ–OAR–2005–0163, U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Mailcode: 6102T, Washington, DC 20460. Please include a total of 2 copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for

EPA, 725 17th St., NW., Washington DC 20503.

• Hand Delivery: U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2005–0163. Such deliveries are only accepted during the Docket(s normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0163. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Jessica Montanez, Air Quality Policy Division, U.S. EPA, Office of Air Quality Planning and Standards (C504–03), Research Triangle Park, North Carolina 27711, telephone number (919) 541–3407, facsimile number (919) 541–5509, electronic mail e-mail address: *montanez.jessica@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2005–0163.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

• Make sure to submit your comments by the comment period deadline identified.

B. Where Can I Get a Copy of This Document and Other Related Information?

In addition to being available in the docket, an electronic copy of this proposal will also be available on the World Wide Web (WWW). Following signature by the EPA Administrator, a copy of this notice will be posted in the regulations and standards section of our NSR home page located at *http://www.epa.gov/nsr*.

Dated: July 2, 2007.

Stephen D. Page,

Office of Air Quality Planning and Standards.

[FR Doc. E7–13297 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2006–0699; FRL–8336–2]

RIN 2060–AN71

Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Data Availability (NODA).

SUMMARY: EPA is issuing this NODA in support of the proposed rule published on November 7, 2006, entitled Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry; Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries. EPA received a number of comments on the proposed rule and is in the process of evaluating those comments. This NODA addresses new data collected and analyses conducted in response to comments that EPA received concerning the impacts of the proposed monitoring

provisions for open-ended lines and valves.

We are seeking comment only on the impacts of the proposed monitoring provisions for open-ended lines and valves at synthetic organic chemical manufacturing sources and petroleum refineries. We do not intend to respond to new comments addressing any other aspect of the proposed rule.

DATES: Comments must be received on or before August 8, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0699, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–1741.
- *Mail:* EPA Docket Center (6102T), Docket ID No. EPA–HQ–OAR–2006–0699, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (6102T), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments on the NODA to Docket ID No. EPA–HQ–OAR–2006–0699. EPA's policy is that all comments received will be included in the public docket(s) without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material will be publicly available only in hard copy. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Ms. Karen Rackley, identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Rackley, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), Research Triangle Park, NC 27711; telephone number: (919) 541–0634; e-mail address: *rackley.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: *Submitting CBI.* Do not submit information that you consider to be CBI electronically through *www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, Attention Docket ID EPA–HQ–OAR–200–0699. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule published on November 7, 2006, is available on the WWW through the Technology Transfer Network (TTN). A copy of the proposed rule is posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Outline. The information presented in this NODA is organized as follows:

I. Background
II. Proposed Amendments to Requirements for Open-Ended Lines and Valves
A. What are the proposed amendments for open-ended lines and valves?
B. What new information is EPA making available for review and comment?
C. What additional supporting data or documentation do I need to provide with my comments?

I. Background

In November 2006, pursuant to Clean Air Act (CAA) section 111(b), EPA proposed amendments to Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry (40 CFR part 60, subpart VV) and Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries (40 CFR part 60, subpart GGG). See 71 FR 65302, November 7, 2006. In developing the proposed amendments, EPA used the best available data that it had before it at the time. Detailed background information describing the proposed rulemaking can be found in the preamble to the proposed rule and in the docket in support of that rule.

During the public comment period, EPA received comments that the supporting documentation in the docket did not provide estimated impacts of the proposed annual monitoring provisions

for open-ended lines and valves. To address this issue, we have reviewed data collected by Agency inspectors regarding the percentage of leaking open-ended lines and valves at petroleum refineries and chemical manufacturing facilities. We also collected screening values for the leaking open-ended lines and valves at petroleum refineries. We used this information to estimate cost and emission reduction impacts for monitoring at the proposed frequency as well as at alternative monitoring frequencies. We will consider only comments, data or information related to data, and procedures used in the impacts analysis. We do not intend to respond to new comments addressing any other aspect of the proposed amendments.

All the monitoring data and details of the procedures used in the impacts analysis discussed in this NODA are available at the EPA Docket Center described in the **ADDRESSES** section of this preamble.

II. Proposed Amendments to Requirements for Open-Ended Lines and Valves

A. What are the proposed amendments for open-ended lines and valves?

Subpart VV (and subpart GGG, which references subpart VV) currently requires open-ended lines and valves to be equipped with a cap, plug, blind flange, or a second valve. As discussed in the preamble to the proposed amendments, inspections conducted by enforcement agencies have found that many of these components are leaking due to improper installation. In order to reduce these emissions and increase compliance with the requirement to properly install the control equipment, we proposed an amendment that would require annual monitoring using Method 21 in 40 CFR part 60, appendix A. An instrument reading of 500 parts per million (ppm) or greater would be considered a leak. As with other leaking equipment, repair would be required within 15 days after detection of the leak. Examples of repair attempts include tightening or replacing the cap, plug, blind flange, or second valve. Records of all monitoring results, each leak detected, and each repair attempted also would be required. Documentation of the total number of leaks and the number for which repair was delayed would be required in semiannual reports.

B. What new information is EPA making available for review and comment?

We are making available open-ended line monitoring data from enforcement agencies. We are also providing estimates of emission reductions and cost impacts for the proposed annual monitoring requirement as well as for more frequent monitoring scenarios. Separate analyses were conducted for petroleum refineries and chemical manufacturing facilities. A summary of the new data and the impacts analysis is presented below. Additional information is in the docket, including the data and documents referred to in the impacts analysis.

Inspectors from EPA's National Enforcement Investigations Center (NEIC) monitored open-ended lines at 16 petroleum refineries. Instrument readings were collected from open-ended lines on an average of 3.5 process units per refinery. On average, 10 open-ended lines were found to be leaking at greater than 500 ppm per refinery (or 2.86 leaking per process unit). All of the monitored process units were subject to standards that require caps, plugs, blind flanges, or second valves for open-ended lines.

The percentage of leaking open-ended lines at these refineries was not available because the NEIC inspectors monitored only a fraction of the open-ended lines in each process unit, and they did not record the total number of open-ended lines per process unit. To estimate the percentage leaking, we assumed the number leaking per process unit from the NEIC inspections represented the total number leaking for an average refinery process unit, and we divided this number by the estimated number of open-ended lines for an average process unit. Based on the impacts analysis for the proposed amendments to subparts VV and GGG, we estimated that 195 new or reconstructed refinery process units with equipment in volatile organic compound (VOC) service would become affected sources in the next 5 years. Information on the number of open-ended lines for different types of process units at large and small refineries (see EPA–454/R–98–011) was used to estimate a total of 7,349 open-ended lines in VOC service at these 195 process units. This would mean an average refinery process unit has 37.7 open-ended lines in VOC service, and 7.6 percent (2.86/37.7) are leaking.

To the best of our knowledge, the monitored open-ended lines that were found to be leaking were in gas/vapor service or light liquid service. Based on information about the type of service for valves, flanges, and pumps in refinery process units (see EPA–454/R–98–011) we estimated that 27 percent of open-ended lines in refinery process units are in heavy liquid service. The resulting estimate is that 10.4 percent (7.6/0.73) of refinery open-ended lines in gas/vapor or light liquid service are leaking. This estimate may understate the number of open-ended lines that are leaking (and the resulting emission reduction estimates) because the NEIC inspectors did not monitor all open-ended lines in each of the inspected processes, and it is unlikely that none of the unmonitored open-ended lines were leaking.

For the synthetic organic chemicals manufacturing industry (SOCMI), inspectors in EPA's Region V have monitored open-ended lines at six chemical manufacturing facilities. They found between 6 and 27 percent of all open-ended lines were leaking at greater than 500 ppm. The average was 12.6 percent leaking. However, the leak concentrations for the monitored open-ended lines at SOCMI sources were unavailable. Therefore, we decided to estimate SOCMI emissions using the same leak concentrations and overall leak frequency as for refineries. Since the overall percent leaking for refineries (10.4 percent) is lower than for SOCMI sources (12.6 percent), this approach results in worst-case cost-effectiveness estimates for SOCMI sources. As described for the refinery analysis, to the best of our knowledge, these leaks occurred from open-ended lines in gas/vapor service or light liquid service. Based on information from the Additional Information Document (see EPA–450/3–82–010) we estimated that 12 percent of open-ended lines in SOCMI process units are in heavy liquid service. We then divided the percent of total open-ended lines at refineries (*i.e.*, 7.6 percent) by 0.88 to estimate that 8.6 percent of the open-ended lines in gas/vapor service and light liquid service at SOCMI sources are leaking.

To estimate the current emissions from leaking open-ended lines, we used the NEIC instrument readings in correlation equations for connectors and flanges (see Tables 2–9 and 2–10 in EPA–453/R–95–017). The equations for connectors and flanges were used because we expect that the openings through which VOC would be emitted around an improperly installed cap or plug would be more similar to the openings for connectors and flanges than an uncapped open-ended line. This procedure provided average emission rates per open-ended line (including non-leakers) for both refineries and SOCMI facilities. To estimate baseline

nationwide emissions, we multiplied these average emission rates by the estimated number of open-ended lines in gas/vapor or light liquid service that will become affected facilities in the 5 years after proposal of the amendments. The estimated number of refinery and SOCMI process units, open-ended lines, and emissions in the fifth year after proposal are shown in Table 1 of this preamble.

TABLE 1.—NATIONAL FIFTH YEAR ESTIMATES OF THE NUMBER OF PETROLEUM REFINERY AND SOCMI PROCESS UNITS, NUMBER OF OPEN-ENDED LINES, AND BASELINE EMISSIONS

Type of source	Total number of process units	Total number of open-ended lines	Number of open-ended lines in gas/vapor or light liquid service	Current Emissions	
				kg/hr/OEL	Nationwide Mg/yr
Refinery	195	7,350	5,370	0.00047	22
SOCMI	191	24,300	21,400	0.0028	520

The amount of emission reduction associated with monitoring will be a function of the monitoring frequency, how often the cap or plug on the open-ended line is opened, and the subsequent leak frequency for opened open-ended lines. In addition to the proposed annual monitoring frequency, the analysis also estimates impacts for semiannual, quarterly, and monthly monitoring. The opening frequency depends on the purpose of the open-ended line. Available data indicate that open-ended lines that are used for sampling represent about 20 percent of all open-ended lines at refineries. These open-ended lines are likely opened more frequently than open-ended lines that serve other functions. For this analysis, we assumed that these open-ended lines are opened once per month. Other open-ended lines that are used for purging, venting, and draining are likely opened much less frequently than open-ended lines that are part of sampling connection systems. Some may be opened only when the process unit is being shut down. For this analysis we assumed that the 80 percent of open-ended lines used for these purposes are evenly distributed among those that are opened quarterly, semiannually, and annually because data from refineries or SOCMI sources are unavailable. We also assumed the 20/80 split applies to SOCMI sources as well as refineries.

The subsequent leak frequency is due primarily to the care and technique of the operator installing the cap or other control equipment. Properly installed, there should be no leak. For this analysis, we assumed that operators would continue to install caps and other control equipment in the same manner that they currently use. This means that for any open-ended lines that are opened between monitoring events, we would expect the subsequent leak frequency to equal the baseline leak frequency, regardless of the amount of time since the previous monitoring event or the monitoring frequency. The impact of these assumptions on the percentage emission reductions for each of the different opening frequencies and monitoring intervals is described in the analysis. The estimated overall percent reductions and total mass reductions for each of the four monitoring scenarios in the fifth year after proposal of the amendments are shown in Tables 2 and 3 of this preamble for petroleum refineries and SOCMI sources, respectively.

The cost impacts analysis includes estimated initial costs and annual costs. The initial costs include costs for identifying and integrating open-ended lines into the monitoring program, initial monitoring, and repair of initial leakers. Annual costs include capital recovery for initial costs, periodic monitoring costs, costs to repair leaking equipment, and additional time to prepare semiannual reports. Unit costs for initial setup and monitoring and annual monitoring were assumed to be the same as for other types of equipment. These costs were estimated only for open-ended lines in gas/vapor or light liquid service because, as noted above, essentially all of the leaking open-ended lines are likely in these services. Repair costs were estimated assuming all of the leaks can be repaired online in an average of 10 minutes by relatively simple techniques such as tightening the valve, replacing a worn plug, or reinstalling a cap properly. Labor rates and overhead factors were assumed to be the same as in the earlier analysis of impacts for the proposed changes in the leak definitions for pumps and valves. One hour was added to the time to prepare each semiannual report. We expect that the additional reporting burden will be minimal because only the total number of leaks and the number for which repair is delayed would have to be reported. The impacts analysis also includes a recovery credit for the material that is not emitted. As in the earlier impacts analysis, these credits are $600/megagrams (Mg) for emission reductions at petroleum refineries and $900/Mg for emission reductions at SOCMI facilities.

The estimated initial costs, total annual costs, and cost-effectiveness of each option are shown in Tables 2 and 3 of this preamble for refinery and SOCMI process units, respectively. Note that the recovery credit for two of the four scenarios in the SOCMI analysis exceeds the total annual cost, but it does not in the refinery analysis. This difference in the results is due primarily to the difference in the correlation equations for the two industries. For a given screening value, the equation for SOCMI facilities estimates much higher emissions than the equation for refineries.

TABLE 2.—NATIONAL FIFTH YEAR IMPACTS OF MONITORING OPTIONS FOR OPEN-ENDED LINES IN REFINERY PROCESS UNITS

Monitoring frequency	Emission Reductions		Initial costs (1000 $)	Total Annual Costs (1000 $/yr)		Cost-Effectiveness ($/Mg)	
	Percent	Mg/yr		Without recovery credit	With recovery credit	Overall	Incremental
Annually	24	5.3	102	37	34	6,500	.....
Semiannually	42	9.1	102	51	46	5,000	3,000

TABLE 2.—NATIONAL FIFTH YEAR IMPACTS OF MONITORING OPTIONS FOR OPEN-ENDED LINES IN REFINERY PROCESS UNITS—Continued

Monitoring frequency	Emission Reductions		Initial costs (1000 $)	Total Annual Costs (1000 $/yr)		Cost-Effectiveness ($/Mg)	
	Percent	Mg/yr		Without recovery credit	With recovery credit	Overall	Incremental
Quarterly	60	13	102	75	67	5,100	5,200
Monthly	82	18	102	150	140	7,800	15,000

TABLE 3.—NATIONAL FIFTH YEAR IMPACTS OF MONITORING OPTIONS FOR OPEN-ENDED LINES IN SOCMI PROCESS UNITS

Monitoring frequency	Emission Reductions		Initial costs (1000 $)	Total Annual Costs (1000 $/yr)		Cost-Effectiveness ($/Mg)	
	Percent	Mg/yr		Without recovery credit	With recovery credit	Overall	Incremental
Annually	24	120	400	120	11	87	.....
Semiannually	42	220	400	170	(20)	(93)	(340)
Quarterly	60	310	400	260	(18)	(57)	25
Monthly	82	430	400	560	180	420	1,700

C. What additional supporting data or documentation do I need to provide with my comments?

The EPA is soliciting comment on the new monitoring data and on all aspects of the procedures and assumptions used in the impacts analysis. We are specifically requesting data and comment on the following items:

- Additional monitoring data for open-ended lines, particularly any data that show open-ended lines in heavy liquid service that have been found to leak at greater than 500 ppm.
- Data on the percentage of open-ended lines in heavy liquid service.
- The appropriateness of using correlation equations for connectors and flanges to estimate emissions from improperly capped and plugged open-ended lines.
- Data on how often open-ended lines in different applications are opened.
- A description of the types of activities needed to repair leaking open-ended lines, and estimates of the time needed to perform such repairs.

Timely comments on these subjects will be taken into account in developing the final impacts analysis and in EPA's final action on the proposed amendments.

List of Subjects for 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: June 27, 2007.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. E7–13203 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2007–0467; FRL–8337–1]

RIN NA2040

Withdrawal of Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington State

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Federal regulations to withdraw its 1992 federally promulgated marine copper and cyanide chronic aquatic life water quality criteria for Washington State, thereby enabling Washington to implement its current EPA-approved chronic numeric criteria for copper and cyanide that cover all marine waters of the State.

In 1992, EPA promulgated Federal regulations establishing water quality criteria for priority toxic pollutants for 12 States, including Washington, and two Territories that had not fully complied with the Clean Water Act (CWA). These regulations are known as the ''National Toxics Rule'' or ''NTR''. On November 18, 1997, Washington adopted revised chronic marine aquatic life criteria for copper and cyanide, the only two marine aquatic life priority toxic pollutants in the NTR applicable to Washington. These revisions included a chronic marine aquatic life water quality criterion for copper for all marine waters and a chronic site-specific cyanide criterion for the Puget Sound. EPA approved these criteria on February 6, 1998. On August 1, 2003, Washington adopted revisions to its water quality standards, including a chronic marine criterion for cyanide for all marine waters except the Puget Sound. EPA approved this criterion on May 23, 2007. Since Washington now has marine copper and cyanide chronic aquatic life criteria effective under the CWA that EPA has approved as protective of Washington's designated uses, EPA is proposing to amend the NTR to withdraw the federally promulgated criteria.

DATES: Written comments must be received by August 8, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2007–0467, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ow-docket@epa.gov.*
- Mail to either: Water Docket, USEPA, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460 or Docket Manager, Washington Marine Aquatic Life NTR Removal, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA–HQ–OW–2007–0467.

• Hand Delivery: EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20004 or Becky Lindgren, Washington Marine Aquatic Life NTR Removal, U.S. EPA, Region 10, OWW–131, 1200 Sixth Avenue, Seattle, WA 98101, Attention Docket ID No. EPA–HQ–OW–2007–0467. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2007–0467. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at two Docket Facilities. The OW Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at the U.S. EPA Region 10 address. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. The telephone number is (206) 553–0775.

FOR FURTHER INFORMATION CONTACT: Becky Lindgren, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101 (telephone: 206–553–1774 or e-mail: *lindgren.becky@epa.gov*) or Claudia Fabiano, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue, NW., Mail Code 4305T, Washington, DC 20460 (telephone: 202–566–0446 or e-mail: *fabiano.claudia#epa.gov*).

SUPPLEMENTARY INFORMATION: This action concern's EPA's withdrawal of Federal marine copper and cyanide chronic aquatic life water quality criteria applicable to Washington State from 40 CFR 131.36 (the National Toxics Rule) (57 FR 60848). For further information, including the rationale, regulatory text, and various statutes and executive orders that require findings for rulemakings, please see the information provided in the direct final rule titled, ''Withdrawal of Federal Marine Aquatic Life Water Quality Criteria for Toxic Pollutants Applicable to Washington'' located in the ''Rules and Regulations'' section of this **Federal Register** Publication.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians-lands, Intergovernmental relations, Reporting and Recordkeeping requirements, Water pollution control.

Dated: July 2, 2007.

Stephen L. Johnson,

Administrator.

[FR Doc. E7–13206 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7723]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet

the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Kanawha County, West Virginia, and Incorporated Areas				
Alum Creek	Begins at approximately 298 feet downstream of CSX Railroad.	None	+519	Kanawha County (Unincorporated Areas).
	Ends approximately at 3649 feet upstream of Rebel Mountain Road.	None	+709	
Brier Creek	Begins at approximately 1180 feet downstream of Sproul Road.	None	+608	Kanawha County (Unincorporated Areas).
	Ends approximately at 2390 feet upstream of Brown Land Road.	None	+702	
Dutch Hollow	Begins at approximately 3125 feet downstream of I–64 Bridge.	None	+590	City of Dunbar, Kanawha County (Unincorporated Areas).
	Ends approximately at 4850 feet upstream of I–64 Bridge.	None	+666	
Finney Branch	Begins at approximately 1050 feet downstream of Charles Avenue.	None	+590	City of Dunbar, Kanawha County (Unincorporated Areas).
	Ends approximately at 360 feet upstream of Gravel Drive.	None	+601	
Georges Creek	Begins at approximately 2575 feet downstream of Malden Road.	None	+597	Kanawha County (Unincorporated Areas).
	Ends approximately at 3490 feet upstream of Georges Creek Drive.	None	+721	
Indian Creek	Begins at approximately 3775 feet downstream of State Route 114.	None	+611	Kanawha County (Unincorporated Areas).
	Ends approximately at 1000 feet upstream of Boner Drive.	None	+693	
Magazine Branch	Starts at approximately 920 feet downstream of Pennsylvania Avenue.	None	+594	City of Charleston, Kanawha County (Unincorporated Areas).
	Ends approximately at 100 feet upstream of Pacific Street.	None	+688	
Middle Fork	Begins at approximately 480 feet downstream of Middle Fork Road.	None	+606	Kanawha County (Unincorporated Areas).
	Ends approximately at 135 feet upstream of Middle Fork Road.	None	+630	
Mill Creek	Begins at approximately 90 feet downstream of Rail Road Bridge.	None	+605	Kanawha County (Unincorporated Areas).
	Ends approximately at 4550 feet upstream of Mill Creek Road.	None	+775	
Two and Three Quarter Mile Creek.	Begins at approximately 220 feet downstream of U.S. Route 60.	None	+589	Kanawha County (Unincorporated Areas).
	Ends approximately at 1880 feet upstream of Cane Fork Road.	None	+618	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	

+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Charleston

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301. Send comments to The Honorable Danny Jones, Mayor, City of Charleston, 501 East Virginia Street, Charleston, WV 25301.

City of Dunbar

Maps are available for inspection at 210 12th Street, Dunbar, WV 25064. Send comments to The Honorable C. B. Rigney, Mayor, City of Dunbar, P.O. Box 483, Dunbar, WV 25064.

Kanawha County (Unincorporated Areas)

Maps are available for inspection at 501 East Virginia Street, Charleston, WV 25301. Send comments to Mr. W. Kent Carper, Commissioner, Unincorporated Areas of Kanawha County, 501 East Virginia Street, Charleston, WV 25301.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 26, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–13182 Filed 7–6–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7806]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Bay County, Florida, and Incorporated Areas				
Bayou George	Approximately 800 feet upstream of the confluence with White Bucky Branch.	+16	+17	Bay County (Unincorporated Areas), City of Panama City.
	Approximately 1.2 miles upstream of Crash Island Drive.	None	+60	
Buckhorn Creek	At the confluence with Econfina Creek	None	+148	Bay County (Unincorporated Areas).
	Approximately 1,800 feet upstream of the confluence with Econfina Creek.	None	+148	
Econfina Creek	At the confluence with Deer Point Lake	None	+6	Bay County (Unincorporated Areas).
	Approximately 0.7 mile upstream of State Road 20	None	+28	
	At Atlanta and St. Andrews Bay Railroad	None	+147	
	Approximately 1,700 feet upstream of U.S. Highway 231.	None	+150	
Green Creek	At the confluence with Bear Creek	None	+141	Bay County (Unincorporated Areas).
	Approximately 880 feet upstream of Gardenia Street	None	+174	
Juniper Creek	At U.S. Highway 231	None	+158	Bay County (Unincorporated Areas).
	Approximately 1.1 miles upstream of U.S. Highway 231.	None	+172	
Laird Street Outfall	At Lagoon Drive	None	+8	Bay County (Unincorporated Areas), City of Panama City Beach.
	Just south of West Panama City Beach Parkway	None	+16	
Robinsons Bayou	Approximately 900 feet upstream of Frankford Avenue.	+7	+10	Bay County (Unincorporated Areas), City of Panama City.
	Approximately 400 feet south of the intersection of Jenks Avenue and 15th Street.	None	+33	
Unnamed Tributary 1 to Bear Creek.	Approximately 860 feet upstream of the confluence with Bear Creek.	None	+124	Bay County (Unincorporated Areas).
	Approximately 2,800 feet upstream of Pine Ridge Road.	None	+154	
Unnamed Tributary 2 to Bear Creek.	At the confluence with Unnamed Tributary 1 to Bear Creek.	None	+135	Bay County (Unincorporated Areas).
	Approximately 1,350 feet upstream of the confluence with Unnamed Tributary 1 to Bear Creek.	None	+141	
Unnamed Tributary to Econfina Creek.	At the confluence with Econfina Creek	None	+150	Bay County (Unincorporated Areas).
	Approximately 740 feet upstream of the confluence with Econfina Creek.	None	+161	
Watson Bayou	Immediately upstream of 11th Street	+8	+10	Bay County (Unincorporated Areas), City of Panama City, Town of Cedar Grove.
	Approximately 2,000 feet west of the intersection of Mercedes Avenue and 24th Plaza.	None	+36	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Panama City

Maps are available for inspection at Panama City Engineering Department, 9 Harrison Avenue, Panama City, FL.
Send comments to Mr. Kenneth R. Hammons, Panama City City Manager, 9 Harrison Avenue, Panama City, FL 32401–2724.

City of Panama City Beach

Maps are available for inspection at Panama City Beach Building Department, 110 South Arnold Road, Panama City Beach, FL.
Send comments to The Honorable Gayle Oberst, Mayor of the City of Panama City Beach, 110 South Arnold Road, Panama City Beach, FL 32413.

Town of Cedar Grove

Maps are available for inspection at Cedar Grove Town Hall, 2728 East 14th Street, Cedar Grove, FL.
Send comments to Mr. Jim Anderson, Cedar Grove Town Manager, 2728 East 14th Street, Cedar Grove, FL 32401.

Bay County (Unincorporated Areas)

Maps are available for inspection at Bay County Planning and Zoning Department, 640 Molberry Avenue, Panama City, FL.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Send comments to Mr. Mike Nelson, Chairman of the Bay County Board of County Commissioners, 310 West 6th Street, Panama City, FL 32401.				
Floyd County, Iowa, and Incorporated Areas				
Hyers Creek	At Riverside Avenue	*1006	+1006	Floyd County (Unincorporated Areas), City of Charles City.
	Approximately 3,800 feet upstream of Cleveland Street.	None	+1035	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Charles City

Maps are available for inspection at City Hall, 105 Milwaukee Mall, Charles City, IA 50616.
Send comments to The Honorable Jim Erb, Mayor, City of Charles City, 105 Milwaukee Mall, Charles City, IA 50616.

Floyd County (Unincorporated Areas)

Maps are available for inspection at Floyd County Planning and Zoning, 101 South East 1st, Charles City, IA 50616.
Send comments to The Honorable Leo Staudt, Chairman, Board of Supervisors, Floyd County Courthouse, 101 South Main Street, Charles City, IA 50616.

Lyon County, Kansas, and Incorporated Areas				
Beaver Creek	At confluence with Cottonwood River	None	+1135	Lyon County (Unincorporated Areas).
	Just upstream of Road 200	None	+1209	
Cottonwood River	Just upstream of Interstate 35	None	+1123	Lyon County (Unincorporated Areas).
	At the County Boundary with Chase County	None	+1144	
East Tributary to Beaver Creek.	At confluence with Beaver Creek	None	+1142	Lyon County (Unincorporated Areas).
	Approximately 1250 feet upstream of Pond Embankment.	None	+1218	
East Tributary to Cottonwood River.	Just upstream of Interstate 35	None	+1123	Lyon County (Unincorporated Areas), City of Emporia.
	Approximately 3000 feet upstream of Road 180	None	+1150	
Linck Creek	At confluence with Cottonwood River	None	+1128	Lyon County (Unincorporated Areas).
	Approximately 3000 feet upstream of Road 200	None	+1205	
Ludy Creek	At confluence with Link Creek	None	+1129	Lyon County (Unincorporated Areas).
	Just downstream of Road 190	None	+1173	
Moon Creek	At confluence with Cottonwood River	None	+1125	Lyon County (Unincorporated Areas), City of Emporia.
	Approximately 1750 feet Northwest of intersection of Road E and Road 200.	None	+1200	
West Tributary to Beaver Creek.	At confluence with Beaver Creek	None	+1155	Lyon County (Unincorporated Areas).
	At County Boundary with Chase County	None	+1187	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Emporia

Maps are available for inspection at 104 E. 5th Avenue, Emporia, KS 66801.
Send comments to The Honorable Jim Kessler, Mayor, City of Emporia, P.O. Box 928, 522 Mechanic, Emporia, KS 66801.

Lyon County (Unincorporated Areas)

Maps are available for inspection at 430 Commercial Street, Room 205, Lyon Co. Courthouse, Emporia, KS 66801.
Send comments to The Honorable Marshall Miller, Chairman, Board of Co. Commissioners, 430 Commercial Street, Lyon Co. Courthouse, Emporia, KS 66801.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Huron County, Michigan, and Incorporated Areas				
Lake Huron	Entire Shoreline	None	+583	City of Harbor Beach Port Hope, Township of Gore, Township of Huron, Township of Rubicon, Township of Sand Beach, Township of Sherman, Village of Port Austin.
	Entire Shoreline	None	+583	City of Harbor Beach, Port Hope, Township of Gore, Township of Huron, Township of Rubicon, Township of Sand Beach, Township of Sherman, Village of Port Austin.
Saginaw Bay	Entire shoreline along the Township of Caseville	+583	+584	Township of Caseville, Village of Caseville.
	Entire shoreline along the Township of Hume	None	+584	Township of Hume.
	Entire shoreline along the Township of Lake	+583	+584	Township of Lake.
	Entire shoreline along the Township of McKinley	None	+584	Township of McKinley.
	Entire shoreline along the Township of Fairhaven	None	+585	Township of Fairhaven.
	Entire shoreline along the Township of Fairhaven	None	+585	Township of Fairhaven.
	Entire shoreline along the Township of Sebewaing	+584	+585	Township of Sebewaing.
Saginaw Bay	Entire shoreline along the Township of Port Austin	None	+583	Village of Port Austin, Township of Pointe Aux Barques.
Sebewaing River/State Drain	At the confluence with Saginaw Bay	+584	+585	Township of Sebewaing.
	At Bay Street	None	+593	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Harbor Beach

Maps are available for inspection at 766 State Street, Harbor Beach, MI 48441.
Send comments to The Honorable Robert J. Swartz, Mayor of Harbor Beach, 766 State Street, Harbor Beach, MI 48441.

Port Hope

Maps are available for inspection at 4250 Lakeshore Drive, Port Hope, MI 48468.
Send comments to The Honorable Gary Schave, Village President, 4250 Lakeshore Drive, Port Hope, MI 48468.

Township of Caseville

Maps are available for inspection at 6767 Main Street, Caseville, MI 48725.
Send comments to Larry Degg, Supervisor, Township of Caseville, 6767 Main Street, Caseville, MI 48725.

Township of Fairhaven

Maps are available for inspection at 9811 Main Street, Bay Port, MI 48759.
Send comments to Mr. Orin J. Englehardt, Township Supervisor, 9546 Kilmanagh Road, Sebewaing, MI 48759.

Township of Gore

Maps are available for inspection at 6980 Moeller Road, Port Hope, MI 48468.
Send comments to Daniel Koglin, Supervisor, Township of Gore, 6819 E. Kinde Road, Port Hope, MI 48468.

Township of Hume

Maps are available for inspection at 1918 Oak Beach Road, Port Austin, MI 48467.
Send comments to John C. Hollister, Supervisor, Township of Hume, 2475 Port Austin Road, Port Austin, MI 48467.

Township of Huron

Maps are available for inspection at 5150 Kaufman Road, Port Hope, MI 48468.
Send comments to Evan Steinbis, Supervisor, Township of Huron, 5150 Kaufman Road, Port Hope, MI 48468.

Township of Lake

Maps are available for inspection at 6064 Dufty Road, Caseville, MI 48725.
Send comments to Clay Kelterborn, Supervisor, Township of Lake, 4988 W. Kinde Road, P.O. Box 429, Caseville, MI 48725.

Township of McKinley

Maps are available for inspection at 2701 Sturm Road, Pigeon, MI 48755.
Send comments to Jerry Beyer, Supervisor, Township of McKinley, 7755 Campbell Road, Bay Port, MI 48720.

Township of Pointe Aux Barques

Maps are available for inspection at 9219 Linwood Road, Port Austin, MI 48467.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	

Send comments to Mr. Clayton C. Purdy, 1840 Cliff Road, Port Austin, MI 48467.

Township of Rubicon

Maps are available for inspection at 3195 N. Lakeshore Road, Port Hope, MI 48468.
Send comments to Robert Oeschger, Supervisor, Township of Rubicon, 3840 Ruppel Road, Port Hope, MI 48468.

Township of Sand Beach

Maps are available for inspection at 8665 Lincoln Road, Harbor Beach, MI 48441.
Send comments to Wade Mazure, Supervisor, Township of Sand Beach, 6573 Learman Road, Harbor Beach, MI 48441.

Township of Sebewaing

Maps are available for inspection at 108 W. Main, Sebewaing, MI 48759.
Send comments to Patrice Gettel-Lindow, President, Village of Sebewaing, 108 W. Main, Sebewaing, MI 48759.

Township of Sherman

Maps are available for inspection at 4599 S. Ruth Road, Ruth, MI 48470.
Send comments to Leo J. Emming, Supervisor, Township of Sherman, 4484 N. Ruth Road, Ruth, MI 48470.

Village of Caseville

Maps are available for inspection at 6767 Main Street, Caseville, MI 48725.
Send comments to Clyde D. Campbell, President, Village of Caseville, 6729 Ash Street, Caseville, MI 48725.

Village of Port Austin

Maps are available for inspection at 17 W. State Street, Port Austin, MI 48467.
Send comments to Marilyn Bruce, President, Village of Port

Village of Ubly

Maps are available for inspection at 2241 Pierce Street, Ubly, MI 48475.
Send comments to Dennis West, President, Village of Ubly, 2241 Pierce Street Austin, 17 W. State Street, Port Austin, MI 48467., Ubly, MI 48475.

Anson County, North Carolina, and Incorporated Areas

Bailey Creek	At the confluence with North Fork Jones Creek	None	+257	Anson County (Unincorporated Areas).
	At the confluence of Brush Fork and Ready Fork	None	+282	
Bell Creek	At the confluence with Deadfall Creek	None	+283	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Little Huntley Road (State Road 1217).	None	+308	
Big Branch	At the confluence with Lanes Creek	None	+333	Anson County (Unincorporated Areas).
	Approximately 1,450 feet upstream of Birmingham Road (State Road 1436).	None	+343	
North	At the confluence with Cribs Creek	None	+256	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Cribs Creek.	None	+271	
Black Jack Branch	At the confluence with Brown Creek	None	+291	Anson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Lower White Store Road (State Road 1252).	None	+320	
Blackwell Branch	Approximately 1,000 feet upstream of the confluence with Lanes Creek.	None	+365	Anson County (Unincorporated Areas).
	At the confluence of Caudle Branch and Maness Branch.	None	+424	
Boles Creek	At the confluence with Deadfall Creek	None	+293	Anson County (Unincorporated Areas).
	Approximately 550 feet downstream of Little Huntley Road (State Road 1217).	None	+301	
Brown Creek	At the confluence with Pee Dee River	None	+213	Anson County (Unincorporated Areas), Town of Polkton.
	Approximately 0.9 mile upstream of Okey High Road (State Road 1229).	None	+335	
Tributary 1	At the confluence with Brown Creek	None	+251	Anson County (Unincorporated Areas), Town of Polkton.
	Approximately 1,450 feet upstream of Barrass Street	None	+310	
Tributary 2	At the confluence with Brown Creek	None	+255	Town of Polkton.
	Approximately 480 feet upstream of East Freemont Street.	None	+313	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 3	At the confluence with Brown Creek	None	+296	Anson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Brown Creek.	None	+309	
Tributary 4	At the confluence with Brown Creek	None	+303	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence of Brown Creek Tributary 4A.	None	+329	
Tributary 4A	At the confluence with Brown Creek Tributary 4	None	+311	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Brown Creek Tributary 4.	None	+334	
Brush Fork	At the confluence with Bailey Creek and Reedy Fork	None	+282	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 360 feet downstream of South Park Road.	None	+361	
Tributary 1	At the confluence with Brush Fork	None	+315	Town of Wadesboro.
	Approximately 0.5 mile upstream of East Caswell Street.	None	+344	
Tributary 2	At the confluence with Brush Fork	None	+324	Town of Wadesboro.
	Approximately 80 feet downstream of US 52 Highway South.	None	+351	
Tributary 3	At the confluence with Brush Fork	None	+328	Town of Wadesboro.
	Approximately 1,820 feet upstream of Wortham Street	None	+341	
Buffalo Creek	At the confluence with Pee Dee River	None	+217	Anson County (Unincorporated Areas).
	Approximately 430 feet upstream of Railroad	None	+259	
South	At the confluence with Pee Dee River	None	+189	Anson County (Unincorporated Areas).
	Approximately 650 feet downstream of Clark Mountain Road (State Road 1744).	None	+216	
Tributary 1	At the confluence with Buffalo Creek	None	+218	Anson County (Unincorporated Areas).
	Approximately 610 feet upstream of Pinkston River Road (State Road 1627).	None	+220	
Cabin Branch	At the confluence with Brown Creek	None	+229	Anson County (Unincorporated Areas).
	Approximately 1,060 feet upstream of Jacks Branch Road (State Road 1637).	None	+249	
Camp Branch	At the confluence with Rocky River	None	+220	Anson County (Unincorporated Areas).
	Approximately 780 feet upstream of Railroad	None	+267	
Tributary 1	At the confluence with Camp Branch	None	+220	Anson County (Unincorporated Areas).
	Approximately 1,540 feet downstream of US 52 Highway North.	None	+238	
Canal Branch	At the confluence with Palmetto Branch	None	+217	Anson County (Unincorporated Areas).
	Approximately 80 feet upstream of Threadgill Street	None	+310	
Canebreak Branch	At the confluence with Lanes Creek	None	+332	Anson County (Unincorporated Areas).
	Approximately 530 feet upstream of Johnson Road (State Road 1435).	None	+342	
Caudle Branch	At the confluence with Blackwell Branch and Maness	None	+424	Anson County (Unincorporated Areas).
	Approximately 1,000 feet upstream of Stegall Road (State Road 1407).	None	+430	
Cedar Branch	At the confluence with Lanes Creek	None	+330	Anson County (Unincorporated Areas).
	Approximately 800 feet upstream of Bill Curlee Road (State Road 1415).	None	+337	
Cedar Creek	At the confluence with Pee Dee River	None	+210	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Cedar Creek Tributary 7.	None	+323	
Tributary 1	At the confluence with Cedar Creek	None	+210	Anson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 0.8 mile upstream of the confluence with Cedar Creek.	None	+221	
Tributary 2	At the confluence with Cedar Creek	None	+210	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Cedar Creek.	None	+221	
Tributary 3	At the confluence with Cedar Creek	None	+212	Anson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Cedar Creek.	None	+231	
Tributary 4	At the confluence with Cedar Creek	None	+251	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Cedar Creek.	None	+261	
Tributary 5	At the confluence with Cedar Creek	None	+278	Anson County (Unincorporated Areas).
	Approximately 680 feet upstream of Doc Wyatt Road	None	+286	
Tributary 6	At the confluence with Cedar Creek	None	+279	Anson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Cox Road	None	+310	
Tributary 7	At the confluence with Cedar Creek	None	+292	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Cedar Creek.	None	+310	
Clay Creek Tributary	At the North Carolina/South Carolina State boundary	None	+337	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the North Carolina/South Carolina State boundary.	None	+341	
Cranes Branch	At the confluence with Brown Creek	None	+240	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Cameron Briley Road (State Road 1429).	None	+261	
Cribs Creek	At the confluence with Rocky River	None	+256	Anson County (Unincorporated Areas).
	Approximately 0.7 mile upstream of NC 742 Highway North.	None	+383	
Culpepper Creek	At the confluence with Goulds Fork	None	+271	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 1.4 miles upstream of Avery Road	None	+307	
Deadfall Creek	At the confluence of Thompson Creek	None	+244	Anson County (Unincorporated Areas).
	Approximately 660 feet downstream of Long Pine Church Road (State Road 1220).	None	+301	
Derita Creek	At the confluence with Brush Fork	None	+314	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 1,460 feet upstream of Railroad	None	+355	
Flat Fork	At the confluence with Brown Creek	None	+213	Anson County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Flat Fork Tributary 1.	None	+253	
Tributary 1	At the confluence with Flat Fork	None	+230	Anson County (Unincorporated Areas).
	Approximately 2.2 miles upstream of the confluence with Flat Fork.	None	+287	
Goulds Fork	At the confluence with Brown Creek	None	+222	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 0.9 mile upstream of White Store Road (State Road 1205).	None	+330	
Tributary 1	At the confluence with Goulds Fork	None	+245	Anson County (Unincorporated Areas).
	Approximately 0.5 mile downstream of NC 742 Highway North.	None	+279	
Tributary 2	At the confluence with Goulds Fork	None	+269	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 0.5 mile upstream of Avery Road	None	+286	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Grindstone Branch	At the confluence with Goulds Fork	None	+237	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 0.7 mile upstream of Powe Street (State Road 1655).	None	+290	
Tributary 1	At the confluence with Grindstone Branch	None	+272	Anson County (Unincorporated Areas).
	Approximately 1,820 feet upstream of Airport Road (State Road 1645).	None	+304	
Hale Creek	At the confluence with Jones Creek	None	+192	Anson County (Unincorporated Areas).
	Approximately 1,690 feet downstream of Knotts Road (State Road 1807).	None	+260	
Tributary 1	At the confluence with Hale Creek	None	+213	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Hale Creek.	None	+231	
Tributary 2	At the confluence with Hale Creek	None	+233	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Hale Creek.	None	+248	
Hurricane Creek	At the confluence with Brown Creek	None	+213	Anson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Dennis Road (State Road 1649).	None	+233	
Island Creek	At the confluence with Pee Dee River	None	+139	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of NC Highway 145	None	+225	
Tributary 1	At the confluence with Island Creek	None	+139	Anson County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Island Creek.	None	+162	
Jacks Branch (into Brown Creek).	At the confluence with Brown Creek	None	+224	Anson County (Unincorporated Areas).
	Approximately 700 feet upstream of Mount Vernon Road (State Road 1638).	None	+250	
Jenkins Branch	At the confluence with Pee Dee River	None	+190	Anson County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with Pee Dee River.	None	+216	
Jones Creek	At the confluence with Pee Dee River	None	+128	Anson County (Unincorporated Areas).
	At the confluence of North Fork Jones Creek and South Fork Jones Creek.	None	+230	
Tributary 1	At the confluence with Jones Creek	None	+129	Anson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Jones Creek.	None	+150	
Kelly Branch	At the confluence with Brown Creek	None	+270	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Lower White Store Road (State Road 1252).	None	+302	
Lacey Branch	At German Hill Road (State Road 1404)	None	+377	Anson County (Unincorporated Areas).
	Approximately 200 feet upstream of Pulpwood Yard Road (State Road 1401).	None	+446	
Lampley Branch	At the confluence with North Fork Jones Creek	None	+285	Anson County (Unincorporated Areas), Town of Wadesboro.
	Approximately 0.9 mile upstream of Burns Street (State Road 1401).	None	+429	
Lanes Creek	At the confluence with Rocky River	None	+248	Anson County (Unincorporated Areas), Town of Peachland.
	Approximately 0.4 mile upstream of confluence of Beaverdam Creek.	None	+416	
Tributary 1	At the confluence with Lanes Creek	None	+248	Anson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 0.6 mile upstream of the confluence with Lanes Creek.	None	+249	
Tributary 2	At the confluence with Lanes Creek	None	+248	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Lanes Creek.	None	+275	
Tributary 3	At the confluence with Lanes Creek	None	+256	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Lanes Creek.	None	+264	
Tributary 4	At the confluence with Lanes Creek	None	+315	Anson County (Unincorporated Areas).
	Approximately 1,880 feet upstream of the confluence with Lanes Creek.	None	+328	
Tributary 5	At the confluence with Lanes Creek	None	+340	Anson County (Unincorporated Areas).
	Approximately 1,400 feet upstream of the confluence with Lanes Creek.	None	+354	
Ledbetter Branch	At the confluence with Brown Creek	None	+255	Anson County (Unincorporated Areas), Town of Polkton.
	Approximately 510 feet upstream of West Polk Street (State Road 1121).	None	+298	
Tributary 1	At the confluence with Ledbetter Branch	None	+284	Town of Polkton.
	Approximately 570 feet upstream of West Polk Street (State Road 1121).	None	+309	
Leggett Branch	At the confluence with Little Brown Creek	None	+308	Anson County (Unincorporated Areas).
	Approximately 860 feet upstream of White Store Road (State Road 1121).	None	+335	
Lick Creek	At the confluence with Brown Creek	None	+271	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Lowery Road (State Road 1244).	None	+314	
Little Brown Creek	At the confluence with Brown Creek	None	+251	Anson County (Unincorporated Areas), Town of Polkton.
	Approximately 340 feet downstream of White Store Road (State Road 1228).	None	+330	
Little Creek	At the confluence with Pee Dee River	None	+129	Anson County (Unincorporated Areas).
	Approximately 100 feet downstream of Pit Road (State Road 1801).	None	+165	
North	At the confluence with Rocky River	None	+246	Anson County (Unincorporated Areas).
	Approximately 400 feet upstream of Little Creek Road (State Road 1619).	None	+284	
Tributary 1	At the confluence with Little Creek	None	+130	Anson County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Little Creek.	None	+163	
Little Cribs Creek	At the confluence with Cribs Creek	None	+323	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Cribs Creek.	None	+337	
Maness Branch	At the confluence with Caudle Branch and Blackwell Branch.	None	+424	Anson County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Old Plank Road (State Road 1421).	None	+440	
McCoy Creek	At the confluence with Pee Dee River	None	+149	Anson County (Unincorporated Areas).
	Approximately 650 feet downstream of Blewett Falls Road (State Road 1745).	None	+180	
Mill Creek	At the confluence with Pee Dee River	None	+123	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of US Highway 52	None	+253	
Tributary 1	At the confluence with Mill Creek	None	+241	Anson County (Unincorporated Areas), Town of Morven.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 230 feet upstream of South White Oak Street.	None	+364	
North Fork	At the confluence with Lampley Branch	None	+386	Town of Wadesboro.
	Approximately 550 feet downstream of NC 109 Highway South.	None	+411	
Jones Creek	At the confluence with Jones Creek and South Fork Jones Creek.	None	+230	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of NC 742 Highway South.	None	+323	
Tributary 1	At the confluence with North Fork Jones Creek	None	+296	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with North Fork Jones Creek.	None	+360	
Smith Creek	At the confluence with Smith Creek	None	+189	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Dr. Sorrell Road (State Road 1741).	None	+214	
Palmetto Branch	At the confluence with Brown Creek	None	+216	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Railroad	None	+248	
Pee Dee River	Just downstream of the confluence with Whortenberry Creek.	None	+109	Anson County (Unincorporated Areas).
	At the confluence with Rocky River	None	+220	
Tributary 1	At the confluence with Pee Dee River	None	+134	Anson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Pee Dee River.	None	+147	
Tributary 2	At the confluence with Pee Dee River	None	+146	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Pee Dee River.	None	+171	
Tributary 3	At the confluence with Pee Dee River	None	+194	Anson County (Unincorporated Areas).
	Approximately 2.8 miles upstream of the confluence with Pee Dee River.	None	+223	
Tributary 4	At the confluence with Pee Dee River	None	+201	Anson County (Unincorporated Areas).
	Approximately 200 feet downstream of Stanback Ferry Road (State Road 1703).	None	+213	
Pinch Gut Creek	At the confluence with Brown Creek	None	+245	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence of Pinch Gut Creek Tributary 2.	None	+293	
Tributary 1	At the confluence with Pinch Gut Creek	None	+245	Anson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Pinch Gut Creek.	None	+257	
Tributary 2	At the confluence with Pinch Gut Creek	None	+270	Anson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Pinch Gut Creek.	None	+281	
Pressley Creek	At the confluence with Pee Dee River	None	+217	Anson County (Unincorporated Areas).
	Approximately 1.450 feet upstream of Pinkston River Road (State Road 1627).	None	+223	
Tributary 1	At the confluence with Pressley Creek	None	+217	Anson County (Unincorporated Areas).
	Approximately 570 feet upstream of Pinkston River Road (State Road 1627).	None	+224	
Reeder Branch	At the confluence with Pee Dee River	None	+190	Anson County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Pee Dee River.	None	+220	
Reedy Fork	At the confluence with Bailey Creek and Brush Fork	None	+282	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of West Wall Street (State Road 1730).	None	+317	
Rhoddy Creek	At the confluence with Deadfall Creek	None	+247	Anson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 1.0 mile upstream of the confluence with Deadfall Creek.	None	+270	
Richardson Creek	At the confluence with Rocky River	None	+259	Anson County (Unincorporated Areas).
	Approximately 0.5 miles upstream of Blonnie Ross Road (State Road 1459).	None	+295	
Rocky Branch	At the confluence with Lanes Creek	None	+346	Anson County (Unincorporated Areas).
	Approximately 1,440 feet upstream of the confluence with Lanes Creek.	None	+357	
Rocky River	At the confluence with Pee Dee River	None	+220	Anson County (Unincorporated Areas).
	At the Anson/Union County boundary	None	+302	
Tributary 13	At the confluence with Rocky River	None	+250	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Rocky River.	None	+277	
Tributary 2	At the confluence with Rocky River	None	+235	Anson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Rocky River.	None	+237	
Savannah Branch	At the North Carolina/South Carolina State boundary	None	+331	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the North Carolina/South Carolina State boundary.	None	+336	
Savannah Creek	At the confluence with Pee Dee River	None	+195	Anson County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Mills Peach Orchard Road (State Road 1742).	None	+293	
Tributary 1	At the confluence with Savannah Creek	None	+208	Anson County (Unincorporated Areas).
	Approximately 1,690 feet upstream of the confluence of Savannah Creek Tributary 1A.	None	+217	
Tributary 1A	At the confluence with Savannah Creek Tributary 1	None	+211	Anson County (Unincorporated Areas).
	Approximately 1,680 feet upstream of the confluence with Savannah Creek Tributary 1.	None	+219	
Tributary 2	At the confluence with Savannah Creek	None	+222	Anson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Savannah Creek.	None	+231	
Shaw Creek	At the confluence with Deadfall Creek	None	+281	Anson County (Unincorporated Areas).
	Approximately 500 feet downstream of Union Church Road (State Road 1003).	None	+324	
Smith Creek	At the confluence with Pee Dee River	None	+189	Anson County (Unincorporated Areas).
	Approximately 2.4 miles upstream of the confluence of North Fork Smith Creek.	None	+264	
South Fork Jones Creek	At the confluence with Jones Creek and North Fork Jones Creek.	None	+230	Anson County (Unincorporated Areas).
	Approximately 1,350 feet upstream of NC 742 Highway South.	None	+318	
Swans Branch	At the confluence with Brown Creek	None	+255	Anson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence of Swans Branch Tributary 1.	None	+293	
Tributary 1	At the confluence with Swans Branch	None	+267	Anson County (Unincorporated Areas).
	Approximately 550 feet upstream of US 74 Highway West.	None	+280	
Thompson Creek	At the downstream North Carolina/South Carolina State boundary.	None	+244	Anson County (Unincorporated Areas).
	At the upstream North Carolina/South Carolina State boundary.	None	+260	
Turkey Top Creek	At the confluence with Pee Dee River	None	+205	Anson County (Unincorporated Areas).
	Approximately 1,170 feet downstream of Stanback Ferry Road (State Road 1703).	None	+220	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 1	At the confluence with Turkey Top Creek	None	+205	Anson County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Stanback Ferry Road (State Road 1703).	None	+219	
Tributary 2	At the confluence with Turkey Top Creek	None	+208	Anson County (Unincorporated Areas).
	Approximately 1,140 feet upstream of Stanback Ferry Road (State Road 1703).	None	+224	
Whortenberry Creek	At the confluence with Pee Dee River	None	+110	Anson County (Unincorporated Areas).
	Approximately 1,270 feet upstream of Sneedsboro Road (State Road 1829).	None	+139	
Wide Mouth Branch	Approximately 0.5 mile upstream of the confluence with Lanes Creek.	+394	+395	Anson County (Unincorporated Areas).
	At the Anson/Union County boundary	None	+406	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Ansonville

Maps are available for inspection at the Ansonville Town Hall, 8778 US Highway 52, Ansonville, North Carolina.
Send comments to The Honorable Joe Estridge, Mayor of the Town of Ansonville, P.O. Box 437, Ansonville, North Carolina 28007.

Town of Morven

Maps are available for inspection at the Morven Town Hall, 301 East Main Street, Morven, North Carolina.
Send comments to The Honorable Theodore Carr, Mayor of the Town of Morven, P.O. Box 295, Morven, North Carolina 28119.

Town of Peachland

Maps are available for inspection at the Peachland Town Hall, 25 West Passaic Street, Peachland, North Carolina.
Send comments to The Honorable Steven Garris, Mayor of the Town of Peachland, P.O. Box 120, Peachland, North Carolina 28133.

Town of Polkton

Maps are available for inspection at the Polkton Town Hall, 35 West Polk Street, Polkton, North Carolina.
Send comments to The Honorable Minne Staton, Mayor of the Town of Polkton, P.O. Box 234, Polkton, North Carolina 28135.

Town of Wadesboro

Maps are available for inspection at the Wadesboro Town Hall, 124–126 East Wade Street, Wadesboro, North Carolina.
Send comments to The Honorable Don McRorie, Mayor of the Town of Wadesboro, P.O. Box 697, Wadesboro, North Carolina 28170.

Anson County (Unincorporated Areas)

Maps are available for inspection at the Anson County Inspections and Permitting Department, 107 East Ashe Street, Wadesboro, North Carolina.
Send comments to Mr. Andy Lucas, Anson County Manager, 114 North Greene Street, Room 30, Wadesboro, North Carolina 28170.

Rowan County, North Carolina, and Incorporated Areas

Back Creek	At the confluence with North Second Creek	None	+672	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+760	
Tributary 1	At the confluence with Back Creek	None	+759	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+763	
Beaverdam Creek (East)	At the confluence with North Second Creek	None	+655	Rowan County (Unincorporated Areas).
	Approximately 0.4 mile upstream of NC Highway 801	None	+718	
(West)	At the confluence with Withrow Creek	None	+684	Rowan County (Unincorporated Areas), Town of Cleveland.
	Approximately 2.1 miles upstream of Umberger Road	None	+851	
Bell Branch	At the confluence with South Yadkin River	None	+697	Rowan County (Unincorporated Areas).
	Approximately 1,500 feet upstream of the confluence with South Yadkin River.	None	+697	
Bost Branch	At the confluence with Second Creek	None	+669	Town of Rockwell.
	Approximately 1,655 feet upstream of the confluence with Second Creek.	None	+676	
Bostian Heights Branch	Approximately 150 feet upstream of Scercy Road (State Road 1346).	+741	+742	Rowan County (Unincorporated Areas).
	Approximately 225 feet upstream of Daugherty Road (State Road 1243).	+756	+763	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Cedar Creek	At the confluence with Yadkin River	None	+578	Rowan County (Unincorporated Areas).
	Approximately 0.4 mile upstream of River Road (State Road 2152).	None	+578	
Church Creek	At the confluence with Crane Creek/High Rock Lake	None	+626	Rowan County (Unincorporated Areas), Town of Granite Quarry.
	Approximately 1.0 mile upstream of U.S. Highway 52	None	+759	
Tributary 1	At the confluence with Church Creek	None	+660	Rowan County (Unincorporated Areas), Town of Granite Quarry.
	Approximately 380 feet downstream of U.S. Highway 52.	None	+770	
Tributary 1A	At the confluence with Church Creek Tributary 1	None	+660	Rowan County (Unincorporated Areas), Town of Granite Quarry.
	Approximately 0.5 mile upstream of Fish Pond Road	None	+752	
Tributary 2	At the confluence with Church Creek	None	+733	Unincorporated Areas of Rowan County, Town of Granite Quarry.
	Approximately 100 feet downstream of Percy Lane	None	+757	
Coddle Creek	At the Iredell/Rowan/Cabarrus County boundary	None	+674	Rowan County (Unincorporated Areas).
	Approximately 40 feet upstream of the confluence of East Fork Creek.	None	+674	
Cold Water Creek	At Moose Road (State Road 1308)	None	+650	Rowan County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Moose Road (State Road 1308).	None	+653	
Tributary 1	At Interstate 85	None	+661	Rowan County (Unincorporated Areas).
	Approximately 520 feet upstream of Old Beatty Ford Road (State Road 1211).	None	+663	
Crane Creek	Approximately 0.5 mile downstream of the confluence of Town Creek.	None	+626	Rowan County (Unincorporated Areas), City of Salisbury, Town of East Spencer, Town of Granite Quarry.
	At the downstream side of U.S. Highway 52	+700	+701	
Tributary 1	At the confluence with Crane Creek	None	+626	Rowan County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Lake Fork Road (State Road 2170).	None	+651	
Tributary 2	Approximately 2,400 feet upstream of the confluence with Crane Creek.	None	+735	Town of Faith.
	Approximately 220 feet upstream of Cemetery Drive	None	+862	
Crane Creek/High Rock Lake	Entire shoreline within Rowan County	None	+626	Rowan County (Unincorporated Areas).
	Entire shoreline within Rowan County	None	+626	
Draft Branch	At the confluence with Grants Creek	+671	+672	City of Salisbury.
	Approximately 1.0 mile upstream of the confluence with Grants Creek.	+671	+672	
Dutch Buffalo Creek Tributary 1.	Approximately 20 feet downstream of the Cabarrus/Rowan County boundary.	None	+688	Rowan County (Unincorporated Areas).
	At the Rowan/Cabarrus County boundary	None	+688	
East Fork Creek	At the confluence with Coddle Creek	None	+674	Rowan County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Unity Church Road (State Road 1355).	None	+802	
Fisher Branch	At the confluence with Second Creek	None	+670	Rowan County (Unincorporated Areas), Town of Rockwell.
	Approximately 60 feet downstream of Fisher Road (State Road 2320).	None	+740	
Flat Creek	At the confluence with Yadkin River	None	+574	Rowan County (Unincorporated Areas).
	Approximately 1.3 miles upstream of River Road (State Road 2152).	None	+589	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Flat Rock Branch	At the confluence with Grants Creek	+761	+760	Rowan County (Unincorporated Areas), Town of Landis.
	Approximately 0.9 mile upstream of the confluence with Grants Creek.	None	+787	
Fourth Creek	At the confluence with South Yadkin River	None	+656	Rowan County (Unincorporated Areas).
	Approximately 500 feet upstream of the Iredell/Rowan County boundary.	None	+730	
Tributary 4	At the confluence with Fourth Creek	None	+708	Rowan County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Fourth Creek.	None	+711	
Tributary 5	At the confluence with Fourth Creek	None	+709	Rowan County (Unincorporated Areas).
	Approximately 360 feet upstream of Baker Mill Road (State Road 1957).	None	+713	
Grants Creek	At the confluence with Yadkin River	None	+640	Rowan County (Unincorporated Areas), City of Salisbury, Town of China Grove, Town of Landis, Town of Spencer.
	Approximately 1,190 feet upstream of North Meriah Street.	+827	+835	
Tributary 2	Approximately 1,000 feet upstream of the confluence with Grants Creek.	+674	+675	City of Salisbury.
	Approximately 870 feet downstream of Par Drive	None	+688	
Tributary 3	Approximately 1,750 feet upstream of the confluence with Grants Creek.	+677	+678	City of Salisbury.
	Approximately 0.4 mile upstream of the confluence with Grants Creek.	None	+680	
Tributary 4	Approximately 2,000 feet upstream of the confluence with Grants Creek.	+680	+681	City of Salisbury, Rowan County (Unincorporated Areas).
	Approximately 1,700 feet downstream of National Guard Road.	None	+689	
Henderson Branch	At the confluence with Grants Creek	+644	+647	City of Salisbury.
	Approximately 1,500 feet upstream of the confluence with Grants Creek.	+646	+647	
Innis Street Creek	At the confluence with Town Creek	+696	+697	City of Salisbury.
	Just downstream of North Arlington Street	+696	+697	
Irish Buffalo Creek	Approximately 0.5 mile upstream of Cannon Farm Road.	+732	+737	Rowan County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Echo Hollow Drive.	+857	+865	
Tributary 4	Approximately 0.6 mile upstream of the confluence with Irish Buffalo Creek.	None	+744	Rowan County (Unincorporated Areas), Town of Landis.
	Approximately 0.9 mile upstream of the confluence with Irish Buffalo Creek.	None	+760	
Tributary 5	Approximately 0.6 mile upstream of the confluence with Irish Buffalo Creek.	None	+747	Town of Landis.
	Approximately 0.8 mile upstream of the confluence with Irish Buffalo Creek.	None	+752	
Jump and Run Branch	At the confluence with Grants Creek	+655	+658	City of Salisbury.
	Approximately 380 feet upstream of Willow Road	None	+763	
Kerr Creek	At the confluence with Sloans Creek	None	+680	Rowan County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Corriher Springs Road (State Road 1554).	None	+845	
Klutz Branch	Approximately 75 feet upstream of the confluence with Legion Park Branch.	+760	+759	Town of Granite Quarry.
	Approximately 970 feet upstream of Peeler Street	+774	+776	
Lake Wright Branch	At the confluence with Grants Creek	+717	+715	Town of China Grove, Rowan County (Unincorporated Areas).
	Approximately 1,600 feet upstream of the confluence with Grants Creek.	+717	+716	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
Legion Park Branch	Approximately 150 feet upstream of the confluence with Trexler Creek.	+707	+706	Rowan County (Unincorporated Areas), Town of Granite Quarry.
	Approximately 150 feet upstream of South Oak Street	None	+796	
Little Creek	At the confluence with Grants Creek	+693	+691	Rowan County (Unincorporated Areas).
	Approximately 2,400 feet upstream of the confluence with Grants Creek.	+693	+692	
South	At the confluence with Third Creek	None	+720	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+748	
Lomax Creek	At the confluence with Grants Creek	+637	+642	Town of Spencer.
	Approximately 750 feet upstream of the confluence with Grants Creek.	+641	+642	
Mahaley Branch	At the confluence with Grants Creek	+648	+649	City of Salisbury.
	Approximately 1,650 feet upstream of the confluence with Grants Creek.	+648	+649	
Mill Creek	Approximately 250 feet downstream of the Rowan/Cabarrus County boundary.	None	+714	Rowan County (Unincorporated Areas).
	Approximately 400 feet upstream of Smith Road (State Road 1361).	None	+799	
North Second Creek	At the confluence with South Yadkin River	None	+651	Rowan County (Unincorporated Areas).
	At the confluence of Back Creek	None	+672	
Park Avenue Branch	At the confluence with Town Creek	+691	+690	City of Salisbury.
	Approximately 700 feet upstream of the confluence with Town Creek.	+691	+690	
Park Creek	At the Rowan/Cabarrus County boundary	None	+679	Rowan County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Smith Road (State Road 1360).	None	+810	
Peeler Branch	At the confluence with Second Creek Tributary 1	None	+656	Rowan County (Unincorporated Areas), Town of Rockwell.
	Approximately 500 feet upstream of Sides Road	None	+711	
Petrea Branch	At the confluence with Grants Creek	+717	+714	Town of China Grove.
	Approximately 180 feet upstream of Spring Branch Road.	+766	+765	
Riles Creek	At the confluence with Yadkin River	None	+572	Rowan County (Unincorporated Areas).
	Approximately 150 feet upstream of the Rowan/Stanly County boundary.	None	+572	
Rocky Branch	At the confluence with Grants Creek	+641	+642	Town of Spencer.
	Approximately 1,200 feet upstream of the confluence with Grants Creek.	+641	+642	
Tributary 1	At the confluence with Rocky Branch	+649	+650	Rowan County (Unincorporated Areas), City of Salisbury, Town of Spencer.
	Approximately 0.5 mile upstream of Pickett Avenue	None	+708	
Rowan Avenue Park Stream	At the confluence with Grants Creek	+629	+642	Rowan County (Unincorporated Areas), Town of Spencer.
	Approximately 150 feet upstream of Charles Street	+641	+642	
Second Creek	At the Rowan/Davidson County boundary	None	+625	Town of Rockwell, Rowan County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Second Creek Tributary 3.	None	+810	
Tributary 1	At the confluence with Second Creek	None	+640	Rowan County (Unincorporated Areas).
	Approximately 190 feet downstream of Lower Palmer Road.	None	+657	
Tributary 2	At the confluence with Second Creek	None	+663	Rowan County (Unincorporated Areas), Town of Rockwell.
	Approximately 450 feet upstream of Miller Street	None	+735	
Tributary 3	At the confluence with Second Creek	None	+747	Rowan County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 200 feet upstream of Shuping Mill Road (State Road 2663).	None	+827	
Sills Creek	At the confluence with Back Creek	None	+680	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+812	
Tributary 1	At the confluence with Sills Creek	None	+702	Rowan County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Sills Creek.	None	+710	
Sixth Street Branch	At the confluence with Grants Creek	+641	+642	Town of Spencer.
	Approximately 700 feet upstream of the confluence with Grants Creek.	+641	+642	
Sloans Creek	At the confluence with Back Creek	None	+672	Rowan County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Brown Road (State Road 1211).	None	+844	
South Yadkin River	At the confluence with Yadkin River	None	+647	Rowan County (Unincorporated Areas), City of Salisbury.
	At the Iredell/Davie/Rowan County boundary	None	+697	
Third Creek	At the confluence with Fourth Creek	None	+670	Town of Cleveland, Rowan County (Unincorporated Areas).
	Just upstream of the Iredell/Rowan County boundary	None	+723	
Third Street Creek	At the confluence with Grants Creek	+636	+642	Town of Spencer.
	Approximately 1,260 feet upstream of the confluence with Grants Creek.	+641	+642	
Thomas Street Creek	At the confluence with Town Creek	+704	+703	City of Salisbury.
	At South Boundary Street	+704	+703	
Town Creek	At the confluence with Crane Creek/High Rock Lake	+626	+627	Rowan County (Unincorporated Areas), City of Salisbury, Town of East Spencer.
	Approximately 350 feet upstream of Klumac Road	+715	+714	
Tributary 1	At the confluence with Town Creek	+646	+645	Rowan County (Unincorporated Areas), Town of East Spencer.
	Approximately 110 feet upstream of Tanglewood Drive.	None	+714	
Trexler Creek	Approximately 960 feet upstream of the confluence with Crane Creek.	+709	+708	Town of Granite Quarry.
	Approximately 0.2 mile upstream of U.S. Highway 52	+826	+831	
Unnamed Stream 1	At the confluence with Fourth Creek	None	+678	Rowan County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Mount Vernon Road (State Road 1986).	None	+688	
Unnamed Stream 2	At the confluence with Fourth Creek	None	+720	Rowan County (Unincorporated Areas).
	Approximately 0.5 mile downstream of Rary Road (State Road 1978).	None	+723	
Vance Avenue Branch	At the confluence with Town Creek	+709	+708	City of Salisbury.
	Approximately 460 feet upstream of the confluence with Town Creek.	+709	+708	
Wildlife Tributary	At the confluence with Draft Branch	+671	+672	City of Salisbury.
	Approximately 0.5 mile upstream of the confluence with Draft Branch.	+671	+672	
Withrow Creek	At the confluence with North Second Creek	None	+665	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+743	
Woodleaf Branch (East)	At the confluence with Grants Creek	+671	+670	City of Salisbury.
	Approximately 100 feet upstream of 4th Street	None	+707	
(West)	At the confluence with Withrow Creek	None	+730	Rowan County (Unincorporated Areas).
	At the Iredell/Rowan County boundary	None	+767	
Yadkin River	Approximately 500 feet downstream of the Rowan/Davidson/Stanly/Montgomery County boundary.	None	+566	Rowan County (Unincorporated Areas), Town of Spencer.
	At the confluence of South Yadkin River	None	+647	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground.		Communities affected
		Effective	Modified	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Salisbury

Maps are available for inspection at the Salisbury City Hall, 217 South Main Street, Salisbury, North Carolina.
Send comments to Mr. David Treme, Salisbury City Manager, P.O. Box 479, Salisbury, North Carolina 28145.

Town of China Grove

Maps are available for inspection at the China Grove Town Hall, 205 Swink Street, China Grove, North Carolina.
Send comments to The Honorable Don Bringle, Mayor of the Town of China Grove, 205 Swink Street, China Grove, North Carolina 28023.

Town of Cleveland

Maps are available for inspection at the Cleveland Town Hall, 302 East Main Street, Cleveland, North Carolina.
Send comments to The Honorable James Brown, Mayor of the Town of Cleveland, P.O. Box 429, Cleveland, North Carolina 27013.

Town of East Spencer

Maps are available for inspection at the East Spencer Town Hall, 105 South Long Street, East Spencer, North Carolina.
Send comments to The Honorable Erma Jefferies, Mayor of the Town of East Spencer, P.O. Box 339, East Spencer, North Carolina 28039.

Town of Faith

Maps are available for inspection at the Faith Town Hall, 100 North Main Street, Faith, North Carolina.
Send comments to The Honorable William M. Johnson, Jr., Mayor of the Town of Faith, P.O. Box 37, Faith, North Carolina 28041.

Town of Granite Quarry

Maps are available for inspection at the Granite Quarry Town Hall, 143 North Salisbury Avenue, Granite Quarry, North Carolina.
Send comments to The Honorable Mary Ponds, Mayor of the Town of Granite Quarry, P.O. Box 351, Granite Quarry, North Carolina 28072.

Town of Landis

Maps are available for inspection at the Landis Town Hall, 312 South Main Street, Landis, North Carolina.
Send comments to The Honorable Mike Mahaley, Mayor of the Town of Landis, P.O. Box 8165, Landis, North Carolina 28088.

Town of Rockwell

Maps are available for inspection at the Rockwell Town Hall, 202 East Main Street, Rockwell, North Carolina.
Send comments to The Honorable Beauford Taylor, Mayor of the Town of Rockwell, P.O. Box 506, Rockwell, North Carolina 23138.

Town of Spencer

Maps are available for inspection at the Spencer Town Hall, 600 South Salisbury Avenue, Spencer, North Carolina.
Send comments to The Honorable Alecia Bean, Mayor of the Town of Spencer, P.O. Box 45, Spencer, North Carolina 28159.

Rowan County (Unincorporated Areas)

Maps are available for inspection at the Rowan County Planning Department, 130 West Innes Street, Salisbury, North Carolina.
Send comments to Mr. William Cowan, Rowan County Manager, 130 West Innes Street, Salisbury, North Carolina 28144.

St. Croix County, Wisconsin, and Incorporated Areas

Kinnickinnic River	Approximately 1,500 feet downsteam of County Road MM.	None	+897	St. Croix County (Unincorporated Areas).
	Approximately 1,200 feet upstream of North Main Street.	+884	+896	
Willow River	Approximately 2,500 feet upstream of the confluence with Paperjack Creek.	+943	+983	St. Croix County (Unincorporated Areas).
	Approximately 1.4 miles downstream of 160th Street	+942	+984	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

St. Croix County (Unincorporated Areas)

Maps are available for inspection at St. Croix County Office Building, 1101 Carmichael Road, Hudson, WI 54016.
Send comments to Clarence W. Malick, Chairperson, St. Croix County Board of Commissioners, St. Croix County Office Building, 1101 Carmichael Road, Hudson, WI 54016.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 26, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–13183 Filed 7–6–07; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register

Vol. 72, No. 130

Monday, July 9, 2007

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

DEPARTMENT OF AGRICULTURE

Forest Service

Humboldt-Toiyabe National Forest; Mountain City Ranger District, Big Springs Exploration Drilling Project

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: Gateway Gold Corporation has submitted a Plan of Operations to explore for, locate, and delineate precious metals on National Forest System lands within the Big Springs Mine area. In response to that proposed plan of operations, the Mountain City Ranger District of the Humboldt-Toiyabe National Forest will prepare an Environmental Impact Statement for the Big Springs Exploration Drilling Project. This proposal is for the drilling on up to 1000 drill sites over a five year period on National Forest System (NFS) lands. The Project Area is located in Elko County, Nevada. Analysis for this project was initiated in 2005 with the preparation of an Environmental Assessment. In late October 2006, two lakes that had formed in existing mine pits (pit lakes) and the surrounding aquifer began draining. The pit lakes are now dry and the aquifer level has dropped about 150 feet below previous levels measured prior to October 2006. It is unknown where the aquifer is draining to or what the impacts, if any, would be to water quality and surface and groundwater resources. Based upon these changed environmental conditions of the hydrology at the site, the Forest Service has decided to document the analysis in an Environmental Impact Statement.

DATES: To be most effective, comments concerning the scope of the proposed analysis should be received within 30 days from the date that this Notice of Intent is published in the **Federal Register**. The draft EIS is expected to be completed in October 2007, and the final EIS is expected to be completed in March 2008.

ADDRESSES: Send written scoping comments to: District Ranger, Mountain City Ranger District, 2035 Last Chance Road, Elko, NV 89801.

Electronic scoping comments may be sent via e-mail to: *comments-intermtn-humboldt-toiyabe-mtncity@fs.fed.us.* Please put ''Big Springs EIS'' in the subject line of e-mail transmissions.

FOR FURTHER INFORMATION CONTACT: Will Wilson, Project Coordinator, Humboldt-Toiyabe National Forest, 2035 Last Chance Road, Elko, NV 89801, Telephone: 775–778–6132.

SUPPLEMENTARY INFORMATION:

Purpose of and Need for Action

The purpose and need for this proposed action is to authorize occupancy and use to Gateway Gold to explore for, locate, and delineate precious metals on National Forest System lands within the Big Springs Mine area. The statutory right of Gateway Gold to explore for and develop mineral resources on federally administered lands is recognized in the General Mining Law of 1872, and is consistent with the Humboldt National Forest Land and Resource Management Plan of 1986.

Proposed Action

The operator proposes construction of up to 1000 drill sites and associated temporary roads over a 5-year period. Approximately 200 drill sites would be constructed each year, with the drilling of up to three drill holes per drill site. Each drill site would occupy approximately 0.2 acres. Up to thirty miles of new exploration road (90 acres) would be constructed in total over five years. Each year, the operator would keep approximately 5 to 7 miles of the newly constructed road (15 to 21 acres) open to provide primary access to exploration targets within the area. In addition, the operator would annually construct 3 to 5 additional miles (9 to 15 acres) of drill site access road that would be slated for reclamation each year. Overland travel would be 2 miles in length; at least one-mile of overland access would be slated for reclamation at the end of each drilling season. Total acreage disturbed over five years would not exceed 220 acres. Seasonal reclamation would be completed each year, along with concurrent reclamation to stabilize and reduce the overall amount of disturbance. Final reclamation would require that all disturbances by the operator be recontoured to natural slope, and seeded with native weed-free seed species.

Other Possible Alternatives

Currently, two alternatives have been identified to be analyzed in detail with further analysis potentially generating other alternatives:

No Action Alternative: The plan of operations submitted by Gateway Gold would not be approved. Conditions at the project area would remain as they are now.

Proposed Action with Additional Mitigation and Monitoring: This alternative is identical to the Proposed Action Alternative with the exception of added mitigation and monitoring measures for protection of wildlife and water quality. These additional measures were identified during scoping, issue development, and identification of potential impacts during the initial analysis. These measures are in addition to the environmental protection measures already included in the Proposed Action Alternative and include Best Management Practices, Forest Service standard operating procedures for mineral exploration projects, and mitigation measures tailored specifically for this Project.

Responsible Official: The responsible official is: Forest Supervisor, Humboldt-Toiyabe National Forest, 1200 Franklin Way, Sparks, NV 89431.

Nature of Decision To Be Made: Based on the environmental analysis presented in the EIS, the Forest Supervisor will decide (1) Whether or not to approve actions as proposed or modified, or as described in an alternative; (2) what mitigation measures are needed; and (3) what monitoring is required.

Scoping Process

Scoping of the Proposed Action commenced in 2005 and is continuing at this time. Initial public input was invited through the mailing of a scoping letter on January 13, 2005. Letters initiating consultation were also sent to American Indian tribes. The Forest Service will again mail information to interested and/or affected parties. The project has been listed in the Humboldt-

Toiyabe National Forest Schedule of Proposed Actions since April of 2005. In 2005 the Forest Service received scoping responses, including letters from the Nevada Division of Environmental Protection, Nevada Historic Preservation Office, Nevada Department of Wildlife and Western Watersheds Projects. Comments were also received from Elko County Commissioners and Elko County Roads Department. Relevant responses were used to synthesize and develop issues. There are currently no scoping meetings planned for the EIS.

Preliminary Issues

The following are the significant issues identified through the analysis conducted to date. We are asking you to help us further refine the existing issues, as well as identify other issues or concerns relevant to the Proposed Action.

Water Quality—Drilling and associated activities could result in (1) Cross contamination of aquifers by providing conduits; (2) impacts to existing engineered mine features (embankments); (3) interactions and effects to water quality; and (4) increased sedimentation and erosion from ground disturbing activities.

Water Quantity and Flows—Drilling through geologic structures can intercept aquifers and alter groundwater flow.

Wildlife—Exploration activities have the potential to disrupt seasonal use by a variety of wildlife species (mule deer, sage grouse, various raptors and other species) in and around the project area, and to affect quality and quantity of habitat for these species.

Special Status Species (Wildlife)—Proposed surface disturbance and human activity associated with exploration activities may cause short- and long-term adverse effects to habitats used by Northern goshawk, sage-grouse, neo-tropical migratory birds, pygmy rabbit, and several species of bats with potential to occur in the Project area.

Special Status Species (Aquatics and Fisheries)—Increased sediment from disturbance by the proposed exploration could adversely affect threatened Lahontan cutthroat trout and Columbia spotted frog (candidate species), which inhabit the North Fork Humboldt River.

Recreation—Exploration activities and effects including noise, increased traffic on the access road, and road maintenance could affect recreation opportunities and the quality of the recreational experience.

Livestock—Surface disturbance would alter the vegetation, which has the potential to change the carrying capacity within the pasture in both the short-term and long-term.

Vegetation—Surface disturbance may (1) Affect specific plant communities, such as aspen, riparian vegetation and sub-alpine fir; (2) promote the spread and establishment of noxious weeds, such as hoary cress and Canada thistle, and other non-native invasive species, and (3) affect sensitive plants).

Other issues that will also be addressed in the analysis include the potential impacts this project may have on the McAffee Peak Inventoried Roadless Area which is partly within the project area. As proposed a small amount of exploration activities would be within this roadless area. Approximately 12 drill sites and less than 1,000 feet to the drill road are located slightly within or on the northern boundary of the McAffee Peak Inventoried Roadless Area. The portion of the roadless area impacted is a small ''finger'' that was created through a mapping error in 1998/1999 when the latest inventory for roadless areas was adopted. This is the inventory that was made part of the 2001 Roadless Area Conservation Rule. This finger in question has reclaimed mining and exploration roads within its boundaries and lacks roadless characteristics. This type of activity fits within an exemption category for allowing road construction within the IRA tied to outstanding or existing valid rights. Because no portion of the project area within or adjacent to the McAffee IRA exhibits roadless characteristics, effects of the Proposed Action upon the McAffee IRA have not been identified as a significant issue.

Comment Requested

This NOI continues the scoping process which will guide the development of the Environmental Impact Statement. The public is invited to submit scoping comments, stating concerns and issues relevant to the proposed project. These comments will be used to help establish the scope of study and analysis for the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft EIS will be prepared for comment. The comment period on the draft EIS will be 45 days from the date that the Environmental Protection Agency (EPA) publishes the notice of availability (NOA) in the **Federal Register.**

The Forest Service believes that, 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 draft EISs 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 have been 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 comments and objections are made available to the Forest Service at a time when it can consider them and respond to them in a meaningful manner within the final EIS.

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

Comments received, including the names and addresses of those who comment, will be considered part of the public record of this proposal and will be available for public inspection

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

Dated: June 27, 2007.

Edward C. Monnig,

Forest Supervisor.

[FR Doc. 07–3307 Filed 7–6–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC)

will meet in Willows, California. Agenda items covered include: (1) Introductions, (2) Approve Minutes, (3) Public Comment, (4) Project Proposals/ Possible Action, (5) Status of Funding, (6) Reports on Completed Projects, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on July 23, 2007, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals who wish to speak or propose agenda items send their names and proposals to Eduardo Olmedo, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–1815; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee will file written statements with the Committee staff before or after the meeting. Public input sessions are provided and individuals who made written requests by July 19, 2007 have the opportunity to address the committee at those sessions.

Dated: June 27, 2007.

Eduardo Olmedo,

Designated Federal Official.

[FR Doc. 07–3308 Filed 7–6–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Multiple Purpose Dam No. 3 of the Muddy Fork of the Illinois River Watershed, Washington County, Arkansas

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Multiple Purpose Dam No. 3 of the Muddy Fork of the Illinois River Watershed, Washington County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Kalven L. Trice, State Conservationist, Natural Resources Conservation Service, Rm. 3416 Federal Building, 700 West Capital Avenue, Little Rock, AR 72201–3225, Telephone (501) 301–3100.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kalven L. Trice, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Multiple Purpose Dam (MPD) No. 3 to maintain the present level of flood control, fish habitat and recreational benefits and comply with the current dam safety and performance standards. Local Sponsoring Organizations for the rehabilitation of MPD No. 3 are the Arkansas Game and Fish Commission and Washington County Conservation District.

Rehabilitation of MPD No. 3 will require the dam to be modified to meet current performance and safety standards for a high hazard dam. The modification will consist of:

- The existing principal spillway inlet and conduit are adequate. The principal spillway crest will be maintained at Elevation 1169.3, the current permanent pool elevation.
- Increasing spillway capacity by the addition of a 100-foot wide RCC structural spillway over the top of dam to supplement the existing 110-foot wide vegetated auxiliary spillway, with the crest elevation of both spillways set at Elevation 1175.3 feet, the current elevation for the vegetated spillway.
- Raising the top of dam and dike (located northwest of the pool area) from Elevation 1179.0 feet to Elevation 1181.9 feet to safely pass the 6-hour to 72-hour duration Probable Maximum Precipitation (PMP) storms.

All disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (Section 313, Pub. L. 106–472). Total project cost is estimated to be $1,429,900, of which $1,019,600 will be paid from the Small Watershed Rehabilitation funds and $410,300 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kalven L. Trice, State Conservationist.

No administrative action on implementation of the proposal will be taken until August 8, 2007.

Dated: June 28, 2007.

Kalven L. Trice,

State Conservationist.

[FR Doc. E7–13226 Filed 7–6–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's National Handbook of Conservation Practices

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices for public review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include: ''Agrichemical Handling Facility (Code 309)'' (This is a new standard), and ''Fence (Code 382)'' (This is an existing standard that has been updated). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their respective electronic Field Office Technical Guides (eFOTG). These practices may be used in conservation systems that treat highly erodible land or on land determined to be a wetland.

EFFECTIVE DATES: Comments will be received for a 30-day period commencing with this date of publication. Final versions of these new or revised conservation practice standards will be adopted after the close

of the 30-day period, after consideration of all comments.

ADDRESSES: Comments should be submitted by one of the following methods:

1. In writing to: National Agricultural Engineer, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or
2. Electronically by e-mail to: *Daniel.meyer@wdc.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of these standards are attached to this Notice or can be downloaded or printed from the following Web site: *ftp://ftp-fc.sc.egov.usda.gov/NHQ/practice-standards/federal-register/.* Single copies of paper versions of these standards are also available from NRCS in Washington, DC. Submit individual inquiries in writing to Daniel Meyer, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890, or electronically to *Daniel.meyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law.

For the next 30 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments and a final determination of changes will be made.

Signed in Washington, DC, on June 7, 2007.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service.

[FR Doc. E7–13251 Filed 7–6–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Gear Identification Requirements.

Form Number(s): None.

OMB Approval Number: 0648–0353.

Type of Request: Regular submission.

Burden Hours: 3,138.

Number of Respondents: 1,692.

Average Hours per Response: Fifteen minutes.

Needs and Uses: Participants in the groundfish fisheries in the Exclusive Economic Zone off the coast of Alaska are required to mark identification information on marker buoys for hook-and-line, longline pot, and pot-and-line gear. The information is needed for fishery enforcement purposes. Cooperating fishermen also use the gear identification to report placement or occurrence of gear in unauthorized areas. Fishermen marking their gear correctly ultimately benefit, as unauthorized and illegal fishing is deterred and more burdensome regulations are avoided.

Affected Public: Business or other for-profit.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Fax number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 3, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13216 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

Title: Interim Capital Construction Fund Agreement and Certificate Family of Forms.

Form Number(s): 88–14.

OMB Approval Number: 0648–0090.

Type of Request: Regular submission.

Burden Hours: 2,250.

Number of Respondents: 1,000.

Average Hours per Response: Application and agreement document, each 30 minutes; Schedules A and B, 50 minutes, certificate of completion, 1 hour.

Needs and Uses: The Capital Construction Fund Program allows commercial fishermen to enter into agreements with the Secretary of Commerce to establish accounts to fund the construction, reconstruction, or replacement of a fishing vessel. Monies placed into the accounts receive tax deferral benefits. Persons must apply for the program to establish their eligibility.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: July 3, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13217 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Information and Communication Technology Survey

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: To ensure consideration written comments must be submitted on or before September 7, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Valerie Strang, U.S. Census Bureau, HQ–6K171, Washington, DC 20233–6400; (301) 763–3317.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to conduct the 2007 through 2009 Information and Communication Technology Survey (ICTS). The annual survey collects data on two categories of non-capitalized expenses (purchases; and operating leases and rental payments) for four types of information and communication technology equipment and software (computers and peripheral equipment; ICT equipment, excluding computers and peripherals; electromedical and electrotherapeutic apparatus; and computer software, including payroll associated with software development). The survey also collects capital expenditures data on the four types of ICT equipment and software cited above. Only non-farm, non-governmental companies, organizations, and associations operating in the United States are included in this survey.

The Bureau of Economic Analysis (BEA), Federal Reserve Board, Bureau of Labor Statistics and industry analysts use these data to evaluate productivity and economic growth prospects. In addition, the ICTS provides improved source data significant to BEA's estimate of the investment component of Gross Domestic Product, capital stock estimates, and capital flow tables.

The only change from the previous ICTS is the incorporation of the 2007 North American Industry Classification System (NAICS) into the 2009 ICTS. Through the 2008 ICTS, data will be collected based on the 2002 NAICS. Beginning with the 2009 ICTS, we will collect and publish data based on the 2007 NAICS. Industries will comprise 3-digit and selected 4-digit 2007 NAICS codes.

II. Method of Collection

The Census Bureau will primarily use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 30 days of the initial mailing. They can respond via a secure facsimile machine by using our toll-free number. Letters and/or telephone calls encouraging participation will be directed to companies that have not responded by the designated time.

Beginning with the 2006 ICTS, we introduced an encrypted Internet Data Collection System (Census Taker) for optional use as a substitute for the paper form mailed to all companies. Census Taker is an electronic version of the paper data collection instrument. It provides improved quality with automatic data checks and is context-sensitive to assist the data provider in identifying potential reporting problems before submission, thus reducing the need for follow-up. Census Taker is completed via the Internet eliminating the need for downloading software and increasing the integrity and confidentiality of these data.

Employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Companies operating in only one industry will receive an ICT–1(S) form. Companies operating in more than one, but less than nine industries will receive an ICT–1(M) form. And, companies that operate in nine or more industries will receive an ICT–1(L) form.

III. Data

OMB Number: 0607–0909.

Form Numbers: ICT–1 (S), ICT–1 (M), ICT–1 (L).

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, not for-profit institutions.

Estimated Number of Respondents: 46,000.

Estimated Time per Response: The average for all respondents is 1.74 hours with the range from less than 1 hour to 21 hours.

Estimated Total Annual Burden Hours: 80,040.

Estimated Total Annual Cost: $2 million.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Section 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13219 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Annual Capital Expenditures Survey

ACTION: Notice.

SUMMARY: The Department of Commerce, 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)).

DATES: To ensure consideration written comments must be submitted on or before September 7, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Valerie Strang, U.S. Census Bureau, Room HQ–6K171, Washington, DC 20233; (301) 763–3317.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to conduct the 2007 through 2009 Annual Capital Expenditures Survey (ACES). The annual survey collects data on fixed assets and depreciation, sales and receipts, capitalized computer software, and capital expenditures for new and used structures and equipment. The ACES is the sole source of detailed comprehensive statistics on actual business spending for non-farm, non-governmental companies, organizations, and associations operating in the United States. Both employer and non-employer companies are included in the survey.

The Bureau of Economic Analysis, the primary Federal user of our annual program statistics, uses these data in refining and evaluating annual estimates of investment in structures and equipment in the national income and product accounts, compiling annual input-output tables, and computing gross domestic product by industry. The Federal Reserve Board uses these data to improve estimates of investment indicators for monetary policy. The Bureau of Labor Statistics uses these data to improve estimates of capital stocks for productivity analysis. Industry analysts use these data for market analysis, economic forecasting, identifying business opportunities, product development, and business planning.

Changes from the previous ACES are the collection of capital expenditures by type of structure and type of equipment in the 2008 ACES, and the incorporation of the 2007 North American Industry Classification System (NAICS) in the 2009 ACES.

Capital expenditures by type of structure and type of equipment were last collected from employer companies in the 2003 ACES. These data, collected together once every five years, will again be collected in the 2008 ACES. These data are critical to evaluating the comprehensiveness of capital expenditures statistics in years detailed data on types of structures and equipment are not collected. The detailed structures data will provide a 5-year benchmark for estimates of new construction put in place. The detailed equipment data will provide a periodic measure of expenditures by type of equipment and assist in evaluating estimates of the private equipment and software components of nonresidential fixed investment.

Through the 2008 ACES, data will be based on the 2002 NAICS. Beginning with the 2009 ACES, we will collect and publish data based on the 2007 NAICS. Industries in the survey will comprise 3-digit and 4-digit 2007 NAICS codes.

II. Method of Collection

The Census Bureau will primarily use mail out/mail back survey forms to collect data. Companies will be asked to respond to the survey within 30 days of the initial mailing. Companies can respond via a secure facsimile machine by using our toll-free number. Letters and/or telephone calls encouraging participation will be directed to respondents that have not responded by the designated time.

Beginning with the 2006 ACES, we introduced an encrypted Internet Data Collection System (Census Taker) for optional use as a substitute for the paper form mailed to all companies. Census Taker is an electronic version of the paper data collection instrument. It provides improved quality with automatic data checks and is context-sensitive to assist the data provider in identifying potential reporting problems before submission, thus reducing the need for follow-up. Census Taker is completed via the internet eliminating the need for downloading software and increasing the integrity and confidentiality of these data.

The employer companies will be mailed one of three forms based on their diversity of operations and number of industries with payroll. Companies operating in only one industry will receive an ACE–1(S) form. Companies operating in more than one, but less than nine industries will receive an ACE–1(M) form. And, companies that operate in nine or more industries will receive an ACE–1(L). All non-employer companies will receive an ACE–2 form.

III. Data

OMB Number: 0607–0782.

Form Numbers: ACE–1(S), ACE–1(M), ACE–1(L) and ACE–2.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, self-employed individuals.

Estimated Number of Respondents: Approximately 61,000 (46,000 employer companies, and 15,000 non-employer businesses).

Estimated Time per Response: The average for all respondents is 2.18 hours. For employer companies completing form ACE–1, the range is 2 to 16 hours, averaging 2.56 hours. For companies completing form ACE–2, the range is less than 1 hour to 2 hours, averaging 1 hour.

Estimated Total Annual Burden Hours: 132,980.

Estimated Total Annual Cost: $3.3 million.

Respondents' Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 182, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 2, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13245 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket A(32c)-09–2007]

Foreign–Trade Zone 39–Dallas/Ft. Worth, TX, Subzone 39I, Turbomeca USA, Grand Prairie, TX

A request has been submitted to the Foreign–Trade Zones Board (the Board) by the Dallas/Ft. Worth International Airport Board, grantee of FTZ 39, requesting a determination pursuant to Sec. 400.32(c) of the Board's regulations on whether certain activity is within the scope of authority approved under Board Order 1363 establishing Subzone 39I at the Turbomeca USA (Turbomeca) facility in Grand Prairie, Texas.

From 2003 until 2006, the Turbomeca facility was the subject of a focused assessment by CBP. As a result of the assessment, certain foreign components used in the manufacturing process have been reclassified. The activity conducted at the facility, the manufacturing and repair of helicopter engines (duty–free), and the actual foreign components used in the manufacturing process, have not changed. However, the company is now using the following additional

classifications of components: tubes, pipes and hoses of plastic or rubber; flanges, threaded articles of metal; helical spring lock washers; cotters and cotter pins; helical springs; non–threaded copper washers; articles of copper, iron or steel with heads of copper; copper screws, nuts, bolts and washers; stoppers, caps and lids of base metals; electric motors; parts of electric sound or visual signaling apparatus; grounding of electrical circuits; relays; contactors; panel boards and distribution boards; circuit cards; other electric conductors; magnifying/sight glass; articles of aluminum; starter motors; electrical apparatus for switching or protecting electrical circuits; and, other programmable controllers (duty rate ranges from duty–free to 5.8%). All bearings will continue to be admitted to the subzone in privileged foreign status. The reclassification has resulted in an increase to the company's zone savings of approximately $150,000 per year.

Public comment on the request is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 8, 2007. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 23, 2007.

A copy of the request and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: June 29, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–13235 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Commercial Service Market Segmentation Study of Moderate U.S. Exporters Survey

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information, as required Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (2)(A)).

DATES: Written comments must be submitted on or before September 7, 2007.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Gary Rand, 14th and Constitution Avenue, NW., Washington, DC 20230; phone number: 202–482–0691; e-mail: *Gary.Rand@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In an effort to remain relevant to the marketplace and optimize our respective operations, the Commercial Service (CS), Manufacturing Extension Partnership (MEP), Census Bureau (Census), and Export-Import Bank (Ex-Im) have formed a project team to conduct market segmentation research and analysis. The market segmentation is a systematic approach for identifying clusters of companies with similar needs and behavior, and developing service offerings and sales/marketing approaches targeted at segments with the greatest return of investment. The purpose of this initiative is to gain market knowledge and generate statistically valid characterizations about the needs and buying behavior of exporting companies, with a particular focus on moderate exporters (those U.S. firms that currently export, but on a limited or reactive basis and whose international sales comprise less than 10% of total sales or whose international sales growth is less than 10% per year). From this research, services, pricing, and messaging may be repositioned to address the exporting needs of small and medium-sized businesses.

II. Method of Collection

The CS, MEP, Census, and Ex-Im have contracted with Pacific Consulting Group (PCG) to conduct surveys to gain insight into the attitudes, needs, and behaviors of moderate exporters.

PCG will recruit firms over the phone using lists obtained from third party vendors. Data collection will be conducted during a telephone survey. A telephone survey was chosen over a web survey for the following reasons: (1) Since no databases of current or potential exporters is available from a governmental agency, PCG will purchase a list from Dun and Bradstreet. The list contains contact information including phone numbers but not e-mail addresses; (2) Firms do not offer e-mail address databases, to obtain e-mail addresses, the addresses must be manually extracted from a firm's Web site; (3) While web surveys are easier to administer and provide a convenient option for the respondent, they do not have as high a completion rate as phone surveys. This is especially true when there is no incentive for the respondent to complete the survey; and (4) The web survey has more potential to be completed by a respondent other than the targeted respondent, *i.e.* there is no way to verify who completed the survey.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 800.

Estimated Total Annual Costs: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed 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 forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 3, 2007.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E7–13218 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Automotive Replacement Glass Windshields from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review

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

SUMMARY: On May 30, 2007, the Department of Commerce (''Department'') initiated the administrative review of the antidumping duty order on automotive replacement glass windshields from the People's Republic of China (''PRC'') covering the period of review from April 1, 2006, through March 31, 2007 (''POR''). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 72 FR 29968 (May 30, 2007) (''*Initiation Notice*''). On June 5, 2007, the request for administrative review received by the Department was withdrawn. Therefore, the Department is rescinding this administrative review of automotive replacement glass windshields from the PRC.

EFFECTIVE DATE: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On April 2, 2007, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on automotive replacement glass windshields from the PRC for the POR. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 72 FR 15650 (April 2, 2007). On April 30, 2007, Shenzhen CSG Automotive Glass Co., Ltd., (''Shenzhen'') requested an administrative review of its sales of automotive replacement glass windshields to the United States during the POR. Pursuant to this request, the Department initiated an administrative review of the antidumping duty order on automotive replacement glass windshields from the PRC. *See Initiation Notice*. On June 5, 2007, Shenzhen timely withdrew its request for administrative review.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of the notice of initiation. In this case, Shenzhen withdrew its request for administrative review of its exports of automotive replacement glass windshields for the POR within 90 days from the date of publication of the *Initiation Notice*. No other interested party requested a review of this company. Therefore, the Department is rescinding this review of the antidumping duty order on automotive replacement glass windshields from the PRC covering the POR, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries for Shenzhen. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders (''APOs'')

This notice also serves as a reminder to parties subject to APOs of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: July 2, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13232 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates from Spain: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to timely requests by Aragonesas Industrias y Energía S.A. (''Aragonesas''), and Biolab, Inc., Clearon Corporation and Occidental Chemical Corporation (collectively, ''the Petitioners''), the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (''chlorinated isos'') from Spain with respect to Aragonesas. The period of review (''POR'') is December 20, 2004, through May 31, 2006.

The Department has preliminarily determined that Aragonesas made U.S. sales of chlorinated isos at prices less than normal value (''NV''). If these preliminary results are adopted in our final results of administrative review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. In addition, the Department has received information sufficient to warrant a successor–in-interest analysis in this administrative review. Based on this information, the Department preliminarily determines that Aragonesas is the successor–in-interest to Aragonesas Delsa S.A. (''Delsa'') for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results. We will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Mark Manning at (202) 482–3936 or (202) 482–5253,

respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On June 24, 2005, the Department published in the **Federal Register** an antidumping duty order on chlorinated isocyanurates from Spain. *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005). In response to timely requests filed by the Petitioners and Aragonesas, the Department published a notice of initiation of an administrative review. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, 71 FR 42626 (July 27, 2006). The POR for this administrative review is December 20, 2004, through May 31, 2006.

On July 26, 2006, the Department issued an antidumping duty questionnaire to Aragonesas. On August 7, 2006, Aragonesas requested that the Department allow it to limit its reporting of cost of production (''COP'') and constructed value (''CV'') information in this review to exclude the last twelve days of 2004. In a letter dated August 9, 2006, the Department granted Aragonesas' request and permitted it to limit its COP and CV reporting to information based on its fiscal year (*i.e.*, for calendar year 2005 and January through May, 2006). On September 19, 2006, Aragonesas requested that the Department permit Aragonesas to report in its home market sales database only metric ton sack (''supersack'') sales in Spain, or alternatively, only supersack sales and the one or two most similar models sold in Spain. In a letter dated October 3, 2006, the Department rejected Aragonesas' request and informed Aragonesas that it was responsible for reporting all home market sales of subject merchandise, regardless of the packaging characteristics applicable to the sale. The Department found that Aragonesas' proposed reporting methodology excluded the possibility of similar matches with U.S. sales with different packaging characteristics.

On September 13, 2006, the Department received Aragonesas' response to section A of the antidumping questionnaire. On October 3, 2006, the Department received Aragonesas' response to sections B and C of the antidumping questionnaire. On October 17, 2006, the Department received Aragonesas' response to section D of the antidumping questionnaire. We issued supplemental questionnaires to Aragonesas on November 7, 2006, November 21, 2006, December 1, 2006, December 12, 2006, January 24, 2007, February 9, 2007, March 12, 2007, March 23, 2007, and April 17, 2007. Aragonesas filed timely responses to each questionnaire.

The Department extended the time limit for the preliminary results in this review twice, once by 90 days, and later by an additional 30 days. *See Chlorinated Isocyanurates From Spain: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 72 FR 7603 (February 16, 2007); *Chlorinated Isocyanurates from Spain: Extension of Time Limit for Preliminary Results of the First Administrative Review*, 72 FR 23800 (May 1, 2007).

In its questionnaire responses, Aragonesas provided information regarding its relationship with an affiliated producer of chlorinated isos during the POR. After an analysis of this information, the Department determined that, in accordance with 19 CFR 351.401(f), it is not appropriate to collapse Aragonesas and the affiliated producer for purposes of this review because: (a) The common ownership between the corporate group consisting of Ercros Industrial, S.A. (''Ercros'') (Aragonesas' parent company) and Aragonesas, and the affiliated producer, is not significant; (b) the management overlap between the corporate group consisting of Ercros and Aragonesas, and the affiliated producer, is not significant; and (c) although there are significant intertwined operations between the corporate group consisting of Ercros and Aragonesas, and the affiliated producer, most of these intertwined operations are between Ercros, rather than Aragonesas, and the affiliate. Because of the proprietary nature of the details of the Department's decision, a complete explanation is contained in the Memorandum from Abdelali Elouaradia, Office Director, to Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, ''Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain: Collapsing Aragonesas Industrias y Energía, S.A. and [* * *],'' dated May 2, 2007 (''Collapsing Memorandum''). Thus, the Department determined that there is no significant potential for manipulation of price if the affiliate does not receive the same antidumping duty rate as Aragonesas. See Collapsing Memorandum at 8.

Scope of the Order

The products covered by this order are chlorinated isos. Chlorinated isos are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isos: (1) Trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isos are available in powder, granular, and tableted forms. This order covers all chlorinated isos.

Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isos and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Past Scope Rulings

During the Department's less–than-fair–value (''LTFV'') investigation of chlorinated isos from Spain, Arch Chemicals, Inc. (''Arch''), an importer, argued that its patented, formulated, chlorinated isos tablet is not covered by the scope of the investigation. In the Final LTFV Determination, the Department found that Arch's patented chlorinated isos tablet is included within the scope of this antidumping duty investigation. *See Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506 (May 10, 2005) (''*Final LTFV Determination*''); *see also* Memorandum from Holly A. Kuga, Senior Office Director, to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, ''Scope of the Antidumping Duty Investigations of Chlorinated Isocyanurates from the People's Republic of China and Spain,'' dated December 10, 2004.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), during the period May 7 through 18, 2007, the Department verified the sales and cost information submitted by Aragonesas in its questionnaire responses provided during the course of this review. We used standard verification procedures including

examination of relevant accounting and production records, and original source documents provided by the respondent. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to The File, ''Verification of the Sales Response of Aragonesas Industrias y Energía, S.A. in the Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain,'' dated June 11, 2007; *see also* Memorandum from Michael P. Harrison to The File Regarding ''Verification of the Cost Response of Aragonesas Industrias y Energía, S.A. in the Antidumping Review of Chlorinated Isocyanurates from Spain,'' dated June 27, 2007.

Successor–In-Interest Analysis

In accordance with section 751(b) of the Act, the Department is conducting a successor–in-interest analysis to determine whether Aragonesas is the successor–in-interest to Delsa for purposes of determining antidumping liability with respect to the subject merchandise. In making such a successor–in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See*, *e.g.*, *Stainless Steel Bar from Italy: Final Results of Antidumping Duty Administrative Review and Rescission of Review*, 70 FR 46480, 46481 (August 10, 2005) (''*Stainless Steel Bar from Italy*''); *Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review: Polychloroprene Rubber From Japan*, 67 FR 58, 58–59 (January 2, 2002) (''*Polychloroprene Rubber from Japan*''); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, at Comment 1 (May 13, 1992) (''*Canadian Brass*''). While no individual factor or combination of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See*, *e.g.*, *Stainless Steel Bar from Italy*, 70 FR at 46481; *Polychloroprene Rubber from Japan* 67 FR at 58; *Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9979–9980 (March 1, 1999); *Fresh and Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review*, 63 FR 50880, 50881 (September 23, 1998) (unchanged in final results); *Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, at Comment 1 (February 14, 1994); *Canadian Brass*, at Comment 1. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will generally accord the new company the same antidumping duty treatment as its predecessor.

We preliminarily determine that Aragonesas is the successor–in-interest to Delsa. Aragonesas explained in its questionnaire response that Delsa was a separately incorporated company, wholly–owned by Uralita Group S.A. (''Uralita''), and held within Uralita's Chemical Division. The Chemical Division of Uralita consisted of three separately incorporated companies: Delsa, Aragonesas Industrias y Energía S.A., and Aiscondel S.A. In June 2005, Uralita sold the Chemical Division to Ercros. In December 2005, Ercros consolidated Delsa and the two other companies into one company, Aragonesas (the POR respondent). As a result of the consolidation in December 2005, Delsa's separate corporate board of three members was eliminated, and replaced by a sole director for all three Aragonesas business divisions that reports to the Ercros board. The Department has examined the information placed on the record by Aragonesas concerning successorship. Based upon our review, we preliminarily find that there were no changes in key managerial positions or the production facilities in the operating unit that produces subject merchandise. Furthermore, the Department preliminarily finds no evidence of any change in supplier relationships or the customer base stemming from the sale of Delsa, and the subsequent formation of Aragonesas.

Therefore, the Department preliminarily finds that there has been little change to the operating unit that produces subject merchandise as a result of the sale to a new corporate parent company, Ercros. The only change is the reorganized directorship, and the number of board members. Accordingly, the Department preliminarily finds that Aragonesas is the successor–in-interest to Delsa, and should receive the same antidumping duty treatment with respect to chlorinated isos as the respondent from the *Final LTFV Determination*, the former company Delsa.

Comparisons to Normal Value

To determine whether Aragonesas sold chlorinated isos in the United States at prices less than NV, the Department compared the export price (''EP'') of individual U.S. sales to the weighted–average NV of sales of the foreign like product made in the ordinary course of trade in a month contemporaneous with the month in which the U.S. sale was made. *See* section 777A(d)(2) of the Act; *see also* section 773(a)(1)(B)(i) of the Act. Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order, that were produced by the same person and in the same country as the subject merchandise, and sold by Aragonesas in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to chlorinated isos sold in the United States.

Product Comparisons

In accordance with section 771(16) of the Act, the Department considered all products produced by the respondent covered by the description in the ''Scope of the Order'' section, above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), the Department compared U.S. sales made by Aragonesas to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, the Department matched foreign like products based on the physical characteristics reported by Aragonesas in the following order: chemical structure, free available chlorine content, physical form, and packaging.

Export Price

The Department based the price of Aragonesas' U.S. sales on EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Aragonesas to the first unaffiliated

purchaser in the United States prior to importation and constructed export price (''CEP'') methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States. Aragonesas reported its U.S. sales on either a delivered duty paid or delivered duty unpaid basis. We made deductions from the starting price, where appropriate, for foreign inland freight, international freight, foreign inland and marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402.

The Department excluded specified quantities of Aragonesas' merchandise sold in the U.S., for reasons that are of a business proprietary nature. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to Edward Yang, Senior Enforcement Coordinator, ''Whether Certain Merchandise Sold By Aragonesas Industrias y Energía, S.A Constitutes Subject Merchandise and Foreign Like Product,'' dated June 22, 2007 (''Scope Memorandum'').

Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's–length prices, and whether home market sales were at below–cost prices, we calculated NV for Aragonesas as noted in the ''Price–to-Price Comparisons'' section of this notice.

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared Aragonesas' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We excluded sales of merchandise that were not foreign like product or subject merchandise, for reasons that are of a business proprietary nature. *See* Scope Memorandum. Because Aragonesas' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that its home market was viable.

B. Arm's–Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length. *See* 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market that are determined not to be at arm's–length are excluded from our analysis. In this proceeding, Aragonesas reported sales of the foreign like product to affiliated customers. To test whether these sales were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party were, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determined that the sales to the affiliated party were at arm's–length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). Where Aragonesas' sales to affiliated home market customers did not pass the arm's–length test we excluded those sales from our analysis.

C. Cost of Production Analysis

We calculated a margin for Delsa in the *Final LTFV Determination*, which was the most recently completed segment of this proceeding as of the publication date of the initiation of this review. In those calculations, the Department disregarded some sales made at prices that were below COP. As a result, in accordance with section 773(b)(2)(A)(ii) of the Act, the Department has determined that there are reasonable grounds to believe or suspect that Aragonesas, which the Department has preliminarily determined is the successor–in-interest to Delsa, sold the foreign like product at prices below the cost of producing the product during the instant POR. Accordingly, the Department initiated a sales below cost inquiry with respect to Aragonesas and required that Aragonesas provide a response to Section D of the questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, for each foreign like product sold by Aragonesas during the POR, the Department calculated Aragonesas' weighted–average COP based on the sum of its materials and fabrication costs, plus amounts for general and administrative (''G&A'') expenses and interest expenses. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of home market selling expenses. We relied on the COP information provided by Aragonesas in its questionnaire responses, except for the following instances where the information was not appropriately quantified or valued:

i) We adjusted Aragonesas' G&A expense rate to include certain non–operating expenses. We also adjusted the cost of goods sold used in the denominator of the expense rate calculation to correct an error in the amount of packing costs deducted.

ii) We adjusted the financial expense rate to exclude interest income from fixed income securities and to exclude an account titled ''Profit of Companies by the Participation Method.'' We also adjusted the cost of goods sold used in the denominator of the expense rate calculation to deduct an estimate of the amount of selling, general and administrative expenses for the consolidated group of companies.

For further discussion of these adjustments, *see* the Memorandum from Michael P. Harrison to Neal Halper, ''Cost of Production and Constructed Value Adjustments for the Preliminary Results,'' dated July 2, 2007.

2. Test of Comparison Market Sales Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis, the Department compared Aragonesas' adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. For purposes of this comparison, the Department used COP exclusive of selling and packing expenses. The prices were inclusive of billing adjustments and exclusive of any applicable movement charges, discounts and rebates, and direct and indirect selling expenses and packing expenses, revised where appropriate.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales of a

given product are at prices less than the COP, the Department does not disregard any below–cost sales of that product, because the Department determines that in such instances the below–cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, the Department disregards the below–cost sales because they: (1) were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on the results of our test, we found that, for certain products, more than 20 percent of Aragonesas' home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the prices at which the foreign like product was first sold by Aragonesas for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the comparison U.S. sale. We excluded sales of merchandise that were not foreign like product, for reasons that are of a business proprietary nature. *See* Scope Memorandum. We calculated NV for Aragonesas using the reported gross unit prices to unaffiliated purchasers, or where appropriate, affiliated purchasers, which are based upon the following terms of delivery: carriage insurance paid, carriage paid, delivered duty paid, delivered duty unpaid, ex works, and free carrier. Where appropriate, the Department made adjustments to the starting price for billing adjustments. We deducted from the starting price, where appropriate, discounts and rebates, pursuant to section 773(a)(6)(B)(ii) of the Act. Based on our sales verification findings, we revised inland freight to account for certain unreported freight expenses. *See* Memorandum from Thomas Martin, International Trade Compliance Analyst, to the File, ''Calculation Memorandum for the Preliminary Results for Aragonesas Industrias y Energia S.A.,'' dated July 2, 2007 (''Calculation Memorandum''). We also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, the Department made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act.

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as reported by the Federal Reserve Bank of the United States.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same LOT as the EP or CEP sales in the U.S. market. The NV LOT is based on the starting price of the sales in the comparison market. Where NV is based on CV, the Department determines the NV LOT based on the LOT of the sales from which the Department derives selling expenses, general and administrative expenses, and profit for CV, where possible. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Fresh Atlantic Salmon From Chile*, 63 FR 2664 (January 16, 1998) (unchanged in final determination). For EP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market. For CEP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market, as adjusted under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1315 (Fed. Cir. 2001).

To determine whether NV sales are at a different LOT than the EP and CEP sales, the Department examines stages in the marketing process and level of selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). When the Department is unable to match U.S. sales to foreign like product sales in the comparison market at the same LOT as the EP sale, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison–market sales at the NV LOT and comparison–market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is at a more advanced stage of distribution than the CEP LOT and there is no basis for determining whether the difference between the NV and CEP LOTs affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *Id.* at 61732.

In this administrative review, Aragonesas had only EP sales in the U.S. market, thus the CEP methodology was not employed in this review. The Department obtained information from Aragonesas regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Aragonesas reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to industrial users). Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market. Aragonesas reported that it made sales in the home market through three channels of distribution (*i.e.*, industrial customers, retail customers, and distributors). We compared the selling functions performed by Aragonesas for these three distribution channels and found that Aragonesas performed similar selling activities in the home market for the retail and distributor channels of distribution, and fewer selling activities for industrial home market customers. Thus, we preliminarily find that the retail and distributor channels of distribution constitute one NV LOT, while the channel of distribution for industrial customers is a second NV LOT. Moreover, we preliminarily find that the NV LOT for retail and industrial purchasers is at a more advanced stage than the NV LOT for industrial customers.

Finally, the Department compared the EP LOT to the two home market LOTs. The Department finds that selling activities performed by Aragonesas for industrial users in the U.S. market and home market are similar. Because selling activities for industrial users in the U.S. market (the only LOT in the U.S. market) and industrial users in the home market are similar, the Department preliminarily determines that, for sales to the U.S. and home markets during the POR that were made at this same LOT (*i.e.*, sales to industrial users), the Department will not make an LOT adjustment to NV. However, where the Department matches sales between the U.S. and home markets where the home market sale is made at a more advanced LOT (*i.e.*, retail and distributor channels of distribution) than the sale in the U.S. market, the Department will grant an LOT adjustment to NV. For additional details regarding the Department's LOT analysis, *see* Memorandum from Thomas Martin, International Trade Compliance Analyst, to Edward Yang, Senior Enforcement Coordinator, ''Level of Trade Analysis: Aragonesas Industrias y Energía S.A. (Aragonesas),'' dated June 22, 2007.

Preliminary Results of Review

As a result of this review, the Department preliminarily determines that the weighted–average dumping margin for the period December 20, 2004, through May 31, 2006, is as follows:

Manufacturer/Exporter	Weighted–Average Margin (percentage)
Aragonesas Industrias y Energía S.A.	2.00

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in the respective case briefs. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register** (*see* 19 CFR 351.309(c)). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with a diskette containing an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries, in accordance with 19 CFR 351.212. In accordance with 19 CFR 351.212(b)(1), in these preliminary results of review, we calculated importer/customer–specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer/customer. Where the importer/customer–specific assessment rate is above *de minimis* (*i.e.*, 0.50 percent *ad valorem* or greater), we will instruct CBP to assess the importer/customer–specific rate uniformly, as appropriate, on all entries of subject merchandise during the POR that were entered by the importer or sold to the customer. Within 15 days of publication in the **Federal Register** of the final results of review, the Department will issue instructions to CBP directing it to assess the final assessment rates (if above *de minimis*) uniformly on all entries of subject merchandise made by the relevant importer or sold to the relevant customer during the POR. Pursuant to 19 CFR 351.106(c)(2), the Department will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''Assessment Policy Notice''). This clarification will apply to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See* Assessment Policy Notice for a full discussion of this clarification.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the ''All Others'' rate made effective by the LTFV investigation. *See Final LTFV Determination*. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13231 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic from the People's Republic of China: Extension of Time Limits for Final Results of New Shipper Reviews

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

EFFECTIVE DATE: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos or Irene Gorelik, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2243 and (202) 482–6905, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 2007, the Department of Commerce (''the Department'') issued the preliminary results of these new shipper reviews. *See Fresh Garlic from the People's Republic of China: Preliminary Results of New Shipper Reviews*, 72 FR 21219 (April 30, 2007) (''*Preliminary Results*'').

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

In order to allow parties additional time to submit comments regarding the Department's *Preliminary Results*, the Department extended the deadline for the submission of case and rebuttal briefs. As a result of the extensions and the extraordinarily complicated issues raised in these reviews, including surrogate valuation and *bona fides* issues, it is not practicable to complete these new shipper reviews within the current time limit. Accordingly, the Department is extending the time limit for the completion of these final results to September 20, 2007 (150 days after issuance of the *Preliminary Results*), in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: June 28, 2007.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E7–13225 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–823–810]

Solid Agricultural Grade Ammonium Nitrate from Ukraine: Continuation of Antidumping Duty Order

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

SUMMARY: As a result of the determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on solid agricultural grade ammonium nitrate from Ukraine would likely lead to continuation or recurrence of dumping, and material injury to an industry in the United States, the Department is publishing notice of continuation of this antidumping duty order.

EFFECTIVE DATE: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3534 and (202) 482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2006, the Department initiated and the ITC instituted sunset reviews of the antidumping duty order on solid agricultural grade ammonium nitrate from Ukraine pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act'').[1]

As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping, and notified the ITC of the magnitude of the margins likely to prevail were the order to be revoked.[2] On June 27, 2007, the ITC determined pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on solid agricultural grade ammonium nitrate from Ukraine would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Scope of the Order

The merchandise covered by this order are solid, fertilizer grade ammonium nitrate (''ammonium nitrate'' or ''subject merchandise'') products, whether prilled, granular or in other solid form, with or without additives or coating, and with a bulk density equal to or greater than 53 pounds per cubic foot. Specifically excluded from this scope is solid ammonium nitrate with a bulk density less than 53 pounds per cubic foot (commonly referred to as industrial or explosive grade ammonium nitrate). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 3102.30.00.00. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of the order is dispositive.

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[1] *See Initiation of Five-Year (''Sunset'') Reviews*, 71 FR 43443 (August 1, 2006); and *Ammonium Nitrate From Ukraine* Investigation No. 731-TA-894, 71 FR 43516 (August 1, 2006).

[2] *See Solid Agricultural Grade Ammonium Nitrate from Ukraine; Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 71 FR 70508 (December 5, 2006).

[3] *See Certain Ammonium Nitrate From Ukraine* Investigation No. 731-TA-894, 72 FR 35260 (June 27, 2007).

Determination

As a result of the determinations by the Department and the ITC that revocation of this antidumping duty order would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on solid agricultural grade ammonium nitrate from Ukraine.

U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than June 2012.

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act. This notice is published pursuant to 751(c) and 771(i) of the Act and 19 CFR 351.218(f)(4).

Dated: July 2, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–13279 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review to Ferrous Scrap Export Association, Application No. 88–3A015.

SUMMARY: On June 29, 2007, the U.S. Department of Commerce issued an amended Export Trade Certificate of Review to the Ferrous Scrap Export Association (''FSEA'').

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (2005).

Export Trading Company Affairs (''ETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the U.S. Department of Commerce to publish a summary of the certification in the **Federal Register.** Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The original FSEA Certificate (Application No.88–00015) was issued on December 12, 1988 (53 FR 51294, December 21, 1988) and previously amended on February 28, 1989 (54 FR 9542, March 7, 1989); and February 5, 1999 (64 FR 6632, February 10, 1999). Also, a name change was announced changing the name of the FSEA Certificate Member ''Witte-Chase Corporation'' to ''Metro Metal Recycling Corp'' (55 FR 13581, April 11, 1990).

FSEA's Export Trade Certificate of Review Has Been Amended To:

1. Add each of the following companies as a new ''Member'' of the Certificate within the meaning of section 325.2(l) of the Regulations (15 CFR 325.2(l)): Sims Hugo Neu Corporation; HNE Recycling LLC; and HNW Recycling LLC, each located in New York, NY.

2. Change the current Member listing of the trade name ''Simsmetal America'' to the legal name of ''Sims Group USA Corporation'', and change the current Member listing of ''Southern Scrap Material Co., Ltd.'' to ''Southern Recycling, LLC,'' due to a company name change.

3. Delete the following companies as ''Members'' of the Certificate: Metro Metal Recycling Corp., New York, NY, and Proler International Corp., Portland, OR.

4. Update ''Export Trade Activities and Methods of Operation'', paragraph 2. a., to reflect the current FSEA Member voting rights, which are as follows:

''2. FSEA and its Members may prescribe the following conditions with respect to voting rights, membership in, and withdrawal and expulsion from, FSEA:

a. Voting need not be on a one-member/one-vote basis. Voting rights shall be: Camden Iron & Metal Inc., Hugo Neu Corporation, Schnitzer Steel Industries, Inc., Sims Group USA Corporation, and Southern Recycling, LLC shall have one vote each; Sims Hugo Neu Corporation, HNE Recycling LLC, and HNW Recycling LLC shall have one vote jointly to be voted by Sims Group USA Corporation; Metal Management, Inc., Naporano Iron & Metal Co. and NIMCO Shredding Co. shall have one vote jointly to be voted by Naporano Iron & Metal Co. Thereafter, any change in voting rights shall require a two-thirds affirmative vote of the members. All votes, including votes to change voting rights, shall be conducted under the voting rules then in effect.''

The effective date of the amended certificate is April 5, 2007. A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4001, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 29, 2007.

Jeffrey C. Anspacher,

Director, Export Trading Company Affairs.

[FR Doc. E7–13196 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XB26]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Crab Committee will meet in Anchorage, AK.

DATES: The meeting will be held on July 31, 2007, from 9:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, King Salmon Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Mark Fina, North Pacific Fishery Management Council; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The agenda will include the following issues: (1) the current uses of B shares (those shares exempt from the processing share landing requirements) and whether those uses are consistent

with the Council's original intent for the use of B shares, and (2) regulatory issues related to administration of the harvest share and processing share allocations and the arbitration program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: July 3, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–13189 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[XRIN: 0648–XB25]

North Pacific Fishery Management Council; Notice of Public Meetings

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

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) will begin its plenary session and its Scientific and Statistical Committee (SSC) will hold public meetings in Anchorage, AK.

DATES: The meetings will be held on August 1–3, 2007. The SSC will begin its session 8 a.m. on August 1 and continue through August 2, 8 a.m. to 12 noon. The Council will begin its session on August 2, at 1 p.m. and continue through August 3 through 5 p.m.

ADDRESSES: The meetings will be held at the Anchorage Marriott Downtown, 820 W 7th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION:

Council Plenary Session: The agenda for the Council's plenary session and SSC meeting will include the following issues: (1) Review and comment on the Steller Sea Lion (SSL) Recovery Plan; (2) Review Bering Sea Atka Mackerel Maximum Retainable Amount with intent to amend action previously taken. The agenda is subject to change, and the latest version will be posted at *http://www.fakr.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: July 3, 2007.

Tracey L. Thompson,

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

[FR Doc. E7–13190 Filed 7–6–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act Meetings

AGENCY: Uniformed Services University of the Health Sciences (USU).

ACTION: Quarterly Meeting Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) announcement of the following meeting:

Name of Committee: Board of Regents of the Uniformed Services University of the Health Sciences.

Date of Meeting: August 7, 2007.

Location: Board of Regents Conference Room (D3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814.

Times:

8 a.m. to 2 p.m. (Open Session).
2 p.m. to 3 p.m. (Closed Session).

Proposed Agenda: The actions that will take place include the approval of minutes from the Board of Regents Meeting held May 18, 2007; acceptance of administrative reports; approval of faculty appointments and promotions; and the awarding of post-baccalaureate degrees as follows: Masters of Science in Nursing, and masters and doctoral degrees in the biomedical sciences and public health. The President, USU; Dean, USU School of Medicine; Acting Dean, USU Graduate School of Nursing; and Commander, USU Brigade will also present reports. These actions are necessary for the University to remain an accredited medical school and to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

SUPPLEMENTARY INFORMATION: Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, this meeting is open to the public. Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Officer at the address detailed above. If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chair and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the open portion of the August 2007 meeting or at a future meeting.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer 301–295–3066.

Dated: July 3, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–3333 Filed 7–5–07; 12:36 pm]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Sunshine Act Meetings; Department of Defense Task Force on the Future of Military Health Care

AGENCY: DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) and 41 Code of Federal Regulations (CFR) 102–3.140 through 160, the Department of Defense announces the following committee meeting:

Name of Committee: Department of Defense Task Force on the Future of Military Health Care, a duly established subcommittee of the Defense Health Board.

Date of Meeting: July 25, 2007.

Time of Meeting: 8:30 a.m. to 3:30 p.m.

Place of Meeting: National Transportation Safety Board Conference Center, 429 L'Enfant Plaza, Washington, D.C. 20594.

Purpose of Meeting: To obtain, review, and evaluate information related to the Task Force's congressionally-directed mission to examine matters relating to the future of military health care. The Task Force members will receive briefings on topics related to the delivery of military health care during the public meeting.

Agenda: Discussion topic will be Acquisition and Procurement issued related to the military healthcare system.

Prior to the public meeting the Task Force will conduct a Preparatory Work Meeting from 8 a.m.–8:25 a.m. to solely analyze relevant issues and facts in preparation for the Task Force's next public meeting. In addition, the Task Force, following its public meeting, will conduct an additional Preparatory Work Meeting from 3:30 p.m. to 4 p.m. to analyze relevant issues and facts in preparation for the Task Force's next public meeting. Both Preparatory Meetings will be held at the National Transportation Safety Board Conference Center, and pursuant to 41 Code of Federal Regulations, Part 102–3.160(a), both Preparatory Work Meetings are closed to the public.

Additional information and meeting registration is available online at the Task Force Web site: *www.DoDfuturehealthcare.net.*

FOR FURTHER INFORMATION CONTACT: Colonel Christine Bader, Executive Secretary, Department of Defense Task Force on the Future of Military Health Care, TMA/Code:DHS, Five Skyline Place, Suite 810, 5111 Leesburg Pike, Falls Church, Virginia 22041–3206, (703) 681–3279, ext. 109 (*christine.bader@ha.osd.mil*).

SUPPLEMENTARY INFORMATION: Open sessions of the meeting will be limited by space accommodations. Any interested person may attend; however, seating is limited to the space available at the National Transportation Safety Board Conference Center. Individuals or organizations wishing to submit written comments for consideration by the Task Force should provide their comments in an electronic (PDF Format) document through the Task Force Web site (*http://www.DoDfuturehealthcare.net*) at the ''Contact Us'' page, no later than five (5) business days prior to the scheduled meeting.

Dated: July 3, 2007.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–3334 Filed 7–5–07; 12:36 pm]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[DOD–2007–OS–0068]

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD) that their records are being matched by computer. The purpose of the computer matching program is to attempt to verify eligibility for VA Compensation and Pension (C&P) benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

DATES: This proposed action will become effective August 8, 2007 and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget concerns. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the VA OIG and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to attempt to verify eligibility for VA C&P benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by VA OIG to verify the military service record of veterans eligible for VA (C&P) benefits, to identify potential fraudulent payments to fictitious veterans, and to identify payments that should be adjusted where the beneficiary is not entitled to all or part of the VA C&P benefits received. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all veterans or their beneficiaries receiving VA (C&P) benefits with the other files. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual response to possible fraud and abuse. By comparing the information received through the computer matching program between VA OIG and DMDC on a recurring basis, information on successful matches (hits) can be provided to VA to initiate research on these discrepancies, thus assuring that benefit payments are proper.

A copy of the computer matching agreement between VA OIG and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans

Affairs, Office of Inspector General (52CO), 810 Vermont Avenue, NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on June 21, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 2, 2007

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Agreement Between Office of the Inspector General the Department of Veterans Affairs and the Defense Manpower Data Center, the Department of Defense for Verification of Eligibility

A. PARTICIPATING AGENCIES:

Participants in this computer matching program are the Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD), Defense Manpower Data Center (DMDC). The VA OIG is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH:

Upon the execution of this agreement, VA will provide and disclose VA Compensation and Pension (C&P) and Veterans Assistance Discharge Systems (VADS) records to DMDC to identify individuals that have not separated from military service and/or confirm elements of military service relevant to the adjudication of VA benefits. VA OIG will use this information to initiate an independent verification process to determine eligibility and entitlement to VA benefits.

C. AUTHORITY FOR CONDUCTING THE MATCH:

The authority to conduct this match is 5 U.S.C. App. 3, the Inspector General Act of 1978 (IG Act). The IG Act authorizes the VA OIG to conduct audits and investigations relating to the programs and operations of VA. IG Act, § 2. In addition, § 4 of the IG Act provides that the IG will conduct activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in VA's programs and operations.

D. RECORDS TO BE MATCHED:

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. VA will use personal data from the following Privacy Act record system for the match: Compensation, Pension, Education and Rehabilitation Records—VA, 58VA21/22, first published at 41 FR 9294, March 3, 1976, and last amended at 70 FR 34186, June 13, 2005, with other amendments as cited therein.

2. DoD will use personal data from the following Privacy Act record system for the match: Defense Manpower Data Center Data Base—S322.10 DMDC, published in the **Federal Register** at 72 FR 737 on January 8, 2007.

3. Agencies must publish ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose information. The systems of records described above contain appropriate routine use provisions that pertain to disclosure of information between the agencies.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM:

VA, as the source agency, will provide DMDC with two electronic files, the C&P and VADS files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file, and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM:

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. Matching will be conducted when the review/publication requirements have been satisfied and thereafter on an annual basis. By agreement between VA OIG and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:

Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. E7–13266 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary of Defense

[DOD–2007–OS–0071]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 8, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate

Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on (date), to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: July 2, 2007.

C.R. Choate,

Alternative Federal Register Liaison Officer, Department of Defense.

T7346a

SYSTEM NAME:

Reserve and National Guard Members' Status Tracking System.

SYSTEM LOCATION:

Defense Finance and Accounting Service—Indianapolis, 8899 East 56th Street, Indianapolis, IN 46249–2700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Army Reserve and National Guard members in a military pay status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, pay grade, Social Security Number (SSN), date of birth, gender, pay dates, leave account information, rank, enlistment contract or officer acceptance form identification, duty information (duty station, personnel assignment, and unit), security investigation, combat tours, temporary active duty data, years in service, promotional data, master military pay account (MMPA) records, leave and earnings statements (LESs), substantiating pay and allowance entitlements, deductions, or collection actions.

In addition, following are examples of documents maintained in the system:

Pay entitlements and allowances: Base pay, allowances (such as basic allowance for subsistence, basic allowance for quarters, family separation, clothing maintenance and monetary allowances), special compensation for positions such as medical, dental, veterinary, and optometry, special pay and bonus, such as foreign duty, proficiency, hostile fire, incentive pay such as parachute duty, and other entitlements in accordance with the DoD Financial Management Regulations, Volume 7A, 7000.14–R.

Deductions from pay: Indebtedness and collection information.

Duty status: Status adjustments relating to leave, entrance on active duty, absent without leave, confinement, desertion, sick or injured, mentally incompetent, missing, interned, promotions and demotions, and separation document code.

Supporting documentation: Includes, but is not limited to, travel orders and requests, payroll attendance lists and rosters, document records that establish, support, reduce, or cancel entitlements, certificates and statements changing address, name, military assignment, and other individual data, benefits and waivers; military pay, personnel orders, pay adjustment authorization records, member indebtedness documentation, earnings statements, casual payment authorization, and other documentation authorizing or substantiating Reserve Forces military pay and allowances, entitlements, deductions, or collections.

Authority for maintenance of the system: 5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Section 261; 37 U.S.C. 204, Entitlement; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R Volume 7A; and E.O. 9397 (SSN).

PURPOSE(S):

To track U.S. Army Reserve and Guard members' reserve status and ensure proper payment of entitlements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Defense Finance and Accounting Service compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in office buildings protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their official duties. Passwords and digital signatures are used to control access to the systems data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records may be temporary in nature and destroyed when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year or fiscal year, and destroyed 6 years and 3 months after cutoff. Records are destroyed by degaussing, burning, or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Manager, Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, 8899 East 56th Street, Indianapolis, IN 46249–2700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E.

Irvington Place, Denver, CO 80279–8000.

Requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

Individual, DFAS payroll system, and DoD Components.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–13254 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0070]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Threat Reduction Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 8, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 29, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 2, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 023

SYSTEM NAME:

Reasonable Accommodation Program.

SYSTEM LOCATION:

Equal Opportunity Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees and applicants for employment with the Defense Threat Reduction Agency (DTRA) at any of its duty locations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's or applicant's name, occupational series and grade, operating division/function, office location and address, office telephone numbers, disability or medical condition, reasonable accommodation (RA) requested, explanation of how RA would assist the applicant in the application process and in the performance of his/her job, deciding official's name and title, essential duties of the position, information relating to an individual's capability to satisfactorily perform the duties of the position he/she is either applying for or presently holds, relevant medical information, estimated cost of accommodation, action by deciding official, employee/applicant, deciding official, and health care practitioner signatures, social worker, or rehabilitation counselor, medical documentation and supporting documents relating to reasonable accommodation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Rehabilitation Act of 1973 (Section 501 and 505); 29 Code of Federal Regulations (CFR) Part 1630; E.O. 13163; E.O. 13164, EEOC Policy; and DTRA 5505.3, DTRA Reasonable Accommodation Instruction.

PURPOSE(S):

To provide reasonable accommodation(s) for individuals with known physical and mental impairments who have applied for employment or are employees of the DTRA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, 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, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the DTRA's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and year and log number of accommodation request.

SAFEGUARDS:

Access is limited to the Equal Opportunity staff, and agency command surgeon. Case records are maintained in locked security containers. Automated records are controlled by limiting physical access to terminals and by the use of passwords. Work areas are sight controlled during normal duty hours. Security guards and an intrusion alarm system protect buildings.

RETENTION AND DISPOSAL:

Retained in the office for 2 years after completion, and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Equal Opportunity Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information about themselves should address written inquiries to the Equal Opportunity Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Request should contain individual's name, address, and proof of identity (photo identification or must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Equal Opportunity Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Request should contain individual's name, address, and proof of identity (photo identification or must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The DTRA rules for contesting contents are published in 32 CFR part 318, or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual, DTRA records and reports, DTRA employees, witnesses, informants, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–13261 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0069]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Threat Reduction Agency is proposing to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 8, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 29, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: July 2, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 025

SYSTEM NAME:

Facility Access Control Records.

SYSTEM LOCATION:

Headquarters, Defense Threat Reduction Agency, Security and Counterintelligence Directorate, ATTN: Chief, Security Services Division, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals requesting access to Defense Threat Reduction Agency controlled facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for and issuance of facility entry badges, passes, and motor vehicle registration. The records contain individual's name, Social Security Number (SSN), physical and electronic duty addresses, physical and electronic home addresses, duty and home telephone numbers, emergency-essential status, date and place of birth, citizenship, number and type of badge, issue and expiration date of badge; facility identification, user codes, dates and times of building entry, current photograph, physical descriptors such as height, hair and eye color, blood type, biometrics data, handicap data, security clearance data, personal vehicle description, operator's permit data, inspection and insurance data, vehicle decal number, parking lot assignment, parking infractions, participation in mass transit programs, and emergency contact data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2165, the Atomic Energy Act of 1954; 50 U.S.C. 797, the Internal Security Act of 1950; E.O. 10450, Security Requirements for Government Employees, as amended; E.O. 12958 Classified National Security Information, as amended; and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained by the Security Services Division to control access into Defense Threat Reduction Agency managed facilities and spaces. The system will verify security clearance status of individuals requiring entry into restricted access areas; account for building occupants; control evacuation during simulated and actual threat conditions; relay threat situations and conditions to DoD law enforcement officials for investigative or evaluative purposes; and notify emergency contact points of situations affecting a member of the workforce.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, 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, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of Government agencies in the

performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The DoD 'Blanket Routine Uses' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records are in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name, Social Security Number (SSN), facility or user code, or vehicle decal number.

SAFEGUARDS:

Records are maintained in secure, limited access, or monitored work areas accessible only to authorized personnel. Central Processing Units are located in a physically controlled access area requiring either a badge or card swipe for entry. Workstations are password protected.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation. Individual's badge and vehicle pass records are destroyed 5 years after cancellation or expiration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security and Counterintelligence Directorate, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Defense Threat Reduction Agency, Security and Counterintelligence Directorate, ATTN: Chief, Security Services Division, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

Individuals should furnish individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Security and Counterintelligence Directorate, ATTN: Chief, Security Services Division, 8725 John J. Kingman Road, Stop 6201, Fort Belvoir, VA 22060–6201.

Individuals should furnish individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for contesting contents are published in 32 CFR part 318, or may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Individual, DoD Joint Personnel Adjudication System (JPAS), and Enrollment Eligibility Reporting System (DEERS).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–13264 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of Secretary

[DOD–2007–OS–0072]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on August 8, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, Defense Finance and Accounting Service, 6760 E. Irvington Place, Denver, CO 80279–8000.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 676–6045.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on June 29, 2007, to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated December 12, 2000, 65 FR 239.

Dated: July 2, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7401

SYSTEM NAME:

Standard Accounting, Budgeting, and Reporting System (SABRS).

SYSTEM LOCATION:

Defense Information Systems Agency (DISA) Defense Enterprise Computing Center (DECC)—St. Louis, 4300 Goodfellow Blvd., St. Louis, MO 63120–0012.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

U.S. Marine Corps Active and Reserve military members and U.S. Marine Corps appropriated funds employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), U.S. Marine Corps general fund appropriations, authorizations, commitments, obligations records, expenses disbursements and collections.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Vol. 4; 31 U.S.C. Sections 3511, 3512, and 3513; and E.O. 9397 (SSN).

PURPOSE(S):

To support and standardize accounting budget execution and reporting requirements for all general funds authorized within the U.S. Marine Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, 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, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'DoD Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name and Social Security Number (SSN).

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need-to-know basis in the performance of their duties. User's ID numbers, passwords, and user roles are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the fiscal year, and destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing or destroying the electronic media.

SYSTEM MANAGER(S) AND ADDRESS:

Systems Manager, Defense Finance and Accounting Service-Kansas City, Information Technology Directorate, 1500 East 95th Street, Kansas City, MO 64197–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

Requests should contain full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/ Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

From the individuals concerned and the U.S. Marine Corps.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–13268 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[USN–2007–0039]

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Navy proposes to add a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on August 8, 2007 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on June 29, 2007, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (February 20, 1996, 61 FR 6427).

Dated: July 2, 2007.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NM06150–7

SYSTEM NAME:

Navy-Marine Corps Combat Trauma Registry (CTR).

SYSTEM LOCATION:

Naval Health Research Center, P.O. Box 85122, San Diego, CA 92186–5122.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All injury, disease, psychiatric, and sick call patients (active duty Army, Air Force, Navy, Marine Corps, and Coast Guard, reserve/National Guard, civilian, and contractor) initially treated at a deployed Navy-Marine Corps medical facility during military operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic and health data related to the injury, disease or psychiatric event incurred. Demographic data includes individual's name, Social Security Number (SSN), rank, unit, date of birth, gender. Event data includes mechanism of injury, personal protective equipment, date and times of injury, and arrival to the treatment facility. Health data includes anatomical location of injury, vital signs, diagnosis, treatment, procedures, operative notes, disposition, outcomes, and quality of life indicators.

Health data are collected from clinical encounters, from the point of injury (or disease event) through long-term rehabilitative care.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; OASD/HA Policy 04–031, Coordination of Policy to Establish a Joint Theater Trauma Registry; Memorandum of Understanding between the Naval Health Research Center and the U.S. Army Institute of Surgical Research; and E.0. 9397 (SSN).

PURPOSE(S):

To create, populate, and maintain a computerized database of medical events associated with combat casualty care. From the point of injury (or disease event) through final

rehabilitative outcome(s) for patients treated at Navy-Marine Corps medical facilities; To track persons through the medical chain of evacuation, to relate outcomes with medical care received, and to conduct research studies and analyses; to track active duty personnel initially treated at these facilities throughout the medical chain of evacuation and on through long-term rehabilitative care; to provide Navy-Marine Corps data to the Joint Theater Trauma Registry at the Institute of Surgical Research, Brooke Army Medical Center, San Antonio, TX, for the aggregation of Army, Navy, and Air Force combat casualty data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, 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, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system, except as identified below.

Note 1: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

Note 2: Personal identity, diagnosis, prognosis or treatment information of any patient maintained in connection with the performance of any program or activity relating to substance abuse education, prevention, training, treatment, rehabilitation, or research, which is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, except as provided in 42 U.S.C. 290dd–2, will be treated as confidential and will be disclosed only for the purposes and under the circumstances expressly authorized under 42 U.S.C. 290dd–2. The ''Blanket Routine Uses'' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Individual's name and Social Security Number (SSN).

SAFEGUARDS:

Records are located in restricted areas accessible only to authorized personnel that are properly screened, cleared, and trained. Automated information is password protected and encrypted. Automated and manual records are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Commanding Officer, Naval Health Research Center, P.O. Box 85122, San Diego, CA 92186–5122.

Record Holder: Principal Investigator, Navy-Marine Corps Combat Trauma Registry, Naval Health Research Center, P.O. Box 85122, San Diego, CA 92186–5122.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Principal Investigator, Navy-Marine Corps Combat Trauma Registry, Naval Health Research Center, P.O. Box 85122, San Diego, CA 92186–5122.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Principal Investigator, Navy-Marine Corps Combat Trauma Registry, Naval Health Research Center, P.O. Box 85122, San Diego, CA 92186–5122.

The request should include the individual's full name, Social Security Number (SSN), complete mailing address, and must be signed by the service member requesting the information.

CONTESTING RECORD PROCEDURE:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual theater medical registry forms; medical records at Landstuhl Regional Medical Center, Germany (LRMC); National Naval Medical Center, Bethesda (NNMC); autopsy records at Armed Forces Institute of Pathology, Washington, DC (AFIP); Career History Archival Medical and Personnel System (CHAMPS); Civil Composite Health Care System (CHCS); Defense Enrollment Eligibility Reporting System (DEERS); Defense Manpower Data Center (DMDC), Joint Patient Tracking Application (JPTA); Joint Theater Trauma Registry (JTTR); and TRICARE Management Activity (TMA).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E7–13193 Filed 7–6–07; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants to Address Youth Violence and Related Issues in Persistently Dangerous Schools; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.184V.

Dates: Applications Available: July 9, 2007.

Deadline for Transmittal of Applications: August 8, 2007.

Deadline for Intergovernmental Review: September 7, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Grants to Address Youth Violence and Related Issues in Persistently Dangerous Schools Program supports the implementation of programs, activities, and strategies that address youth violence and related issues in local educational agencies (LEAs) with schools that have been identified as persistently dangerous for school year 2006–2007 pursuant to section 9532 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001.

Priority: We are establishing this priority for the FY 2007 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition, in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1).

Absolute Priority: This priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

This priority supports LEA projects that are designed to address violence and related issues, such as gang activity, in schools operated by the LEA that have been identified by the State (consistent with the requirements in section 9532 of the ESEA) as persistently dangerous. Eligible LEAs may also propose activities that address violence and related issues in schools in the LEA that are at risk of becoming persistently dangerous based on objective criteria under the State's definition of persistently dangerous, and system-wide activities that would prevent other schools operated by the LEA from being identified as persistently dangerous in the future.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for this program authorized as part of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28) and therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on the priority under section 437(d)(1) of GEPA. This priority will apply to the FY 2007 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 7131; Section 5502, Title V, Chapter 5, of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $8,594,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2008 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $250,000–$3,000,000.

Estimated Average Size of Awards: $661,000.

Estimated Number of Awards: 13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

III. Eligibility Information

1. *Eligible Applicants:* LEAs in which at least one school was identified as persistently dangerous in the school year 2006–2007 and certified by the State, as part of the State educational agency's (SEA's) annual Consolidated State Performance Report, as a persistently dangerous school under section 9532 of the ESEA by March 31, 2007.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:* (a) *Equitable Participation by Private School Children and Teachers:* Section 9501 of the ESEA requires that SEAs, LEAs, or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other educational personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on youth violence and related issues for private schools in the LEA's service area.

(b) *Maintenance of Effort:* Section 9521 of the ESEA requires that LEAs may receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined effort or aggregate expenditures for the second preceding fiscal year.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet, or from the program office.

To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from the program office, contact: Michelle Padilla, U.S. Department of Education, 400 Maryland Avenue, SW., room 3E246, Washington, DC 20202–6450. Telephone: (202) 260–2648 or by e-mail: *michelle.padilla@ed.gov.*

If you use a Telecommunication Device for the Deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 25 pages, using the following standards:

- A page is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and on both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Titles, headings, footnotes, quotations, references, and captions, as well as text in charts, tables, figures, and graphs, can be single spaced.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.
- Number all pages consecutively using the style 1 of 25, 2 of 25, and so forth.
- Include a Table of Contents with page references. The 25-page limit does not apply to the Table of Contents, the cover sheet, the budget section, including the narrative budget justification, the assurances and certifications, or the one-page abstract or resumes.

Our reviewers will not read any pages of the narrative portion of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: July 9, 2007.

Deadline for Transmittal of Applications: August 8, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format, by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 7, 2007.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the Applicable Regulations section in this notice.

6. *Other Submission Requirements*: Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications.

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The Grants to Address Youth Violence and Related Issues in Persistently Dangerous Schools program, CFDA Number 84.184V, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Grants to Address Youth Violence and Related Issues in Persistently Dangerous Schools competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.184, not 84.184V).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your

application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application). We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll-free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:* U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184V), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center, Stop 4260, Attention: (CFDA Number 84.184V), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184V), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from section 75.210 of EDGAR and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditures information as directed by the Secretary under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Department has established the following Government Performance and Results Act (GPRA) performance measures for the Grants to Address Youth Violence and Related Issues in Persistently Dangerous Schools program:

(1) The percentage of grantees that experience a decrease in the number of the types of incidents that are included in the State's definition of persistently dangerous schools.

(2) The percentage of grantees that experience a decrease in the number of schools in the LEA identified as persistently dangerous.

(3) The percentage of grantees that experience a decrease in the number of students eligible to receive a transfer to a safe public school under section 9532 of the ESEA because they are victims of a violent criminal offense, as determined by State law, while in or on the grounds of a public elementary or secondary school that the students attend.

These measures constitute the Department's indicator of success for this program. Consequently, we advise an applicant for a grant under this program to give careful consideration to these measures in conceptualizing the approach and evaluation for its proposed project. Each grantee will be required to provide, in its annual and final performance reports, data about its progress in meeting these measures.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Michelle Padilla, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3E246, Washington, DC 20202–6450. Telephone: (202) 260–2648 or by e-mail: *michelle.padilla@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice.

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

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

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

Dated: July 3, 2007.

Deborah A. Price,

Assistant Deputy Secretary for Safe and Drug-Free Schools.

[FR Doc. E7–13230 Filed 7–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technical Assistance on Data Collection—General Supervision Enhancement Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2007

Catalog of Federal Domestic Assistance (CFDA) Number: 84.373X.

Dates: Applications Available: July 9, 2007.

Deadline for Transmittal of Applications: August 23, 2007.

Deadline for Intergovernmental Review: September 24, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Under section 616(i)(2) of the Individuals with Disabilities Education Act, as amended (IDEA), the Department may make awards to provide technical assistance to improve the capacity of States to meet data collection requirements.

Priorities: This competition contains two absolute priorities. The priorities are from the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: Eligible entities must submit separate applications under each of the priorities for which they wish to apply.

Absolute Priorities: For FY 2007 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities.

These priorities are:

Priority A—Modified Academic Achievement Standards

Priority B—Alternate Academic Achievement Standards

Program Authority: 20 U.S.C. 1411(c) and 1416(i)(2).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $13,500,000.

Maximum Award: The Secretary does not intend to make awards for more than $400,000 for year one, $300,000 for year two, and $300,000 for year three. We will reject any application that proposes a budget exceeding the stated maximum award amount for years one, two, or three of the budget period, unless the application involves a consortium, or any other group of eligible parties that meets the requirements of 34 CFR 75.127 through 75.129. The level of funding for a consortium, or any other group of States, outlying areas (OAs), or freely associated States (FAS) will reflect the combined total that the entities comprising the consortium, or group, would have received if they had applied separately. The Secretary does not intend to make more than one award to serve a State, OA, or FAS. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Average Size of Award: $400,000.

Note: The Secretary is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Estimated Number of Awards: 33.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), outlying areas (OAs), freely associated States (FAS), and, if endorsed by the SEA to apply and carry out the project on behalf of the SEA, local educational agencies (LEAs), public charter schools that are LEAs under State law, institutions of higher education (IHEs), tribes or tribal organizations, other public agencies, private nonprofit organizations, and for-profit organizations.

Note: States, OAs, and FAS are encouraged to form consortia with any other group of eligible parties that meet the requirements in 34 CFR 75.127 through 75.129 to apply under Priority A or Priority B. A consortium is any combination of eligible entities. The Secretary views the formation of consortia as an effective and efficient strategy to address the requirements of the priorities in this notice.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other: General Requirements*—The projects funded under this competition must make positive efforts to employ, and advance in employment, qualified individuals with disabilities (see section 606 of the IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734. You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.373X.

Individuals with disabilities can obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Alternative Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 40 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: July 9, 2007.

Deadline for Transmittal of Applications: August 23, 2007.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 24, 2007.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

To comply with the President's Management Agenda, we are participating as a partner in the Governmentwide Grants.gov Apply site. The General Supervision Enhancement Grants competition—CFDA number 84.373X is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the General Supervision Enhancement Grants competition—CFDA number 84.373X at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.373, not 84.373X).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted, and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete the steps in the Grants.gov registration process (*http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your

organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date. Application Deadline Date Extension in Case of System Technical Issues with the Grant.Gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address: *By mail through the U.S. Postal Service:*

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.373X), 400 Maryland Avenue, SW., Washington, DC 20202–4260; or *By mail through a commercial carrier:* U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.373X), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.373X), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34

CFR 75.210 and are listed in the application package.

2. *Review and Selection Process: Treating A Priority As Two Separate Competitions:* In the past, there have been problems in finding peer reviewers without conflicts of interest for competitions in which many entities throughout the country submit applications. The Standing Panel requirements under the IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary competitions, applications may be separated into two or more groups and ranked and selected for funding within the specific group. This procedure will ensure the availability of a much larger group of reviewers without conflicts of interest. It also will increase the quality, independence, and fairness of the review process and permit panel members to review applications under discretionary competitions for which they also have submitted applications. However, if the Department decides to select for funding an equal number of applications in each group, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118. The Secretary also may require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* To evaluate the overall success of projects awarded under this competition, the Department will determine at the end of each grant whether the grantee has been successful in achieving the purposes of its award. Grantees will also be required to report information on their projects' performance in annual reports to the Department. (34 CFR 75.590)

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4054, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7571.

If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

VIII. Other Information

Alternative Format: Individuals with disabilities can obtain this document and a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

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

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

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

Dated: July 3, 2007.

Jennifer Sheehy,

Director of Policy and Planning for Special Education and Rehabilitative Services.

[FR Doc. E7–13227 Filed 7–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Technical Assistance on Data Collection—General Supervision Enhancement Grants

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces three separate funding priorities under the Technical Assistance on State Data Collection program authorized under the Individuals with Disabilities Education Act (IDEA). The Assistant Secretary may use the priorities for competitions in fiscal year (FY) 2007 and later years. We take this action to focus attention on an identified national need to provide technical assistance to improve the capacity of States to meet data collection requirements.

EFFECTIVE DATE: This priority is effective August 8, 2007.

FOR FURTHER INFORMATION CONTACT: Larry Wexler, U.S. Department of Education, 400 Maryland Avenue, SW., room 4053, Potomac Center Plaza, Washington, DC 20202–2700. Telephone: (202) 245–7571 or via Internet: *larry.wexler@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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

SUPPLEMENTARY INFORMATION: Under the Technical Assistance on State Data Collection program established under section 616(i)(2) of the IDEA, we make awards to provide technical assistance to improve the capacity of States to meet the section 616 data collection requirements.

We published a notice of proposed priorities (NPP) for this program in the **Federal Register** on March 30, 2007 (72 FR 15126). This notice of final priorities contains four changes from the NPP. We fully explain the changes in the *Analysis of Comments and Changes* section that follows.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPP, four parties submitted comments on the proposed priorities. An analysis of the comments and the changes we have made follows.

We group major issues according to subject. Generally, we do not address technical and other minor and suggested changes that we are not allowed to make under the applicable statutory authority.

Priority A—Modified Academic Achievement Standards and Priority B—Alternate Academic Achievement Standards Comment

Two commenters requested that Priorities A and B require the use of universal design principles in developing alternate assessments based on modified academic achievement standards and alternate assessments based on alternate academic achievement standards.

Discussion: 34 CFR 300.160(g) of the IDEA regulations already requires State educational agencies (SEAs) (or, in the case of a district-wide assessment, local educational agencies (LEAs)), to use universal design principles in developing and administering alternate assessments for children with disabilities, to the extent possible. To require the use of universal design principles in developing alternate assessments under this priority, without consideration for the feasibility, appropriateness, or practicality of their use, would be inappropriate.

Changes: None.

Comment: One commenter recommended that training on universal design principles be included in the training on modified academic achievement standards for individualized education program teams (IEP Teams) required in Priority A.

Discussion: The training required under Priority A focuses on training IEP Teams to use State guidelines to determine the students to be assessed based on modified academic achievement standards. Determining whether universal design principles should be used in developing and implementing alternate assessments is not a responsibility of IEP Teams. Therefore, we believe it would be inappropriate to include training on universal design for IEP Teams, as recommended by the commenter.

Changes: None.

Comment: One commenter stated that projects funded under Priorities A and B should work with an expert who has skills in applying principles of universal design to large-scale assessments, in order to ensure that alternate assessments are, to the extent possible, universally designed.

Discussion: We agree that an expert with experience in applying universal design principles to large-scale assessments would help ensure that alternate assessments, to the extent possible, are universally designed; we will change the list of expert skills in Priorities A and B accordingly.

Changes: We have added, ''applying the principles of universal design to large-scale assessments'' to the list of expert skills in Priorities A and B.

Comment: One commenter recommended that Priorities A and B emphasize placement in the least restrictive environment (LRE) because children with Down syndrome, and many other children taking alternate assessments based on alternate academic achievement standards, are not provided opportunities to be educated in the LRE with their nondisabled peers.

Discussion: We believe it is unnecessary to include the additional language recommended by the commenter. The regulations on alternate academic achievement standards under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB), already require that alternate academic achievement standards for students with the most significant cognitive disabilities developed by a State promote access to the general curriculum (§ 200.1(d)(2)). Similarly, § 200.1(f)(2)(iii) of the ESEA regulations requires students who are assessed based on modified academic achievement standards to have access to the curriculum, including instruction, for the grade in which the students are enrolled. In addition, § 300.114(a)(2) of the IDEA regulations requires children with disabilities to be educated with nondisabled children, to the maximum extent appropriate.

Changes: None.

Comment: One commenter stated that an allowable activity under Priority B should be the development of clear and appropriate guidelines for IEP Teams to use in determining students to be assessed based on alternate academic achievement standards. Another commenter recommended that development and implementation of training for IEP Teams on these State guidelines should be allowable activities under Priority B.

Discussion: We agree that Priority B should support the development of clear and appropriate guidelines for IEP Teams to apply in determining students with the most significant cognitive disabilities who should take an alternate assessment based on alternate academic achievement standards, consistent with § 200.1(f)(1)(i)(A) of the ESEA regulations. We also agree that training for IEP Teams on these guidelines is important to ensure that the guidelines are correctly implemented.

Change: Priority B has been revised to include two additional allowable activities: (1) The development of clear and appropriate guidelines for IEP Teams to use in determining when a child's significant cognitive disability justifies assessment based on alternate academic achievement standards; and (2) the development and implementation of training on guidelines for IEP Teams to use in determining which students should be assessed based on alternate academic achievement standards.

Comment: One commenter recommended that the Secretary provide funds to assist States with developing and implementing alternate assessments based on grade-level academic achievement standards.

Discussion: Given the limited availability of funds, we believe that focusing Priorities A and B on alternate assessments based on alternate academic achievement standards and alternate assessments based on modified academic achievement standards will address the needs of the majority of States. Evidence provided by the Office of Elementary and Secondary Education's peer review of Statewide assessment systems is clear that many States need support to improve their alternate assessments based on alternate academic achievement standards. Additionally, States overwhelmingly expressed the need for funds to support the development of alternate assessments based on modified academic achievement standards when the regulations permitting States to develop modified academic achievement standards were published on April 9, 2007. We have not received similar requests for funds to support the development of alternate assessments based on grade-level academic achievement standards.

Changes: None.

Comment: One commenter recommended that Priorities A and B require applicants to collect data on the characteristics of students who take an alternate assessment based on alternate or modified academic achievement standards, such as the disability category and minority status of students, and whether students are economically disadvantaged or have limited proficiency in English. The commenter also recommended requiring data to be collected on instructional variables, such as students' educational placements, the accommodations they received, and whether instruction was provided by highly qualified teachers.

Discussion: We believe that implementing the commenter's recommendations would require

significant resources and time and be a burden for States to report and would not necessarily improve the use of funds under this program. Therefore, we decline to make the changes requested by the commenter.

Changes: None.

Comment: One commenter recommended that Priorities A and B require applicants to report the percentage of students with disabilities taking either of the alternate assessments and the percentage of those students whose advanced or proficient scores on those alternate assessments are counted as proficient in calculating adequate yearly progress (AYP).

Discussion: The information regarding participation requested by the commenter is already required under the ESEA and the IDEA. Section 200.6(a)(4) of the ESEA regulations requires States and LEAs to report on the number and percentage of students taking an alternate assessment based on alternate or modified academic achievement standards. Likewise, § 300.160(f) of the IDEA regulations requires States to report on the number of students with disabilities participating in alternate assessments based on alternate or modified academic achievement standards.

Neither the regulations under Title I of the ESEA nor the regulations under Part B of the IDEA require reporting of the percentage of advanced or proficient scores on alternate assessments based on alternate and modified academic achievement standards that are used in calculating AYP, and we do not believe it would be useful or appropriate to impose such a requirement only on grantees under Priorities A and B. As noted previously, these priorities are being established under section 616(i)(2) of the IDEA to improve the capacity of States to meet the section 616 data collection requirements. The information requested is not a part of the section 616 data collection requirements.

Changes: None.

Priority C—Outcome Measures

Comment: One commenter stated that an allowable activity under Priority C should include comparing outcomes of children with disabilities participating in regular preschool programs (defined as a program that has a natural proportion of disabled and non disabled children) with outcomes of children in special education preschool programs.

Discussion: The purpose of this priority is to improve the capacity of States to meet the section 616 data collection requirements under the IDEA. The activity recommended by the commenter extends beyond this purpose. Therefore, we decline to make the commenter's recommended change.

Changes: None.

Comment: None.

Discussion: The NPP inadvertently included a requirement that projects funded under Priority C provide an assurance from the State's Assessment Office that it was given an opportunity to contribute to the formulation of the application. Because Priority C does not involve information related to assessments, this requirement was misplaced.

Changes: The requirement that projects funded under Priority C provide an assurance from the State's Assessment Office that it was given an opportunity to contribute to the formulation of the application has been removed.

Note: This notice does not solicit applications. In any year in which we choose to use one of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) Awarding additional points, depending on how well, or the extent to which, the application meets the competitive preference priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive preference priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The Assistant Secretary for Special Education and Rehabilitative Services is establishing three separate funding priorities addressing data collected under the IDEA. Although these are being announced in one notice, these priorities will be funded through separate competitions. Eligible entities must submit separate applications under each of the priorities for which they wish to apply.

Priorities

Background of Priority A—Modified Academic Achievement Standards

On April 9, 2007, the Secretary amended the regulations governing programs administered under Title I of the ESEA, as amended by NCLB, and the regulations governing programs under Part B of the IDEA. These regulations provide States with additional flexibility regarding State, LEA, and school accountability for the achievement of a small group of students with disabilities whose progress is such that, even after receiving appropriate instruction, including special education and related services designed to address the students' individual needs, the students' IEP Teams are reasonably certain that the students will not achieve grade-level proficiency within the year covered by the students' IEPs. These regulations became effective May 9, 2007.

The regulations permit States to develop modified academic achievement standards (and assessments that measure achievement based on those standards) that are aligned with grade-level content standards. States and LEAs are permitted to include the proficient and advanced scores from assessments based on modified academic achievement standards in AYP determinations, subject to a cap of 2.0 percent at the district and State levels based on the total number of students in the grades assessed.

The Secretary anticipates that many States will need support in developing, enhancing, or redesigning their assessment systems to include assessments that are aligned with modified academic achievement standards.

Priority A—Modified Academic Achievement Standards

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for grants to support States with one or more of the following activities: (1) Development of modified academic achievement standards based on the State's academic content standards for the grade in which a student is enrolled; (2) development of State assessments using universal design principles, to the extent possible, based on modified academic achievement standards; and (3) development of clear and appropriate guidelines for IEP Teams to use in determining which students should be assessed based on modified academic achievement standards, and the development and implementation of training on those guidelines for IEP Teams.

Assessments based on modified academic achievement standards must be designed to generate valid scores that can be used for AYP accountability purposes under the ESEA. The scores of students with disabilities participating in alternate assessments based on modified academic achievement

standards also will be reflected in the data required by the Part B State Performance Plans and Annual Performance Reports on the performance and participation of children with disabilities on State assessments under section 616 of the IDEA.

Applicants must include information in their applications on how they will work with experts in large-scale assessment and special education to ensure that they are designing modified academic achievement standards, and assessments based on those standards, that: (1) Address the needs of students with disabilities; (2) validly, reliably, and accurately measure student performance; and (3) result in high quality data for use in evaluating the performance of schools, districts, and States. The experts selected should represent the range of skills needed to develop assessments based on modified academic achievement standards for students with disabilities that will meet the peer review guidelines for assessments published by the Department in the spring of 2004 that are available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf.* Skill sets for experts must include experience with one or more of the following: (1) Large scale assessment; (2) standards-setting techniques; (3) assessment and measurement of children with disabilities; (4) accommodations and supports to assess grade-level content; (5) working with States to develop assessments; (6) development of criterion referenced tests and instruments; (7) psychometric evaluation; (8) conducting studies of the technical adequacy of assessment instruments; (9) research and publishing in the area of assessment and psychometrics; and (10) applying the principles of universal design to large-scale assessments.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting in Washington, DC;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (*i.e.*, the office that addresses accountability under Title I of the ESEA) was given the opportunity to contribute to the formulation of the application.

Background of Priority B—Alternate Academic Achievement Standards

The Department's Title I regulations in 34 CFR part 200, regarding children with the most significant cognitive disabilities, permit a State to develop alternate academic achievement standards for students with the most significant cognitive disabilities and to include those students' proficient and advanced scores on alternate assessments based on alternate academic achievement standards in measuring AYP at the State and district levels, subject to a cap of 1.0 percent of the total number of students in the grades assessed. Alternate assessments based on alternate academic achievement standards, as permitted by the Title I regulations, also are recognized as an appropriate assessment method in section 612(a)(16) of the IDEA.

Alternate assessments that are used by States and LEAs under the ESEA, as amended by NCLB, must be designed to generate valid data that can be used for purposes of determining AYP. Alternate assessments also must meet the requirements in 34 CFR 200.2 (State Responsibilities for Assessment) and 34 CFR 200.3 (Designing State Academic Assessment Systems), including the requirements relating to validity, reliability, and high technical quality; and fit coherently in the State's overall assessment system under 34 CFR 200.2. The alternate assessment must, among other things, be: (1) Valid and reliable for the purposes for which the assessment system is used; (2) consistent with relevant, nationally-recognized professional and technical standards; and (3) supported by evidence from test publishers or other relevant sources that the assessment system is of adequate technical quality for each purpose required under the ESEA, as amended by NCLB. States must include alternate assessment data in their State Performance Plan and Annual Performance Reports relative to performance and participation of children with disabilities on State assessments under the IDEA.

The Department is establishing the following priority because many States need assistance in: (1) Developing alternate academic achievement standards aligned with the State's academic content standards; (2) developing high-quality alternate assessments that measure the achievement of students with the most significant cognitive disabilities based on those standards; (3) reporting on the participation and performance of students with disabilities on alternate assessments based on alternate academic achievement standards; and (4) developing clear and appropriate guidelines for IEP Teams to use in determining which students should be assessed based on alternate academic achievement standards, and the development and implementation of training on those guidelines.

Priority B—Alternate Academic Achievement Standards

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for grants to support States with one or more of the following activities: (1) Development of alternate academic achievement standards aligned with the State's academic content standards; (2) development of high-quality alternate assessments using universal design principles, to the extent possible, that measure the achievement of students with the most significant cognitive disabilities based on those standards; (3) reporting on the participation and performance of students with disabilities on alternate assessments based on alternate academic achievement standards; and (4) development of clear and appropriate guidelines for IEP Teams to use in determining which students should be assessed based on alternate academic achievement standards, and the development and implementation of training on those guidelines for IEP Teams.

Applicants must include information in their applications on how they will work with experts in large-scale assessment and special education to ensure that they are designing alternate academic achievement standards, and assessments based on those standards, that: (1) Address the needs of students with the most significant cognitive disabilities; (2) validly, reliably, and accurately measure student performance; and (3) result in high quality data for use in evaluating the performance of schools, districts, and States. The experts selected should represent the range of skills needed to develop assessments based on alternate academic achievement standards for students with the most significant cognitive disabilities that will meet the peer review guidelines for assessments published by the Department in the spring of 2004 that are available at *http://www.ed.gov/policy/elsec/guid/saaprguidance.pdf.* Skill sets for experts must include experience with one or more of the following: (1) Large scale assessment; (2) standards-setting techniques; (3) assessment and measurement of children with

disabilities; (4) accommodations and supports to assess grade-level content; (5) working with States to develop assessments; (6) development of criterion-referenced tests and instruments; (7) psychometric evaluation; (8) conducting studies of the technical adequacy of assessment instruments; (9) research and publishing in the area of assessment and psychometrics; and (10) applying the principles of universal design to large-scale assessments.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting in Washington, DC;

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility; and

(c) Provide a written assurance that the State's Assessment Office (*i.e.*, the office that addresses accountability under Title I of the ESEA) was given the opportunity to contribute to the formulation of the application.

Background of Proposed Priority C—Outcome Measures

The cornerstone of any accountability system is the development of outcome indicators against which progress can be measured. State performance reports, self-assessments, and other extant data show that most States and Lead Agencies, as defined under Part C of the IDEA (section 635(a)(10)), as well as their LEAs and Early Intervention Service programs, do not have well developed systems for measuring the progress of infants, toddlers, and young children with disabilities and their families served under Part B and Part C of the IDEA or methods to collect and analyze Part B and Part C outcome indicator data. Therefore, most States lack the capacity to collect sufficient data to determine the impact of early intervention and special education services for these children.

Priority C—Outcome Measures

The Assistant Secretary for Special Education and Rehabilitative Services establishes a priority for projects that address the needs of States for technical assistance to improve their capacity to meet Federal data collection requirements in one or both of two focus areas.

Focus Area One. Focus Area One supports the development or enhancement of Part B State systems for collecting, analyzing, and reporting preschool outcome indicator data. Projects funded under Focus Area One must focus on improving the capacity of the State to provide information that could be used to determine the following:

(a) The outcomes associated with preschool children with disabilities participating in State Part B programs.

(b) If the State has standards for preschool disability outcomes, whether preschool children with disabilities are meeting those standards.

(c) Trend data on outcomes associated with preschool children with disabilities and the extent to which preschool children with disabilities are meeting State standards.

Focus Area Two. Focus Area Two supports the development or enhancement of Part C systems for collecting, analyzing, and reporting outcome indicator data. Projects funded under Focus Area Two must focus on improving the capacity of the State to provide information that could be used to determine the following:

(a) The outcomes associated with infants and toddlers with disabilities and their families participating in State Part C programs.

(b) If the State has standards for early intervention outcomes, whether infants and toddlers with disabilities are meeting those standards.

(c) Trend data on outcomes associated with infants and toddlers with disabilities and their families and the extent to which infants and toddlers with disabilities are meeting State standards.

Projects funded under this priority also must—

(a) Budget to attend a three-day Project Directors' meeting in Washington, DC; and

(b) If the project maintains a Web site, include relevant information and documents in a format that meets a government or industry-recognized standard for accessibility.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits of the regulatory action justify the costs.

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

Intergovernmental Review

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

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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

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

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

(Catalog of Federal Domestic Assistance Number 84.373X Technical Assistance on Data Collection—General Supervision Enhancement Grants)

Program Authority: 20 U.S.C. 1411(c) and 1416(i)(2).

Dated: July 3, 2007.

Jennifer Sheehy,

Director of Policy and Planning for Special Education and Rehabilitative Services.

[FR Doc. E7–13229 Filed 7–6–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

A Framework for Developing High-Quality English Language Proficiency Standards and Assessments

AGENCY: Office of the Deputy Secretary, Department of Education.

ACTION: Notice; correction.

SUMMARY: On June 6, 2007, the Secretary of Education (Secretary) published a

notice in the **Federal Register** (72 FR 31300) announcing plans to hold three public meetings to seek recommendations on developing a Framework for States to consider in examining the quality of their standards and assessments for English language proficiency (ELP) under Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (NCLB). The name of the hotel listed as the site for the July 18, 2007 meeting has been changed.

FOR FURTHER INFORMATION CONTACT: Hanna Skandera. Telephone: (202) 401–0831.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

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

Correction

In the **Federal Register** of June 6, 2007, on page 31301, in the third column, under *Announcement of Public Meetings,* correct the third paragraph to read as follows:

Wednesday, July 18, 2007, in Washington, DC at the Westin Washington, DC City Center, 1400 M Street, NW., from 2 p.m. to 6 p.m.

Electronic Access to This Document

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

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

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

Dated: July 3, 2007.

Raymond Simon,

Deputy Secretary.

[FR Doc. E7–13223 Filed 7–6–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–8337–6]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board. The Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico. The statute calls for the Board to have representatives from U.S. Government agencies; the States of Arizona, California, New Mexico and Texas; tribal representation; and a variety of non-governmental officials. One purpose of this meeting is to hear presentations on the theme selected for the Board's Eleventh Report, natural disasters and the environment. The meeting also will include a public comment session and a business meeting on the second day. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Tuesday, July 24, from 9 a.m. (registration at 8:30 a.m.) to 5:30 p.m. and Wednesday, July 25, from 8 a.m. (registration 7:30 a.m.) to 12 noon. It will be preceded by a Board field trip to learn about local environment infrastructure on the afternoon of July 23rd.

ADDRESS: The meeting will be held at the Holiday Inn, 3777 North Expressway, Brownsville, Texas 78520. Telephone: 1–800–325–7385.

The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Elaine Koerner, Designated Federal Officer, *koerner.elaine@epa.gov,* 202–233–0069, U.S. EPA, Office of Cooperative Environmental Management (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the Board should be sent to Elaine Koerner, Designated Federal Officer, at the contact information above.

Meeting Access: For information on access or services for individuals with disabilities, please contact Elaine Koerner at the contact information above. To request accommodation of a disability, please contact Elaine Koerner, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: June 19, 2007.

Elaine Koerner,

Designated Federal Officer.

[FR Doc. 07–3311 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8337–4; EPA–HQ–OARM–2007–0166]

Amendment of System Records Notice for the PeoplePlus

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of an Amendment of an existing System of Records Notice for the PeoplePlus.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Administration and Resources Management (OARM) is giving notice that it proposes to AMEND AN EXISTING SYSTEM OF RECORDS for EPA–1 PeoplePlus. The Environmental Protection Agency (EPA or Agency) is amending a Privacy Act system of records to reflect the agency's collection of employee data determined to be privacy and or personally identifiable information (PII). In previous amendments the Human Capital Management (HCM) function of PeoplePlus was always the underlying source of employee information when providing Benefits, Payroll, and Time and Labor processing. The data collected includes, but is not limited to, contents of employee information in the Official Personnel Folder (OPF) as specified in the Office of Personnel Management (OPM) Operating Manual, ''The Guide to Personnel Recordkeeping,'' but never to this level of detail. Further, the system's name is changing from ''PeoplePlus Payroll, Time and Labor Application'' to ''PeoplePlus'' because the name included functions of PeoplePlus which changed recently with the e-Payrolls initiative. This notice does not affect any Privacy Act rights already accorded individuals who are subject of Agency

personnel and payroll records. PeoplePlus will not change the nature of the records currently kept by EPA. This action simply gives notice of the additional HCM, and employee information collected, and to notify the public of the routine uses for PeoplePlus. These records are maintained in PeoplePlus to administer EPA's pay and leave requirements, including processing, accounting, and reporting requirements. They also provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in PeoplePlus have various uses by Agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated or microform equivalents may also be used to locate individuals for personnel research.

DATES: Persons wishing to comment on this system of records notice may do so by August 20, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2007–0166, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail: oei.docket@epa.gov*.
- *Fax:* 202–566–1752.
- *Mail:* OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2007–0166. 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 for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: Bobby Moore, Office of Human Resources, Office of Administration and Resources Management, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., M/C 3603M, Washington, DC 20460, telephone (202) 564–7542.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA–1 PeoplePlus (PPL) system of records does not duplicate any existing system of records. Details regarding the amended system of records are contained in this **Federal Register** Notice. PeoplePlus is EPA's integrated Human Resources, Benefits, and Time and Labor Management System. PPL is an enterprise application that provides multiple functionalities for human resources and base benefits as well as on-line entry for time and labor data. The Human Capital Management (HCM) function of PeoplePlus was designed to support personnel operations, feed payroll systems, time and labor and meet managers', human resources (HR) specialists', and employees' needs for information necessary to manage day-to-day operations. These records are not a substitute for the official, permanent documentation that constitutes the Official Personnel Folder (OPF). The data collected includes, but is not limited to, contents of employee information in the OPF as specified in the Office of Personnel Management (OPM) Operating Manual, ''The Guide to Personnel Recordkeeping.'' Much of the Standard Form 52 ''Request for Personnel Action'' and Standard Form 50 ''Notification of Personnel Action'', information is collected to meet Government-wide human resource information needs. Civilian personnel records are records that relate to the supervision over and management of Federal civilian employees. These include records on the general administration and operation of human resource management programs and functions as well as records that concern individual employees. This information is reported to the Central Personnel Data File (CPDF), OPM's centralized, automated information system that provides statistics on Executive Branch employment to the Congress and other agencies. This information is used in a variety of ways to evaluate and formulate human resource systems and programs. Privacy in PeoplePlus is protected by restricting access to authorized users with appropriate roles and permissions. Privacy data is access and managed by the Human Resources Specialist with these secured roles. PeoplePlus is access by EPA employees for time entry and those who provide functional duties within the system. Employees access PeoplePlus using a secure Web site within the Agency's firewall. Employees must use their unique Network ID and secure Password to gain access. PeoplePlus is managed and maintained by both the Office of Administration and Resources Management (OARM) and the Office of the Chief Financial Officer (OCFO). EPA's Central Client Server System (CCSS) is the general support system which services and supports the PeoplePlus major application. CCSS is located at Research

Triangle Park, N.C. within the National Computer Center (NCC), in the Office of Environmental Information (OEI).

Dated: June 4, 2007.

Molly A. O'Neill,

Assistant Administrator and Chief Information Officer.

EPA–1

SYSTEM NAME:

PeoplePlus.

SYSTEM LOCATION:

National Computer Center, Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EPA employees, including Health and Human Services Public Health Service Commissioned Officers assigned to EPA.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

This system contains general human resources elements, basic benefits pay and leave records. This includes, but is not limited to, employee identification and employment status data such as: Name(s), records that establish an individual's identity, social security number, date of birth, sex, race and national origin, disability, home and mailing addresses, home telephone numbers and telephone numbers for emergency contacts, type of appointment, education, training courses attended, veteran preference, military service, service computation for leave, date of probationary and trial period began, date of and the annual performance rating, date of and amount of individual cash, time off, rating based, and suggestion, patents and invention awards, date of and amount of group cash, time off, and suggestion, patents, and inventions awards, grievances and adverse actions for performance based reductions in grade and removal actions, and terminations of probationers, date of within-grade increases, Intergovernmental Personnel Act records, union bus codes, employing organization codes, salary, pay plan, grade, step, adjudication of a position classification and appeal, retained grade or pay appeal, or Fair Labor Standards Act (FLSA) claim complaints, forms and reports completed during employment as a condition of employment, records and pertaining and resulting from the testing of the employee for use of illegal drugs, reports of on-the-job injuries and medical records, forms, and reports generated as a result of the filing of a Workers' Compensation, number of hours worked, overtime, compensatory time, leave accrual rate, leave usage and balances, Thrift Saving Plans (TSP), TSP loans, Civil Service Retirement and Federal Employees Retirement System contributions, Federal Insurance Contributions Act (FICA) withholdings, Federal, State, and city tax withholdings, Federal Employee Group Life Insurance withholdings, Federal Long-Term Care Insurance, Federal Employee Health Benefits withholdings, charitable deductions, allotments to financial organizations, garnishments, savings bonds allotments, union dues withholdings, deductions for Internal Revenue Service levies, court ordered child support levies, Federal salary offset deductions, and information on the Leave Transfer Program and the Leave Bank Program, Flexible Spending Accounts (FSA), child care subsidy, time compliance technical orders (TCTO), Physicians Comparability Allowances (PCA), uniform allowances, non-foreign cost-of-living allowances, Within Grade Increase, Quality Step Increase, student loan repayment program, recruitment, relocation, and retention incentives, extended assignment incentives, supervisory differentials, post differentials, night pay differential, Sunday premium pay, law enforcement availability pay, administratively uncontrollable overtime pay, regularly scheduled standby duty pay, evacuation payment, hazardous duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5101 *et seq.*; 5 U.S.C. 5501 *et seq.*; 5 U.S.C. 5525 *et seq.*; 5 U.S.C. 5701 *et seq.*; 5 U.S.C. 6301 *et seq.*; 31 U.S.C. 3512; Executive Order 9397 (Nov. 22, 1943); 5 U.S.C. 6362; 5 U.S.C. 6311.

PURPOSE(S):

These records are maintained in PeoplePlus to administer EPA's pay and leave requirements, including processing, accounting and reporting requirements. They also provide the basic source of factual data about a person's Federal employment while in the service and after his or her separation. Records in PeoplePlus have various uses by Agency personnel offices, including screening qualifications of employees; determining status, eligibility, and employee's rights and benefits under pertinent laws and regulations governing Federal employment; computing length of service; and other information needed to provide personnel services. These records and their automated equivalents may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

A. To the Department of the Treasury to issue checks, make payments, make electronic funds transfers, and issue U.S. Savings Bonds.

B. To the Department of Agriculture National Finance Center to credit Thrift Savings Plan deductions and loan payments to employee accounts.

C. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job connected injury or illness.

D. To the Internal Revenue Service; Social Security Administration; and State and local tax authorities in connection with the withholding of employment taxes and tax levies.

E. To the State Unemployment Offices in connection with a claim filed by former employees for unemployment benefits.

F. To the officials of labor organizations as to the identity of employees contributing union dues each pay period and the amount of dues withheld from each employee.

G. To the Office of Personnel Management and to Health Benefit carriers in connection with enrollment and payroll deductions.

H. To the Office of Personnel Management in connection with employee retirement and life insurance deductions.

I. To the Combined Federal Campaign in connection with payroll deductions for charitable contributions.

J. To the Office of Management and Budget and Department of the Treasury to provide required reports on financial management responsibilities.

K. To provide information as necessary to other Federal, State, local or foreign agencies conducting computer matching programs to help eliminate fraud and abuse and to detect unauthorized overpayments made to individuals. When disclosures are made as part of computer matching programs, EPA will comply with the Computer Matching and Privacy Protection Act of 1988.

L. To the Social Security Administration and the Department of Health and Human Services to provide information on newly hired employees for child support enforcement purposes.

M. To the Department of Health and Human Services in connection with the master personnel and payroll files for their Public Health Service Officers.

N. To the Defense Finance and Accounting Service to provide payroll processing services.

O. To the Federal Retirement Benefit Contractors to enable employees to receive retirement benefit calculations.

P. To disclose information to Government training facilities (Federal, State, and local) in review of OPM's Go Learn eGov initiative as part of EHRI.

Q. To disclose information to Office of Civil Rights (OCR) for Equal Employment Opportunity Commission (EEOC) when requested in connection with investigations of alleged or possible discrimination practices in the Federal Sector, and in response to its request for use in the conduct of an examination of an agency's compliance with affirmative action plan instructions and the Uniform Guidelines on Employee Selection Procedures (1978).

EPA'S GENERAL ROUTINE USES:

A, B, C, D, E, F, G, H, I, J, and *K* apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in hard copy formats and computer processable storage media such as computer tapes and disks. The computer storage devices are located in the National Computer Center, Research Triangle Park, North Carolina. Backup tapes are maintained at a disaster recovery site. Data is on CD and fiche—only after it rolls off line in DCPS for use within the PROs to do research. There are actual history tapes kept in the storage facility for the 56 years.

• *Retrievability:* These records are retrieved by the employee identification number or name.

• *Safeguards:* Computer records are maintained in a secure password protected environment. Access to computer records is limited to those who have a need to know. Permission level assignments allow users access only to those functions for which they are authorized. Paper records are maintained in locked metal file cabinets. All records are maintained in secure, access-controlled areas or buildings.

• *Retention and Disposal:* The retention of data in the system is in accordance with applicable EPA Records Schedules #161 and 553 as approved by the National Archives and Records Administration. Employee records are retained on magnetic tapes for an indefinite period. Hard copy records are maintained for varying periods of time, at which time they are disposed of by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Human Resources, Office of Administration and Resources Management, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (MC 3601ARN), Washington, DC 20460 and Director, Office of Financial Services, Office of the Chief Financial Officer, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (MC 2734R), Washington, DC 20460.

NOTIFICATION PROCEDURES:

Individuals who want to know whether this system of records contains information about them or who want to access, amend or correct their records, should make a written request to the EPA Privacy Act Officer, Freedom of Information Office, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (MC 2822T), Washington, DC 20460 or by facsimile to (202) 566–2149. Individuals must furnish the following information for their records to be located and identified:

A. Full name.

B. A statement that the request relates to the PeoplePlus system of records.

C. A statement indicating the reason for the request (*i.e.*, access, amendment or correction) and whether a personal inspection of the records or a copy of them by mail is desired.

D. Signature.

These requirements and related provisions are set forth in EPA's Privacy Act regulations, 40 CFR Part 16, as amended (2006), which are available on the Agency's Privacy Act Web site at *http://www.epa.gov/privacy/laws/index.htm.*

RECORD ACCESS PROCEDURE:

Individuals wishing to request access to their records should follow the Notification Procedures. Individuals requesting access are also required to provide adequate identification, such as a driver's license, employee identification card, social security card, credit card or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORD PROCEDURE:

Individuals requesting correction or amendment of their records should follow the Notification Procedures and the Record Access Procedures and also identify the record or information to be changed, giving specific reasons for the change. Complete EPA Privacy Act procedures are set out in 40 CFR part 16, as amended (2006).

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

A. The individual on whom the record is maintained.

B. Agency officials such as managers and supervisors.

C. Consumer reporting agencies, debt collection agencies, Department of the Treasury, and other Federal agencies.

D. Federal Retirement Benefit contractors.

E. Leave Bank.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. E7–13205 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8337–3]

Proposed Settlement Agreement, Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(h)(i), notice is hereby given of a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA. The proposed settlement is intended to resolve the potential liability under CERCLA of two (2) parties for response costs incurred by EPA or by the United States Department of Justice on behalf of EPA in connection with Operable Unit 4 (''OU4'') of the Palmerton Zinc Pile Superfund Site, Carbon County, Pennsylvania (''Site'') after January 1, 2002, through August 23, 2006.

DATES: Written comments on the proposed settlement agreement must be received by August 8, 2007.

ADDRESSES: Submit your comments, identified by Docket No. CERC–03–2007–0049–DC, by mail to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; or by e-mail to *nadolski.cynthia@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Cynthia Nadolski (3RC43), Office of Regional Counsel, United States

Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; telephone: (215) 814–2673; fax number (215) 814–2603; e-mail address: *nadolski.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

Notice is hereby given that a proposed administrative agreement between the United States Environmental Protection Agency, CBS Operations Inc., and TCI Pacific Communications has been approved, subject to public comment, by the Department of Justice pursuant to Section 122(h)(1) of CERCLA. The administrative agreement was signed by the Director of the Hazardous Site Cleanup Division, EPA Region III, on June 15, 2007. The settlement provides for recovery of 100% of the costs incurred by EPA and the U.S. Department of Justice on behalf of EPA in connection with OU4 of the Site after January 1, 2002, through August 23, 2006, in the amount of $256,138.40.

The Environmental Protection Agency will receive written comments on the proposed administrative settlement for a period of thirty (30) days from the date of publication of this Notice. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of CERCLA. Unless EPA or the Department of Justice determines, based on any comments which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy of the Settlement Agreement?

A copy of the proposed Agreement for Recovery of Past Response Costs can be obtained from the United States Environmental Protection Agency, Region III, Office of Regional Counsel (3RC00), 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029 by contacting Cynthia Nadolski, Senior Assistant Regional Counsel, at (215) 814–2673, or via e-mail at *nadolski.cynthia@epa.gov.* It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available to the public unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment. 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.

Dated: June 20, 2007.

James N. Webb,

Acting Director, Hazardous Site Cleanup Division, Region III.

[FR Doc. E7–13204 Filed 7–6–07; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, July 17, 2007, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, NW., Washington, DC 20507.

STATUS: Part of the meeting will be open to the public and part of the meeting will be closed.

MATTERS TO BE CONSIDERED:

Open Session:

1. Announcement of Notation Votes, and

2. Obligation of Funds for the EEOC National Contact Center.

Closed Session:

Agency Adjudication and Determination on Federal Agency Discrimination Complaint Appeals.

Note: In accordance with the Sunshine Act, a part of the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Acting Executive Officer on (202) 663–4070.

Dated: July 5, 2007.

Stephen Llewellyn,

Acting Executive Officer, Executive Secretariat.

[FR Doc. 07–3348 Filed 7–5–07; 2:46 pm]

BILLING CODE 6570–01–M

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals to Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: AIREN BROADCASTING COMPANY, Station KZCC, Facility ID 164090, BMPH–20070523ADS, From MCCLOUD, CA, To TRINIDAD, CA; ALASKA EDUCATIONAL RADIO SYSTEM, INC., Station KABN–FM, Facility ID 93588, BPED–20070516AAB, From KASILOF, AK, To RIDGEWAY, AK; ALASKA EDUCATIONAL RADIO SYSTEM, INC., Station KRAW, Facility ID 93589, BPED–20070516AAC, From STERLING, AK, To RIDGEWAY, AK; ALASKA EDUCATIONAL RADIO SYSTEM, INC., Station KWMD, Facility ID 93248, BPED–20070516AAD, From KASILOF, AK, To RIDGEWAY, AK; BRAGG BROADCASTING CORPORATION, Station KSAR, Facility ID 87970, BPH–20070516ABC, From THAYER, MO, To CHEROKEE VILLAGE, MO; CALL COMMUNICATIONS GROUP, INC., Station WMKL, Facility ID 61087, BMPED–20070521AIL, From KEY LARGO, FL, To HAMMOCKS, FL; CC LICENSES, LLC, Station WREO–FM, Facility ID 54566, BPH–20070530AHG, From ASHTABULA, OH, To MCDONALD, OH; CEDAR COVE BROADCASTING, INC., Station KEZF,

Facility ID 84104, BPED–20070514AFO, From EATON, CO, To SOUTH GREELEY, WY; CHAPIN ENTERPRISES, LLC, Station KRKR, Facility ID 54707, BPH–20070419ADV, From LINCOLN, NE, To VALLEY, NE; CHARLES D. HALL, Station NEW, Facility ID 165324, BNPH–20060303ABG, From RANGELY, CO, To CLIFTON, CO; CITICASTERS LICENSES, L.P., Station WKDD, Facility ID 43863, BPH–20070425AGO, From CANTON, OH, To MUNROE FALLS, OH; CITICASTERS LICENSES, L.P., Station WBBG, Facility ID 73309, BPH–20070530AHR, From NILES, OH, To GENEVA–ON–THE–LAKE, OH; CMP HOUSTON–KC, LLC, Station KCMO–FM, Facility ID 6385, BPH–20070531APM, From KANSAS CITY, MO, To SHAWNEE, KS; COCHISE BROADCASTING, LLC, Station NEW, Facility ID 171024, BNPH–20070501AHI, From PATAGONIA, AZ, To TUBAC, AZ; COLLEGE CREEK MEDIA, LLC, Station NEW, Facility ID 164144, BMPH–20070605ABM, From PRESHO, SD, To FORT PIERRE, SD; CSN INTERNATIONAL, Station KNMA, Facility ID 122932, BMPED–20070425AFG, From SOCORRO, NM, To TULAROSA, NM; CSN INTERNATIONAL, Station KWRC, Facility ID 90500, BMPED–20070427AAW, From RAPID CITY, SD, To HERMOSA, SD; CSN INTERNATIONAL, Station KGSF, Facility ID 92987, BMPED–20070430AEP, From ANDERSON, MO, To CENTERTON, AR; EDUCATIONAL MEDIA FOUNDATION, Station NEW, Facility ID 170980, BNPH–20070502AFB, From PITTSBURG, NH, To COLEBROOK, NH; FAMILY WORSHIP CENTER CHURCH, INC., Station WJNS–FM, Facility ID 72816, BPH–20070611AKN, From YAZOO CITY, MS, To BENTONIA, MS; FLINN JR, GEORGE S, Station NEW, Facility ID 171030, BNPH–20070502AEH, From PARAGOULD, AR, To BONO, AR; FLINN JR, GEORGE S, Station NEW, Facility ID 171033, BNPH–20070502AFM, From LINDEN, TN, To WAYNESBORO, TN; FRANKLIN COMMUNICATIONS, INC., Station WJZK, Facility ID 30563, BPH–20070119ACO, From RICHWOOD, OH, To WEST JEFFERSON, OH; GEORGIA EAGLE BROADCASTING, INC., Station WZBX, Facility ID 60213, BPH–20070516AAN, From SYLVANIA, GA, To ROCKY FORD, GA; GREAT SCOTT BROADCASTING, Station WZBH, Facility ID 25003, BMPH–20070511ACZ, From GEORGETOWN, DE, To MILLSBORO, DE; HAWKEYE COMMUNICATIONS, INC., Station KCSI, Facility ID 26456, BPH–20070419ADT, From RED OAK, IA, To TREYNOR, IA; IN PHASE BROADCASTING, INC., Station NEW, Facility ID 170976, BNPH–20070501AAD, From CAMP WOOD, TX, To MOUNTAIN HOME, TX; INDIANA COMMUNITY RADIO CORPORATION, Station NEW, Facility ID 121860, BNPED–19991117ABJ, From MADISONVILLE, KY, To DRAKESBORO, KY; JACKMAN HOLDING COMPANY, LLC, Station NEW, Facility ID 170970, BNPH–20070501AGS, From MARQUAND, MO, To LEADWOOD, MO; JACOM, INC., Station WQBX, Facility ID 60788, BPH–20070604ABL, From ALMA, MI, To FOWLER, MI; JER LICENSES, LLC, Station NEW, Facility ID 170966, BNPH–20070502ACF, From GRAPELAND, TX, To CUNEY, TX; JER LICENSES, LLC, Station NEW, Facility ID 170963, BNPH–20070502AEZ, From FLAGLER, CO, To FORT MORGAN, CO; JER LICENSES, LLC, Station NEW, Facility ID 170964, BNPH–20070502AHB, From KAILUA–KONA, HI, To WAILEA–MAKENA, HI; JIM W. FREELAND, Station WCBL–FM, Facility ID 53944, BPH–20070521AGW, From BENTON, KY, To GRAND RIVERS, KY; KEYMARKET LICENSES, LLC, Station WOGF, Facility ID 13711, BPH–20070510AAY, From EAST LIVERPOOL, OH, To MOON TOWNSHIP, PA; KFCM, INC., Station KFCM, Facility ID 34416, BPH–20070516ABF, From CHEROKEE VILLAGE, AR, To ASH FLAT, AR; KM COMMUNICATIONS, INC., Station NEW, Facility ID 171016, BNPH–20070502ADT, From SWEETWATER, TX, To TRENT, TX; KONA COAST RADIO, LLC, Station NEW, Facility ID 170961, BNPH–20070502AFN, From HUGO, CO, To LIMON, CO; KONA COAST RADIO, LLC, Station NEW, Facility ID 170960, BNPH–20070502AGP, From CHEYENNE WELLS, CO, To HILLROSE, CO; KONA COAST RADIO, LLC, Station NEW, Facility ID 170962, BNPH–20070502AHA, From STRATTON, CO, To CROWLEY, CO; NASHVILLE'S SPORTSRADIO, INCORPORATED, Station WNTC, Facility ID 85772, BPH–20070601BRL, From DRAKESBORO, KY, To CROFTON, KY; NOALMARK BROADCASTING CORPORATION, Station NEW, Facility ID 170989, BNPH–20070502AAM, From ARKADELPHIA, AR, To BISMARCK, AR; PLYMOUTH BROADCASTING, INC., Station WZOC, Facility ID 12999, BPH–20070420ABH, From PLYMOUTH, IN, To WALKERTON, IN; RADIO LAYNE, LLC, Station KDJF, Facility ID 164233, BMPH–20070530AGM, From DELTA JUNCTION, AK, To ESTER, AK; RADIOACTIVE, LLC, Station NEW, Facility ID 164248, BMPH–20070424ABC, From VERNON CENTER, MN, To EAGLE LAKE, MN; RAMAR COMMUNICATIONS II, LTD., Station KSTQ–FM, Facility ID 54684, BPH–20070521AGR, From PLAINVIEW, TX, To NEW DEAL, TX; SOUTH BROADCASTING SYSTEM, INC., Station WZMQ, Facility ID 61646, BPH–20070511AAK, From KEY LARGO, FL, To LEISURE CITY, FL; U.S. STATIONS, LLC, Station KWXE, Facility ID 8149, BPH–20070601ADE, From GLENWOOD, AR, To PEARCY, AR; VIRDEN BROADCASTING CORP., Station WYEC, Facility ID 70277, BMPH–20070510ABF, From KEWANEE, IL, To CAMBRIDGE, IL; WILLIAM S. KONOPNICKI, Station 951109MG, Facility ID 78413, BMPH–20070518AAD, From PINETOP, AZ, To SUPERIOR, AZ; YOUNGERS COLORADO BROADCASTING LLC, Station KEZZ, Facility ID 165959, BMPH–20070119AGT, From WALDEN, CO, To MASONVILLE, CO; ZOE COMMUNICATIONS, INC., Station WGMO, Facility ID 10529, BPH–20070531ATM, From SHELL LAKE, WI, To SPOONER, WI; ZOE COMMUNICATIONS, INC., Station WPLT, Facility ID 5039, BPH–20070531ATT, From SPOONER, WI, To SARONA, WI.

DATES: Comments may be filed through September 7, 2007.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. E7–13270 Filed 7–6–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 20, 2007.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. David E. and Diana Locke, as trustee of the David Ellis Locke Trust, as part of a group acting in concert; to acquire voting shares of Miami Bancshares, Inc., and indirectly acquire voting shares of First State Bank of Miami Texas, all of Miami, Texas.

Board of Governors of the Federal Reserve System, July 2, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13144 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 2007.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. ANB Financial N.A. Employee Stock Ownership Plan, Rogers, Arkansas; and its trustees Debra G. Jackson, Gentry, Arkansas; Gregory D. Landis, Centerton, Arkansas; and Charles H. Brannan, Rogers, Arkansas, to retain voting shares of ANB Bancshares, Inc., and thereby indirectly retain voting shares of ANB Financial, NA, both of Rogers, Arkansas.

Board of Governors of the Federal Reserve System, June 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13179 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 23, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. Jack Windle Irrevocable Life Insurance Trust, Livingston, Tennessee; through its co–Trustees, Joyce Dodson Windle, Livingston, Tennessee; and John D. Copeland, Chattanooga, Tennessee; to retain voting shares of Overton Financial Services, Inc., Livingston, Tennessee, and thereby indirectly retain voting shares of Union Bank and Trust Company, Livingston, Tennessee.

2. The Credit Shelter Trust under the Last Will and Testament of Jack Allen Windle, Livingston, Tennessee, through its co–Trustees, Joyce Dodson Windle, Livingston, Tennessee; John D. Copeland, Chattanooga, Tennessee; and Thomas Alfred Windle, Cookeville, Tennessee; to retain voting shares of Overton Financial Services, Inc., Livingston, Tennessee, and thereby indirectly retain voting shares of Union Bank and Trust Company, Livingston, Tennessee.

3. The Tennessee Qualified Terminable Interest Trust under the Last Will and Testament of Jack Allen Windle, through its co–Trustees, Joyce Dodson Windle, Livingston, Tennessee; John D. Copeland, Chattanooga, Tennessee; and Thomas Alfred Windle, Cookeville, Tennessee; to retain voting shares of Overton Financial Services, Inc., Livingston, Tennessee, and thereby indirectly retain voting shares of Union Bank and Trust Company, Livingston, Tennessee.

Board of Governors of the Federal Reserve System, July 3, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13192 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Fenton Financial, Inc., Fenton, Michigan; to acquire 24.9 percent of the voting shares of Premier Commercial Bank, Arizona, N.A., Mesa, Arizona.

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. BSB Bancshares, Inc., Lincoln, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Brunswick Bancshares, Inc., and Brunswick State Bank, both of Brunswick, Nebraska.

Board of Governors of the Federal Reserve System, July 2, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13143 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 25, 2007.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Royal Bank of Scotland Group, plc, the Royal Bank of Scotland, plc, RBSG International Holdings Limited, all of Edinburgh, Scotland, Citizens Financial Group, Providence, Rhode Island, Banco Santander Central Hispano, S.A., Madrid, Spain, Santander Holanda B.V., Delft, Netherlands, Fortis N.V., Utrecht, Netherlands, Fortis S.A./N.V.,Fortis Brussels, S.A./N.V., Fortis Bank S.A./N.V.,all of Brussels, Belgium, Fortis Bank Nederland (Holding) N.V., Utrecht, Netherlands, and RFS Holdings B.V., Amsterdam, Netherlands; to control ABN AMRO Holding N.V. Amsterdam, Netherlands, and thereby indirectly acquire ABN AMRO North American Holding Company, LaSalle Bank Corporation, LaSalle Bank National Association, all of Chicago, Illinois, and LaSalle Bank Midwest National Association, Troy, Michigan. In connection with this proposal Fortis Bank Nederland (Holding) N.V., Santander Holand B.V. and RFS Holdings B.V. have applied to become bank holding companies.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Porter Bancorp, Inc., Louisville, Kentucky; to acquire 100 percent of Ohio County Bancshares, Inc., and thereby indirectly acquire Kentucky Trust Bank, both of Beaver Dam, Kentucky.

Board of Governors of the Federal Reserve System, June 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13180 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Inversions Argos S.A., Suramericana de Inversiones S.A., and Bancolombia S.A., all of Medellin, Columbia; to acquire indirectly Bienes y Servicios, S.A., Santa Tecla, El Salvador, and thereby engage in activities related to money transfer services and selling prepaid calling cards through its subsidiary Banagricola de El Salvador, Inc., Los Angeles, California. See Midland Bank, PLC, 76 Federal Reserve Bulletin 860 (1990); Norwest Corporation, 81 Federal Reserve Bulletin (1995) and 81 Federal Reserve Bulletin 1130 (1995); and Popular, Inc., 84 Federal Reserve Bulletin 481 (1998).

Board of Governors of the Federal Reserve System, June 26, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–13148 Filed 7–6–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Funding Opportunity Title: Training of Latin American Health Care Workers through the Gorgas Memorial Institute, Republic of Panama

AGENCY: Office of the Secretary, Office of Public Health Emergency Preparedness, and the Centers for Disease Control and Prevention, HHS.

ACTION: Notice.

Announcement Type: Single-Source, Cooperative Agreement.

Funding Opportunity Number: Not applicable.

Catalog of Federal Domestic Assistance Number: The Office of Management and Budget (OMB) Catalog of Federal Domestic Assistance (CFDA) number is 93.019.

DATES: To receive consideration, applications must be received by the Office of Grants Management, Office of Public Health and Science (OPHS), Department of Health and Human Services (DHHS), no later than 5 p.m. Eastern Time on August 8, 2007. The application due date requirement in this announcement supersedes the instructions in the OPHS–1 form.

ADDRESSES: Application kits may be obtained electronically by accessing Grants.gov at *http://www.grants.gov* or GrantSolutions at *http://www.GrantSolutions.gov.* To obtain a hard copy of the application kits, contact OPHS/Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, MD 20852 at (240) 453–8822. Applications must be prepared using Form OPHS–1 ''Grant Application,'' which is included in the application kit.

SUMMARY: This project will support the Gorgas Memorial Institute (GMI) to: (a) Develop a regional training center in Panama and (b) train community health workers, clinicians (physicians, nurses, and auxiliary medical workers) and select public-health professionals from Central and South America (*i.e.* Latin America), (c) facilitate partnerships between U.S. universities and their Latin American counterparts to develop human resources for health in Latin America, and (d) harness the energies of U.S. and other non-governmental organizations by partnering with them to advance community health training and program efforts in Latin America.

These efforts will help engage significantly more areas of these countries to prepare for and respond to public health emergencies such as pandemic influenza, and they will contribute to improved and expanded provision of prevention and primary health care. This training of nurses, community health workers and physicians will focus on improving and expanding coverage and access to both public health emergency care and preventive and primary health care in underserved parts of Latin America (*i.e.*, both underserved rural and poor urban communities). It is anticipated that as a result of this project, the healthcare work force will be better prepared to respond to public health emergencies such as pandemic influenza. Key to the selection of recipients for this training will be their availability and willingness to provide their health and medical care skills in underserved areas within the region. In addition to all appropriate medical care and health education or communication subjects, training supported by this project will emphasize infectious diseases, epidemiology, disease surveillance and outbreak response, among other subjects so graduates of training programs will be prepared to play contributing roles to any pandemic preparation and response.

SUPPLEMENTARY INFORMATION: While a number of Latin American countries have made significant strides towards improving the quality of health care for their citizens, and extending that care into underserved areas, a number of countries and regions still suffer from a shortage of appropriately trained health-care workers and clinicians. Though all levels of medical care (primary, secondary and tertiary) warrant further investment and effort to meet Latin Americans' present and growing need for medical care, this need is perhaps most acute among rural and disadvantaged urban communities, where essential public health, prevention and primary care are absent or sparse. From a public-health perspective, focusing public investment on basic and essential primary care results in a maximization of benefits for the greatest number of people.

Compounding the pre-existing and wide ranging needs for basic community, preventive and primary health care in this region are new threats from emerging infectious diseases that are looming on the horizon. The H5N1 strain of avian flu has become the most threatening influenza virus in the world that could cause a pandemic, and any large-scale outbreak of this disease among humans would have grave consequences for global public health, including in Latin America. Influenza experts have warned that the re-assortment of different influenza viruses may greatly increase the potential for the viruses to be transmitted more easily from person to person. Medical practitioners have also discovered several other, new avian viruses transmissible to humans. In the fight against avian and pandemic influenza, early detection and response is the first line of defense, and greater numbers of appropriately trained community and clinical health-care workers would play a vital role in helping respond to such public-health emergencies.

No funds provided under this cooperative agreement may support any activity that duplicates another activity supported by any component of HHS. Funds provided under this cooperative agreement may not supplant funding provided by other sources. Grantees must coordinate all funded activities with the HHS Centers for Disease Control and Prevention (CDC) and the Office of the Assistant Secretary for Preparedness and Response (ASPR).

I. Funding Opportunity Description

Authority: Section 307(a) and (b) of the PHS Act (42 U.S.C. 242l); Section 1702(a)(2), (3) and (4)(A) and (C) (42 U.S.C. 300u–1(a)(2), (3), and 4(A) and (C)); Section 1703(a)(1), (2), (3), and (4) (42 U.S.C. 300u–2(a)(1), (2), (3) and (4)); Section 1703(c) (42 U.S.C. 300u–2(c)); and Section 1704 (1), (2), and (3) (42 U.S.C. 300u–3(1), (2), and (3)); and Public Law 110–5, Continuing Appropriations Resolution, 2007 Section 20621.

Purpose: This program proposes that GMI:

(a) Continue developing and establishing a regional training center in Panama for health workers, medical clinicians (auxiliary health-care workers, community health aides, nurses, physician assistants, nurse practitioners, and physicians) and select public-health professionals from Central and South America. Development of such a center is understood to include the recruitment and retention of faculty and administrative staff, the development of curricula, and all appropriate inter-face with Panamanian, regional and international educational systems and peer groups.

(b) Train significant numbers of community health workers and clinicians (physicians, nurses, and auxiliary medical workers) and select public-health professionals from Central and South American countries.

(c) Through this cooperative agreement with HHS, explore and lead, where possible, the creation of partnerships between U.S. universities and Latin American counterpart institutions to further develop and train community-level health-care human resources, and identify policy and

program options that can contribute to the greater expansion and sustainability of community-level health-care workers in currently underserved areas. Additional funds from HHS could be available in the future to further expand the number of these partnerships.

(d) With HHS, investigate and develop approaches for collaborating with Latin American, U.S. and/or international non-governmental organizations (NGOs) to help advance the training of the community and field health and medical personnel of these NGOs.

(e) With HHS, investigate and develop approaches for collaborating with Latin American and U.S. NGOs to link, bridge and supplement these NGOs' community health initiatives, where possible, through GMI's provision of logistical support and a base of operations for the NGOs, working in agreement with GMI.

(f) Identify organizations of U.S.-based emigrants and their Latin American places of origin throughout the countries of Central and South America, and pursue efforts to build or expand community health complements to any community assistance initiatives these organizations may be providing.

(g) With HHS, international health organizations and NGOs, pursue coordinated efforts on health campaigns of public-health priority for which a campaign strategy approach offers merit (*e.g.*, immunization promotion, including seasonal influenza immunization, polio eradication, oral rehydration therapy, etc.). Any campaigns should utilize the best available approaches to researching, development, implementation and evaluation. GMI will design and implement new teaching methods directed to the community, to adopt healthy lifestyles towards prevention.

Measurable outcomes of the program will be the following:

(a) Continue efforts begun in the first year of this effort, to develop appropriate teaching curricula, engage with appropriate Panamanian and international teaching/educational networks to ensure high educational standards; hire appropriately-trained teaching, administrative and management staff; and establish all appropriate management, fiscal, and business operations to support and sustain such a training institute.

(b) Periodic reports of the number of people who have completed training; such reports should include details on the numbers of those who have dropped out midway, and those who have completed the training; pre- and post-test scores on key competency subject areas; numbers trained by type of health-care or clinical worker; town and country of origin of incoming students, as well as where those same students work and reside at six- and twelve-month intervals following the completion of their training; and the results of follow-up questionnaires sent to graduates that solicit feedback on their training and its appropriateness, and suggestions for how the school might improve its training. Any information Gorgas provides to HHS on training participants should remove individuals' personal data from the reports so that participants' privacy will be maintained. (See ''Reporting Requirements #2'' section later in this document for complementing reporting obligations pertinent to this outcome).

(c) The number of partnerships with U.S. institutions explored, as well as the number for which formal partnerships have been created, where substantive exchange of training expertise, faculty, and/or students is documented and described.

(d) The number of studies and recommendations of program and policy options available to Latin American countries that would contribute to expanded, sustained community-level health-care personnel.

(e) The number of partnerships with Latin American, U.S. and/or international NGOs that are explored, and the number of such partnerships developed and formally established.

(f) Detailed descriptions of the base-of-operations and logistics resources that GMI has developed and is maintaining, along with details of how it is communicating the availability of these resources to NGOs.

(g) The number of Latin American, U.S. and/or international NGOs that have opted to use GMI's provision of base-of-operations and logistics support in a given time period, and details on the nature and extent of such utilization.

(h) The number of health campaigns in which GMI participates, with detailed description(s) of the role(s) played by GMI along with the level of effort it contributed to each of these efforts.

(i) Quantify and detail the number of organizations of U.S.-based emigrants with which GMI has identified and partnered with, to enhance their community-health activities, and provide details of those community-health activities.

(j) The number of scholarships awarded to low income students, who will be participating in these trainings. Any information Gorgas provides to HHS on training participants should remove individuals' personal data from the reports so that participants' privacy will be maintained.

Activities HHS anticipates the Grantee will perform:

It is anticipated the grantee will undertake a variety of activities to realize the aforementioned purposes and outcomes. A list of what some of these activities might include follows.

1. Continue establishing/developing appropriate teaching curricula for specific training modules and assemblages of trainees;

2. In partnership with HHS, Panamanian Ministry of Health and NGOs, acquire didactic teaching resources and equipment that will allow appropriate training.

3. Continue engaging in appropriate Panamanian and international teaching or educational networks to ensure high educational standards;

4. Continue recruiting and hiring appropriately trained teaching and administrative staff;

5. Continue establishing all appropriate management, fiscal, and business operations to support and sustain an efficient and effective training institute;

6. Establishing an efficient performance monitoring and reporting system and submitting periodic reports to HHS;

7. Continue pursuing and developing partnerships with U.S. educational institutions in expanding GMI's knowledge, contacts and resources for improving and expanding community training and sustainability of health workers;

8. Pursuing and developing partnerships with Latin American, U.S. and/or international NGOs to provide these NGOs' healthcare staff with appropriate training;

9. Identify an appropriate level of facilities that can function as a base of operation for NGOs, with appropriate contingency plans for expanding this level of facilities as interest and demand for it could grow;

10. Identify, provide and assemble logistics resources for NGOs to enhance their community-health and outreach activities;

11. In partnership with HHS, and NGOs, identify appropriate topics for health campaigns and participate in the implementation and assessment of those campaigns;

12. Identify and approach fraternal organizations of U.S.-based emigrants that provide assistance to communities in Latin America, and partner with these groups to enhance their community-health activities.

13. In partnership with HHS, Panamanian Ministry of Health and NGOs, identify scholarships or fellowships to participating healthcare personnel attending these courses.

This cooperative agreement will provide total funding of $600,000 for all aspects of the described project.

HHS will be substantially involved with the design and implementation of the grantee's described activities. This grant is being issued and will be managed by the Centers for Disease Control and Prevention (CDC)/Office of the Assistant Secretary for Preparedness and Response (ASPR), with substantive involvement from the Office of Global Health Affairs (OGHA). In HHS international public health efforts, the Offices/Centers of OGHA, CDC and ASPR often collaborate on programs, issues and initiatives (*e.g.*, avian influenza, disease surveillance, etc.).

HHS staff members' activities for this program are as follows:

1. Provide assistance in the design and implementation with any of the aforementioned objectives and activities, including the identification of U.S. universities, and NGOs.

2. Provide liaison through HHS employees at U.S. Embassy(ies) in any participating or collaborating countries, as appropriate, and as relevant to the achievement of the purposes of this cooperative agreement.

3. Organize an orientation meeting with the grantee to discuss applicable U.S. Government, HHS, and National Strategic Plan expectations, regulations and key management requirements, as well as report formats and contents. The orientation could include meetings with staff from HHS agencies and the Office of the Senior Coordinator for Avian and Pandemic Influenza at the U.S. Department of State.

4. Review and approve the process used by the grantee to select key personnel and/or post-award subcontractors and/or subgrantees to be involved in the activities performed under this agreement.

5. Review and approve the grantee's work plan and detailed budget;

6. Review and approve the grantee's monitoring-and-evaluation plan, including for compliance with the strategic-information guidance established by OMB and HHS;

7. Review, on a monthly basis, with the grantee to assess monthly disbursement requests and expenditures in relation to approved work plan and modify plans, as necessary.

8. Meet via conference call on a quarterly basis with the grantee to assess quarterly technical and financial progress reports and modify plans, as necessary.

9. Meet via conference call or in person with the grantee to review the final progress report.

10. Provide technical assistance, as mutually agreed upon. This could include expert technical assistance and targeted training activities in specialized areas, such as strategic information and project management.

11. Provide in-country administrative support to help the grantee meet U.S. Government financial and reporting requirements approved by OMB under 0920–0428 (Public Health Service Form 5161).

12. Assist in assessing program operations and in implementing approaches to accurately monitor the progress and evaluate the overall effectiveness of the program.

II. Award Information

This project will be supported through the cooperative agreement mechanism. CDC/ASPR anticipates making only one award for this proposed work. The anticipated start date is September 15, 2007 to run through to September 14, 2008. CDC/ASPR anticipates providing $600,000 for the 12-month budget period. The total amount that the Gorgas Memorial Institute for Health Studies may request is $600,000. The funds in this cooperative agreement may not support indirect costs.

Approximate Current Fiscal Year Funding: $600,000.

Approximate Total Project Period Funding: This cooperative agreement will provide total funding of $600,000 for a 12-month budget period. Funds under this cooperative agreement shall not apply to indirect costs.

Approximate Number of Awards: One.

Ceiling of Individual Award Range: Maximum dollar amount for the 12-month budget period is $600,000, and will not include payment of any indirect costs.

Throughout the project period, the commitment of HHS to the continuation of funding will depend on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), demonstrated commitment of the recipient to the principles of the terms and spirit of this agreement.

III. Eligibility Information

1. Eligible Applicants

The only eligible applicant that can apply for this funding opportunity is the Gorgas Memorial Institute for Health Studies of Panama. The Republic of Panama has legacy of biomedical triumphs that began with the building of the Panama Canal. Recognizing the outstanding achievements of William Crawford Gorgas in eliminating Yellow Fever and controlling other tropical infections that made possible the construction of the Panama Canal, Panamanian President Belisario Porras proposed in 1920, the creation of the Gorgas Memorial Institute and Laboratories (GMI). GMI opened its doors in 1928, and since then has produced ground-breaking and internationally recognized work in the field of tropical medicine, emerging and re-emerging diseases.

As a public health, training, and research institution, GMI offers strengths in several areas that are essential to the effective realization of this proposal's objectives and activities.

Staffing: GMI has 201 workers that include trainers, physicians, scientists, technical staff and administrative staff. GMI scientific and technical expertise resides in its excellent professional staff members, six of whom are PhDs and 12 of whom are M.D.s. One of the physicians is a former Minister of Health. GMI has two veterinary physicians with PhDs and many technicians with master degrees in science. GMI has a specialist in geo-reference and a group trained in field isolation of dangerous organisms from animal tissues (developed during the Hanta virus epidemics). There is also an excellent administrative, medical library and informatics staff.

Scientific and technical expertise: GMI is the National Public Health Laboratory and the reference laboratory for influenza, dengue and other pathogenic viruses in Panama. It is the reference laboratory for Central America and Panama for HIV/AIDS, measles, Hanta virus and viral encephalitis. Its parasitologists have worked and continue to work in malaria, leishmania and Chagas disease.

GMI has a long and solid reputation in virology, easily confirmed by many distinguished virologists in the United States. The Gorgas Department of Virology has been extremely productive through its collaborations with the Yale University Arbovirus Research Unit, the University of Texas at Galveston and the CDC. GMI began working with influenza in 1976 and has contributed influenza isolates to the WHO, one of which is used in the current influenza vaccines. All these are health concerns of pressing significance for rural and underserved areas.

Laboratory: It has well-established laboratories of virology, parasitology,

immunology, genomics, entomology and food and water chemistry. GMI is the national Public Health Laboratory and this makes it the reference laboratory for malaria, tuberculosis and all viral and bacterial diseases. GMI also has departments of epidemiology and biostatistics, chronic disease studies, health policy, and health and human reproduction studies. In addition to all these areas of expertise, GMI is also the locus of the national human subjects committee (National Institutional Review Board). A new BLS–3 laboratory currently under construction, along with the expansion and improvement of existing laboratory space, is part of a modernization plan that will significantly enhance the capability of GMI laboratories to provide training in the role that laboratory services play in community health care delivery.

Location: The unique geographic characteristics of Panama and its transportation (air, sea, and land) infrastructure make it an extremely central and accessible location for people from Central and South America who would attend for training.

Strategic Partnerships: GMI has a history of developing effective relations and partnerships with leading organizations including the Smithsonian Museum, the U.S. Department of Agriculture (USDA), and HHS/CDC–MERTU in Guatemala, among others.

Historical Medical Collaboration between the United States and Panama via GMI: American and Panamanian physicians and scientist have produced significant contributions since 1928, and those relationships continue up to present.

2. Cost-Sharing or Matching Funds

Cost participation is encouraged. HHS will pay $600,000, while GMI is encouraged to provide an amount that will be specified in their proposal. GMI's contribution may include indirect expenses and in-kind contributions. The types of resources GMI could contribute may include but are not limited to: Personnel time and costs, provision of existing and physical space and structures, and the remodeling (and associated costs) of those physical facilities that are to be converted to teaching facilities, vehicles for transportation, and the development of a staging area for NGOs. If applicants receive funding from other sources to underwrite the same or similar activities, or anticipate receiving such funding in the next 12 months, they must detail how the disparate streams of financing complement each other.

3. Other

If an applicant requests a funding amount greater than the ceiling of the award range, HHS will consider the application non-responsive, and the application will not enter into the review process. HHS will notify the applicant that the application did not meet the submission requirements.

Special Requirements

If the application is incomplete or non-responsive to the special requirements listed in this section, the application will not enter into the review process. HHS will notify the applicant that the application did not meet submission requirements. HHS will consider late applications non-responsive.

Please see ''Submission Dates and Times,'' Departments of Labor, Health and Human Services and Education, and Related Agencies, Public Law 110–5, Continuing Appropriations Resolution, 2007 Section 20621, which provides that an organization that engages in lobbying activities is not eligible to receive Federal funds constituting a grant, loan, or an award.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20852. Applicants may also fax a written request to the OPHS Office of Grants Management at (240) 453–8823 to obtain a hard copy of the application kit. Applications must be prepared using Form OPHS–1.

2. Content and Form of Submission

Application: Applicants must submit a project narrative in English, along with the application forms, in the following format:

- The length of the proposal should not exceed 50 pages;
- Font size should be no smaller than 12-point, and it should be single-spaced;
- Paper size: 8.5 by 11 inches;
- Page-margin size: one inch;
- Number all pages of the application sequentially from page one (Application Face Page) to the end of the application, including charts, figures, tables, and appendices;
- Print only on one side of page; and
- Hold application together only by rubber bands or metal clips, and do not bind it in any way.

The narrative should address activities to be conducted over the entire project period and must include the following items in the order listed:

Understanding of the requirements: The application shall include a discussion of your organization's understanding of the need, purpose and requirements of this cooperative agreement. The discussion shall be sufficiently specific, detailed and complete to clearly and fully demonstrate that the applicant has a thorough understanding of all the technical requirements of this announcement.

Review of the First Year's Implementation and Progress: The applicant should provide a concise but sufficiently detailed summary of all progress made to date during the first year of their grant collaboration with HHS. The review of first year accomplishments should reference each and every one of the specific ''measurable outcomes'' specified in the first year's RFA, and describe any and all progress made on each of these measurable outcomes. If no progress has been made, then that fact should be stated. Whenever possible, any progress made on these outcomes should be quantified. And whenever possible, estimates should be made of the degree of accomplishment or completion (*e.g.* 25%, 50%, etc.) has been achieved, where a quantified final goal or target for the grant was identified.

Project Plan: The project plan must demonstrate that the organization has the technical expertise to carry out the work or task requirements of this announcement. The plan must contain sufficient detail to clearly describe the proposed means for pursuing and accomplishing *each* of the ''Measurable Outcomes'' and ''Grantee Activities'' described in Section I, and shall include a complete explanation of the methods and procedures the applicant will use. The project plan shall include discussions of the following elements:

- Objectives;
- Methods to accomplish the purposes of the cooperative agreement and the ''Grantee Activities;''
- Detailed time line for accomplishment of each activity;
- Ability to respond to emergencies;
- Ability to respond to situations on weekends and after hours; and
- Coordination with HHS, U.S. educational institutions, and NGOs.

Staffing and Management Plan: The applicant must provide a project staffing and management plan, which must include time lines and sufficient detail to ensure that it can meet the Federal

Government's requirements in a timely and efficient manner.

○ The applicant must provide resumes that identify the educational and experience level of any individual(s) who will perform in a key position and other qualifications to show the key individuals' ability to comply with the minimum requirements of this announcement;

○ The applicant must provide a summary of the qualifications of non-key personnel. Resumes must be limited to three pages per person; and

○ The proposed staffing plan must demonstrate the applicant's ability to recruit, retain, or replace personnel who have the knowledge, experience, local-language skills, training and technical expertise commensurate with the requirements of this announcement. The plan must demonstrate the applicant's ability to provide bi-lingual personnel to train and mentor host-country participants.

Performance Measures: The applicant must provide measures of effectiveness that will demonstrate accomplishment of this cooperative agreement's overall objectives and with the specific ''measurable outcomes'' delineated above. Measures of effectiveness must relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcomes. The measures of effectiveness submitted with this application should reference and build upon and improve, where possible, those submitted by the Grantee in the previous year. The applicant must submit a section on measures of effectiveness with its application, and they will be an element for evaluation.

Budget Justification: The budget justification must comply with the criteria for applications. The applicant must submit, at a minimum, a cost proposal fully supported by information adequate to establish the reasonableness of the proposed amount.

Appendices: The applicant may include additional information in the application appendices, which will not count toward the narrative page limit. This additional information includes the following: Curricula Vitae, Resumes, Organizational Charts, Letters of Support, etc. An agency or organization is required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, access: *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.dunandbradstreet.com* or call 1–866–705–5711.

Additional requirements that could require submission of additional documentation with the application appear in section VI.2.—Administrative and National Policy Requirements.

3. Submission Dates and Times

The Office of Public Health and Science (OPHS) will assist with the administration of the grant and provides multiple mechanisms for the submission of applications, as described in the following sections. To be considered for review, applications must be received by the Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services by 5 p.m. Eastern Time on the date specified in the dates section of the announcement. Applications will be considered as meeting the deadline if they are received on or before the deadline date. The application due date in this announcement supersedes the instructions in the OPHS–1.

Submission Mechanisms: The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the Grants.gov and GrantSolutions.gov systems is encouraged. Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review.

In order to apply for new funding opportunities which are open to the public for competition, you may access the Grants.gov Web site portal. All OPHS funding opportunities and application kits are made available on Grants.gov. If your organization has/had a grantee business relationship with a grant program serviced by the OPHS Office of Grants Management, and you are applying as part of ongoing grantee related activities, please access GrantSolutions.gov.

Electronic grant application submissions must be submitted no later than 5:00 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management, (1101 Wootton Parkway, Suite 550, Rockville, MD 20852) no later than 5 p.m. Eastern Time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal: The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by

the terms and conditions of the grant award. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package. All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed ''Invalid'' by the Grants.gov Web site Portal will not be transferred to the GrantSolutions system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management, to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the GrantSolutions system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal. Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the GrantSolutions System: OPHS is a managing partner of the GrantSolutions.gov system. GrantSolutions is a full life-cycle grants management system managed by the Administration for Children and Families, Department of Health and Human Services (HHS), and is designated by the Office of Management and Budget (OMB) as one of the three Government-wide grants management systems under the Grants Management Line of Business initiative (GMLoB). OPHS uses GrantSolutions for the electronic processing of all grant applications, as well as the electronic management of its entire Grant portfolio. When submitting applications via the GrantSolutions system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (*e.g.*, Program Certifications) with the original signature of an individual authorized to act for the applicant agency. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Electronic applications submitted via the GrantSolutions system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the GrantSolutions Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation. When submitting the required forms, do not send the entire application. Complete hard copy applications submitted after the electronic submission will not be considered for review.

Upon completion of a successful electronic application submission, the GrantSolutions system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the GrantSolutions system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications: Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management, on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

5. Funding Restrictions

Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars can be found on the Internet at *http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://www.whitehouse.gov/omb.*

Restrictions, which applicants must take into account while preparing the budget, are as follows:

- Alterations and renovations (A&R) are prohibited under grants/cooperative agreements to foreign recipients. This is an HHS Policy. ''Alterations and renovations'' are defined as work that changes the interior arrangements or other physical characteristics of an existing facility or of installed equipment so that it can be used more effectively for its currently designated purpose or adapted to an alternative use to meet a programmatic requirement. Recipients may not use funds for A&R (including modernization, remodeling, or improvement) of an existing building.
- Reimbursement of pre-award costs is not allowed.
- Recipients may not use funds awarded under this cooperative agreement to support any activity that duplicates another activity supported by any component of HHS.

Recipients may spend funds for reasonable program purposes, including personnel, travel, supplies, and services. Recipients may purchase equipment if deemed necessary to accomplish program objectives; however, they must request prior approval in an e-mail that explicitly notes the costs, and notes CDC/ASPR's approval of the explicit items for any equipment whose purchase price exceeds $10,000 USD.

The costs generally allowable in grants/cooperative agreements to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut and the WHO Secretariat, HHS will not pay indirect costs (either directly or through sub-award) to organizations located outside the territorial limits of the United States, or to international organizations, regardless of their location.

Recipients may contract with other organizations under this program; however, the applicant must perform a substantial portion of the project activities (including program management and operations) for which it is requesting funds. Contracts will require prior approval in writing from CDC/ASPR.

Applicants shall state all requests for funds in the budget in U.S. dollars. Once HHS makes an award, HHS will not compensate foreign recipients for currency-exchange fluctuations through the issuance of supplemental awards.

The funding recipient must obtain an audit of these funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC/ASPR.

A fiscal Recipient Capability Assessment may be required, prior to or post award, to review the applicant's business management and fiscal capabilities regarding the handling of U.S. Federal funds.

6. Other Submission Requirements

None.

V. Application Review Information

1. Criteria

CDC/ASPR will evaluate applications against the following factors:

Factor 1: Project Plan (30 Points)

CDC/ASPR will evaluate the extent to which the proposal demonstrates that the organization has the technical and institutional expertise to carry out the work/task requirements described in this announcement.

CDC/ASPR will evaluate the applicant's project plan to determine the extent to which it provides a clear, logical and feasible technical approach to meeting the goals of this announcement in terms of workflow, resources, communications and reporting requirements for accomplishing work in each of the operational task areas.

Factor 2: Staffing and Management Plan (40 Points)

(a) Personnel. CDC/ASPR will evaluate the relevant educational, work experience and local-language qualifications of key personnel, senior project staff, and subject-matter specialists to determine the extent to which they meet the requirements listed in this announcement.

(b) Staffing Plan. CDC/ASPR will evaluate the staffing plan to determine the extent to which the applicant's proposed organizational chart reflects proper staffing to accomplish the work described in this announcement, and the extent of the applicant's ability to recruit, retain, or replace personnel who have the knowledge, experience, local-language skills, training and technical expertise to meet requirements of the positions.

(c) Management Plan. CDC/ASPR will evaluate the proposed plans for managing the continued development and institutionalization of the Regional Training Center, and all its associated functions, and also the plans for accomplishing each of the other ''measurable outcomes'' specified in this RFA.

Factor 3: Performance Measures (15 Points)

CDC/ASPR will evaluate the applicant's description of performance measures, including measures of effectiveness, to determine the extent to which the applicant proposes objective and quantitative measures that relate to the performance goals stated in the Purpose section of this announcement, and whether the proposed measures will accurately measure the intended outcomes.

Factor 4: Understanding of the Requirements (15 Points)

CDC/ASPR will evaluate the extent of the applicant's understanding of the operational tasks identified in this announcement to ensure successful performance of the work in this project. Because the focus of the work will include interaction with other countries in Central and South America, the applicant must demonstrate an understanding of the cultural, ethnic, political and economic factors that could affect successful implementation of this cooperative agreement.

The applicant's proposal must also demonstrate understanding of the functions, capabilities and operating procedures of U.S. educational institutions, as well as U.S., Latin American and International NGOs, and describe the applicant's ability to work with and within those organizations.

2. Review and Selection Process

CDC/ASPR will review applications for completeness. An incomplete application or an application that is non-responsive to the eligibility criteria will not advance through the review process. CDC/ASPR will notify applicants if their applications did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the AV.1. ''Criteria'' section above.

VI. Award Administration Information

1. Award Notices

The successful applicant will receive a Notice of Award (NoA). The NoA shall be the only binding, authorizing document between the recipient and HHS. An authorized Grants Management Officer will sign the NoA, and mail it to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

2. Administrative and National Policy Requirements

A successful applicant must comply with the administrative requirements outlined in 45 CFR part 74 and part 92 as appropriate. The Public Law 110–5, Continuing Appropriations Resolution, 2007 Section 20621, requires that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, the issuance shall clearly state the percentage and dollar amount of the total costs of the program or project to be financed with Federal money and the percentage and dollar amount of the total costs of the project or program to be financed by non-governmental sources.

3. Reporting Requirements

The applicant must provide HHS/ASPR with a hard copy, as well as an electronic copy of the following reports in English:

1. A quarterly progress report, due no later than 10 calendar days after the end of each quarter of the budget period. The quarterly progress report must contain the following elements:

a. A listing of all of the ''Activities'' and ''Measurable Outcomes'' of the Cooperative Agreement, and a summary of the actual activities and progress that has been made with each and every one of these activities and measurable outcomes during the quarter;

b. Disbursements requested during the quarter, and actual spending during the quarter:

c. Proposed objectives and activities for the next quarterly reporting period;

d. An update on the grant's budget, noting allocations by line item, draw down to date on each of the line items through the end of the quarter being reported upon, and the funds that remain in each line item, and overall;

e. Any additional information that may be requested by CDC/ASPR.

2. For every training course or module that is conducted, the applicant must provide the CDC/ASPR Project Officer with copies of the pre- and post-test results that were administered to every participant of every training class/module. These pre- and post-training test results should be provided in both an aggregated (*i.e.* summarized) format, and in a disaggregated (*i.e.* individual) format. Participants' personal information should be removed from these reports before they are shared with HHS, in order to protect the privacy and anonymity of the participants. These results must be provided to HHS no later than 21 calendar days after the final day of the course for which they apply.

3. An annual progress report, due no later than 15 calendar days after the end of the budget period, which must contain a detailed summary of all the elements required in the quarterly progress report described above;

4. A final performance report, due no later than 30 days after the end of the project period; and

5. A Financial Status Report (FSR) SF–269 is due 90 days after the close of the 12-month budget period.

Recipients must mail/e-mail the reports to the CDC/ASPR Project Officer listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

For program technical assistance, contact: Craig Carlson, MPH, Office of Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services, Telephone: 202–205–5228, E-mail: *craig.carlson@hhs.gov.*

For financial, grants management, or budget assistance, contact: DeWayne Wynn, Grants Management Specialist, Office of Grants Management, Office of Public Health and Science, Department of Health and Human Services, 1101 Wootten Parkway, Suite 550, Rockville, MD 20857, Telephone: (240) 453–8822, E-Mail Address: *DeWayne.Wynn.os@hhs.gov.*

Dated: June 28, 2007.

RADM William C. Vanderwagen,

Assistant Secretary for Preparedness and Response (ASPR).

[FR Doc. E7–13034 Filed 7–6–07; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Meeting of the National Advisory Council for Healthcare Research and Quality

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Healthcare Research and Quality.

DATES: The meeting will be held on Friday, July 20, 2007, from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Eisenberg Conference Center, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Deborah Queenan, Coordinator of the Advisory Council, at the Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland, 20850, (301) 427–1330. For press-related information, please contact Karen Migdail at (301) 427–1855.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Mr. Donald L. Inniss, Director, Office of Equal Employment Opportunity Program, Program Support Center, on (301) 443–1144 no later than July 9, 2007. The agenda, roster, and minutes are available from Ms. Bonnie Campbell, Committee Management Officer, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, Maryland 20850. Her phone number is (301) 427–1554.

SUPPLEMENTARY INFORMATION:

I. Purpose

The National Advisory Council for Healthcare Research and Quality was established in accordance with Section 921 (now Section 931) of the Public Health Service Act (42 U.S.C. 299c). In accordance with its statutory mandate, the Council is to advise the Secretary of the Department of Health and Human Services and the Director, Agency for Healthcare Research and Quality (AHRQ), on matters related to actions of the Agency to enhance the quality, improve the outcomes, reduce the costs of health care services, improve access to such services through scientific research, and to promote improvements in clinical practice and in the organization, financing, and delivery of health care services.

The Council is composed of members of the public, appointed by the Secretary, and Federal ex-officio members.

II. Agenda

On Friday, July 20, the Council meeting will begin at 9 a.m., with the call to order by the Council Chair and approval of previous Council minutes. The Director, AHRQ, will present her update on AHRQ's current research, programs, and initiatives. The agenda will include a discussion of the National Healthcare Quality and Disparities Reports and the topic of Comparative Effectiveness. The official agenda will be available on AHRQ's Web site at *http://www.ahrq.gov* no later than July 13, 2007.

This notice is published in **Federal Register** in less than 15 days in advance

of the meeting due to logistical difficulties.

Dated: June 29, 2007.

Carolyn M. Clancy,

Director.

[FR Doc. 07–3306 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–07–07BG]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Crime Prevention Through Environmental Design: Linking Observed School Environments with Student and School-wide Experiences of Violence and Fear—New—National Center for Injury Prevention (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Among the goals of the Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention (NCIPC) and Control is to reduce the prevalence of violence among youth. Several important priorities included in the Center's published research agenda focus on studying how physical environments influence behavior and risk for violence. The CDC has developed a tool called the Crime Prevention Through Environmental Design (CPTED) School Assessment (CSA) to assess the extent to which the physical characteristics of schools are consistent with Crime Prevention Through Environmental Design (CPTED) principles.

The proposed research will allow us to determine the validity of the CSA by examining the extent to which the CSA subscales, total CSA scores, and CPTED principles are related to typical variables related to fear and violence. If the CSA tool is shown to measure characteristics of the school environment that are associated with fear and violence-related behaviors in school, then it may be used as the basis for research, design, and evaluation of interventions for schools seeking to prevent or reduce the occurrence of crime and violence by providing information related to (re)designing physical features of the environment and changing policies and procedures related to using the school environment.

In addition, an exploratory purpose of this research is to determine whether the CSA items can be divided reliably into supposedly distinct variables reflecting each of the CPTED principles. If we produce practical support for the assessment of these ''CPTED variables,'' then we will also assess validity by determining whether these variables are logically related to our measures of fear, violence and climate in schools.

Survey data from one counselor and 75 students (25 each from 6th, 7th, and 8th grades) will be collected from 50 middle schools in metro-Atlanta, Georgia area (a total of approximately 50 counselor participants and 3,750 student participants), in addition to the observational (CSA) data collection. The counselor and student survey will assess variables such as school climate, actual and perceived levels of school violence at each school. In addition, archival/administrative data will be collected from each of the 50 schools providing information on neighborhood and school characteristics from various sources (e.g., school data reported by the school on a ''School Profile'' form, school district data available on the web, U.S. Census data, and the FBI National Crime and Victimization Survey).

There are no costs to respondents except for their time to participate in the surveys.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden response (in hours)	Total burden (in hours)
Student Survey	3,750	1	40/60	2,500
Counselor Survey	50	1	40/60	33
School Profile	50	1	120/60	100
Total				2,633

DATE: July 2, 2007.

Maryam I. Daneshvar,

Acting Reports Clearance Officer Centers for Disease Control and Prevention.

[FR Doc. E7–13197 Filed 7–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–07–05CH]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

An assessment of the determinants of HIV risk factors for African-American and Hispanic women in the southeastern United States—New—the National Center for HIV/AIDS, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, an estimated 1 million people are living with HIV. About 40,000 new HIV infections occur each year. Women account for about 27% of all new HIV/AIDS diagnoses, with women of color in the South being most affected. Women of color represent 80% of all women estimated to be living with HIV/AIDS. In 2004, the rate HIV/AIDS cases per 100,000 for non-Hispanic African-American adult and adolescent females (67.0) was 21 times higher than that for non-Hispanic white females (3.2). Similarly, the rate of HIV/AIDS cases reported in 2004 for Hispanic women (16.3) was 5 times higher than the rate for non-Hispanic white women.

Limited research data suggest that the character and dynamics of women's sexual relationships, gender relationships, sex roles, and experiences related to race and ethnicity may be important determinants of risk, both for engaging in risk behaviors and for doing so with high-risk partners. In addition, women's vulnerability is connected to a variety of socioeconomic factors, including delayed access to care and support for HIV/AIDS. Accordingly, the specific aims of the study are to:

- Enroll 850 African-American and 500 Hispanic women at risk for HIV infection in a one-time survey.
- Conduct rapid oral HIV testing of all women and facilitate linkage to medical care among those identified as HIV-positive.
- Characterize African-American and Hispanic women on demographic, psychological, behavioral, sociocultural, and environmental/contextual dimensions.
- Assess and compare the prevalence of sexual and drug behaviors of African American and Hispanic women.
- Identify characteristics of African-American and Hispanic women associated with sexual behaviors that place them at risk for contracting HIV. Similarly, identify characteristics that protect against becoming infected with HIV.
- Recruit a sub-sample of survey respondents to take in a qualitative interview.
- Use our findings to provide recommendations on the design of behavioral interventions for African American and Hispanic women.

Women will complete a 10-minute eligibility screening interview. The survey interview will take approximately 45 minutes each to complete for those who agree to participate in the study and 10 minutes to complete for those who refuse to enroll. Women completing the survey will take part in a 45 minute HIV counseling and testing session, which will be followed by a 10-minute training for how to refer other women to the project. The qualitative interview will take approximately one hour to complete. The total response burden for the three-year period is estimated to be 2712.39 hours (904.13 annualized burden hours). There is no cost to respondents except for their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Activity with women volunteers	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Venue intercept interview	125	1	3/60
Eligibility screening interview	675	1	10/60
Refusal questionnaire	90	1	10/60
ACASI survey interview	450	1	45/60
HIV Testing & Counseling	450	1	45/60
RDS Training	450	1	10/60
Qualitative interview	20	1	1

Dated: June 29, 2007.

Maryam I. Daneshvar, PhD,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E7–13243 Filed 7–6–07; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to Forty-Nine Community Services State Associations; Office of Community Services

AGENCY: Office of Community Services, ACF, HHS.

ACTION: Notice to award grant awards.

CFDA Number: 93.570.

SUMMARY: Notice is hereby given that awards will be made to forty-nine Community Services State Associations (CAA), in the amount of $65,000 each for ongoing capacity-building within the Community Services Network of Federal, State and local organizations to continue their work of addressing CSBG program needs. State CAA Associations

have developed a shared vision for addressing the causes and effects of poverty; established a framework to convene fragmented programs across State and local governments; and utilized technological advances to better serve communities and track program successes. The period of this funding will extend from September 30, 2007 through September 29, 2008.

FOR FURTHER INFORMATION CONTACT: Peter Thompson, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: 202–401–4608, E-mail: *peter.thompson@acf.hhs.gov.*

Dated: July 2, 2007.

Yolanda J. Butler,

Deputy Director, Office of Community Services.

[FR Doc. E7–13151 Filed 7–6–07; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0229]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medical Devices: Current Good Manufacturing Practice Quality System Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing information collection, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements related to the medical devices current good manufacturing practice (CGMP) quality system (QS) regulation (CGMP/QS regulation).

DATES: Submit written or electronic comments on the collection of information by September 7, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medical Devices: Current Good Manufacturing Practice Quality System Regulations--21 CFR Part 820 (OMB Control Number 0910–0073)—Extension

Under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), the Secretary of the Department of Health and Human Services (the Secretary) has the authority to prescribe regulations requiring that the methods used in, and the facilities and controls used for, the manufacture, pre-production design validation (including a process to assess the performance of a device but not including an evaluation of the safety and effectiveness of a device), packing, storage, and installation of a device conform to CGMP, as described in such regulations, to assure that the device will be safe and effective and otherwise in compliance with the act.

The CGMP/QS regulation implementing authority provided by this statutory provision is found under part 820 (21 CFR part 820) and sets forth basic CGMP requirements governing the design, manufacture, packing, labeling, storage, installation, and servicing of all finished medical devices intended for human use. The authority for this regulation is covered under sections 501, 502, 510, 513, 514, 515, 518, 519, 520, 522, 701, 704, 801, and 803 of the act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, and 383). The CGMP/QS regulation includes requirements for purchasing and service controls, clarifies recordkeeping requirements for device failure and complaint investigations, clarifies requirements for verifying/validating production processes and process or product changes, and clarifies requirements for product acceptance activities quality data evaluations and corrections of nonconforming product/quality problems.

Requirements are compatible with specifications in the international standards ''ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.'' The CGMP/QS information collections will assist FDA inspections of manufacturers for compliance with quality system requirements encompassing design, production, installation, and servicing processes.

Section 820.20(a) through (e) requires management with executive responsibility to establish, maintain, and/or review the following topics: (1) The quality policy; (2) the organizational structure; (3) the quality plan; and (4) the quality system procedures of the organization.

Section 820.22 requires the conduct and documentation of quality system audits and reaudits.

Section 820.25(b) requires the establishment of procedures to identify training needs and documentation of such training.

Section 820.30(a)(1) and (b) through (j), requires in respective order, the establishment, maintenance, and/or

documentation of the following topics: (1) Procedures to control design of class III and class II devices, and certain class I devices as listed therein; (2) plans for design and development activities and updates; (3) procedures identifying, documenting, and approving design input requirements; (4) procedures defining design output, including acceptance criteria, and documentation of approved records; (5) procedures for formal review of design results and documentation of results in the design history file (DHF); (6) procedures for verifying device design and documentation of results and approvals in the DHF; (7) procedures for validating device design, including documentation of results in the DHF; (8) procedures for translating device design into production specifications; (9) procedures for documenting, verifying validating approved design changes before implementation of changes; and (10) the records and references constituting the DHF for each type of device.

Section 820.40 requires manufacturers to establish and maintain procedures controlling approval and distribution of required documents and document changes.

Section 820.40(a) and (b) requires the establishment and maintenance of procedures for the review, approval, issuance and documentation of required records (documents) and changes to those records.

Section 820.50(a)(1), (a)(2), (a)(3), and (b) requires the establishment and maintenance of procedures and requirements to ensure service and product quality, records of acceptable suppliers, and purchasing data describing specified requirements for products and services.

Sections 820.60 and 820.65 require, respectively, the establishment and maintenance of procedures for identifying all products from receipt to distribution and for using control numbers to track surgical implants and life-sustaining or supporting devices and their components.

Section 820.70(a)(1) through (a)(5), (b) through (e), (g)(1) through (g)(3), (h), and (i) requires the establishment, maintenance, and/or documentation of the following topics: (1) Process control procedures; (2) procedures for verifying or validating changes to specification, method, process, or procedure; (3) procedures to control environmental conditions and inspection result records; (4) requirements for personnel hygiene; (5) procedures for preventing contamination of equipment and products; (6) equipment adjustment, cleaning and maintenance schedules; (7) equipment inspection records; (8) equipment tolerance postings; procedures for utilizing manufacturing materials expected to have an adverse effect on product quality; and (9) validation protocols and validation records for computer software and software changes.

Sections 820.72(a), (b)(1), and (b)(2) and 820.75(a) through (c) require, respectively, the establishment, maintenance, and/or documentation of the following topics: (1) Equipment calibration and inspection procedures; (2) national, international or in-house calibration standards; (3) records that identify calibrated equipment and next calibration dates; (4) validation procedures and validation results for processes not verifiable by inspections and tests; (5) procedures for keeping validated processes within specified limits; (6) records for monitoring and controlling validated processes; and (7) records of the results of revalidation where necessitated by process changes or deviations.

Sections 820.80(a) through (e) and 820.86, respectively, require the establishment, maintenance, and/or documentation of the following topics: (1) Procedures for incoming acceptance by inspection, test, or other verification; (2) procedures for ensuring that in-process products meet specified requirements and the control of product until inspection and tests are completed; (3) procedures for, and records that show, incoming acceptance or rejection is conducted by inspections, tests or other verifications; (4) procedures for, and records that show, finished devices meet acceptance criteria and are not distributed until device master record (DMR) activities are completed; (5) records in the device history record (DHR) showing acceptance dates, results, and equipment used; and (6) the acceptance/rejection identification of products from receipt to installation and servicing.

Sections 820.90(a), (b)(1), and (b)(2) and 820.100 require, respectively, the establishment, maintenance and/or documentation of the following topics: (1) Procedures for identifying, recording, evaluating and disposing of nonconforming product; (2) procedures for reviewing and recording concessions made for, and disposition of, nonconforming product; (3) procedures for reworking products, evaluating possible adverse rework effect and recording results in the DHR; (4) procedures and requirements for corrective and preventive actions, including analysis, investigation, identification and review of data, records, causes and results; and (5) records for all corrective and preventive action activities.

Section 820.100(a)(1) through (a)(7) states that procedures and requirements shall be established and maintained for corrective/preventive actions, including the following: (1) Analysis of data from process, work, quality, servicing records; investigation of nonconformance causes; (2) identification of corrections and their effectiveness; (3) recording of changes made; and (4) appropriate distribution and managerial review of corrective and preventive action information.

Section 820.120 states that manufacturers shall establish/maintain procedures to control labeling storage/application; and examination/release for storage and use, and document those procedures.

Sections 820.120(b) and (d), 820.130, 820.140, 820.150(a) and (b), 820.160(a) and (b), and 820.170(a) and (b), respectively, require the establishment, maintenance, and/or documentation of following topics: (1) Procedures for controlling and recording the storage, examination, release and use of labeling; (2) the filing of labels/labeling used in the DHR; (3) procedures for controlling product storage areas and receipt/dispatch authorizations; (4) procedures controlling the release of products for distribution; (5) distribution records that identify consignee, product, date and control numbers; and (6) instructions, inspection and test procedures that are made available, and the recording of results for devices requiring installation.

Sections 820.180(b) and (c), 820.181(a) through (e), 820.184(a) through (f), and 820.186 require, respectively, the maintenance of records: (1) That are retained at prescribed site(s), made readily available and accessible to FDA and retained for the device's life expectancy or for 2 years; (2) that are contained or referenced in a DMR consisting of device, process, quality assurance, packaging and labeling, and installation, maintenance, and servicing specifications and procedures; (3) that are contained in a DHR and demonstrate the manufacture of each unit, lot, or batch of product in conformance with DMR and regulatory requirements, include manufacturing and distribution dates, quantities, acceptance documents, labels and labeling, control numbers; and (4) that are contained in a quality system record (QSR), consisting of references, documents, procedures, and activities not specific to particular devices.

Sections 820.198(a) through (c) and 820.200(a) through (d), respectively, require the establishment, maintenance,

and/or documentation of the following topics: (1) Complaint files and procedures for receiving, reviewing and evaluating complaints; (2) complaint investigation records identifying the device, complainant, and relationship of the device to the incident; (3) complaint records that are reasonably accessible to the manufacturing site or at prescribed sites; (4) procedures for performing and verifying that device servicing requirements are met and that service reports involving complaints are processed as complaints; and (5) service reports that record the device, service activity, and test and inspection data.

Section 820.250 requires the establishment and maintenance of procedures to identify valid statistical techniques necessary to verify process and product acceptability; and sampling plans, when used, which are written and based on valid statistical rationale; and procedures for ensuring adequate sampling methods.

The CGMP/QS regulation amends and revises the CGMP requirements for medical devices set out under part 820. The regulation adds design and purchasing controls; modifies previous critical device requirements; revises previous validation and other requirements; and harmonizes device CGMP requirements with QS specifications in the international standard ''ISO 9001: Quality Systems Model for Quality Assurance in Design/Development, Production, Installation, and Servicing.'' The rule does not apply to manufacturers of components or parts of finished devices, nor to manufacturers of human blood and blood components subject to 21 CFR part 606. With respect to devices classified in class I, design control requirements apply only to class I devices listed in § 820.30(a)(2) of the regulation. The rule imposes burden upon: (1) Finished device manufacturer firms, which are subject to all recordkeeping requirements; (2) finished device contract manufacturers; specification developers; and (3) repacker, relabelers, and contract sterilizer firms, which are subject only to requirements applicable to their activities. In addition, remanufacturers of hospital single-use devices (SUDs) will now be considered to have the same requirements as manufacturers in regard to this regulation. The establishment, maintenance and/or documentation of procedures, records, and data required by this regulation will assist FDA in determining whether firms are in compliance with CGMP requirements, which are intended to ensure that devices meet their design, production, labeling, installation, and servicing specifications and, thus are safe, effective and suitable for their intended purpose. In particular, compliance with CGMP design control requirements should decrease the number of design-related device failures that have resulted in deaths and serious injuries.

The CGMP/QS regulation applies to approximately 8,963 respondents. These recordkeepers consist of 8,945 original respondents and an estimated 18 hospitals that remanufacture or reuse SUDs. They include manufacturers, subject to all requirements and contract manufacturers, specification developers, repackers, relabelers, and contract sterilizers, subject only to requirements applicable to their activities. Hospital remanufacturers of SUDs are now defined to be manufacturers under guidelines issued by FDA's Center for Devices and Radiological Health (CDRH), Office of Surveillance and Biometrics. Respondents to this collection have no reporting activities, but must make required records available for review or copying during FDA inspection. The regulation contains additional recordkeeping requirements in such areas as design control, purchasing, installation, and information relating to the remanufacture of SUDs. The estimates for this burden are derived from those incremental tasks that were determined when the new CGMP/QS regulation became final as well as those carry-over requirements. The carry-over requirements are based on decisions made by the agency on July 16, 1992, under OMB clearance submission 0910–0073, which still provides valid baseline data.

FDA estimates respondents will have a total annual recordkeeping burden of approximately 3,076,370 hours. This figure also consists of approximately 143,052 hours spent on a startup basis by 650 new firms.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Hours	Hours per Record	Total Hours
820.20(a)	8,963	1	8,963	6.58	58,977
820.20(b)	8,963	1	8,963	4.43	39,706
820.20(c)	8,963	1	8,963	6.17	55,302
820.20(d)	8,963	1	8,963	9.89	88,644
820.20(e)	8,963	1	8,963	9.89	88,644
820.22	8,963	1	8,963	32.72	293,269
820.25(b)	8,963	1	8,963	12.68	113,651
820.30(a)(1)	8,963	1	8,963	1.75	15,685
820.30(b)	8,963	1	8,963	5.95	53,330
820.30(c)	8,963	1	8,963	1.75	15,685
820.30(d)	8,963	1	8,963	1.75	15,685
820.30(e)	8,963	1	8,963	23.39	209,645

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Hours	Hours per Record	Total Hours
820.30(f)	8,963	1	8,963	37.42	335,395
820.30(g)	8,963	1	8,963	37.42	335,395
820.30(h)	8,963	1	8,963	3.34	29,936
820.30(i)	8,963	1	8,963	17.26	154,701
820.30(j)	8,963	1	8,963	2.64	23,662
820.40	8,963	1	8,963	8.91	79,860
820.40(a) and (b)	8,963	1	8,963	2.04	18,285
820.50(a)(1) through (a)(3)	8,963	1	8,963	21.90	196,290
820.50(b)	8,963	1	8,963	6.02	53,957
820.6	8,963	1	8,963	0.32	2,868
820.65	8,963	1	8,963	0.67	6,005
820.70(a)(1) through (a)(5)	8,963	1	8,963	1.85	16,582
820.70(b) and (c)	8,963	1	8,963	1.85	16,582
820.70(d)	8,963	1	8,963	2.87	25,724
820.70(e)	8,963	1	8,963	1.85	16,582
820.70(g)(1) through (g)(3)	8,963	1	8,963	1.43	12,817
820.70(h)	8,963	1	8,963	1.85	16,582
820.70(i)	8,963	1	8,963	7.50	67,223
820.72(a)	8,963	1	8,963	4.92	44,098
820.72(b)(1) and (b)(2)	8,963	1	8,963	1.43	12,817
820.75(a)	8,963	1	8,963	2.69	24,110
820.75(b)	8,963	1	8,963	1.02	9,142
820.75(c)	8,963	1	8,963	1.11	9,949
820.80(a) through (e)	8,963	1	8,963	4.80	43,022
820.86	8,963	1	8,963	0.79	7,081
820.90(a)	8,963	1	8,963	4.95	44,367
820.90(b)(1) and (b)(2)	8,963	1	8,963	4.95	44,367
820.100 (a)(1) through (a)(7)	8,963	1	8,963	12.48	111,858
820.100(b)	8,963	1	8,963	1.28	11,473
820.120(b)	8,963	1	8,963	0.45	4,033
820.120(d)	8,963	1	8,963	0.45	4,033
820.130	8,963	1	8,963	0.45	4,033
820.140	8,963	1	8,963	6.34	56,825
820.150(a) and (b)	8,963	1	8,963	5.67	50,820
820.160(a) and (b)	8,963	1	8,963	0.67	6,005
820.170(a) and (b)	8,963	1	8,963	1.50	13,445

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Hours	Hours per Record	Total Hours
820.180(b) and (c)	8,963	1	8,963	1.50	13,445
820.181(a) through (e)	8,963	1	8,963	1.21	10,845
820.184(a) through (f)	8,963	1	8,963	1.41	12,638
820.186	8,963	1	8,963	0.40	3,585
820.198(a) through (c)	8,963	1	8,963	4.94	44,277
820.200(a) and (d)	8,963	1	8,963	2.61	23,393
820.25	8,963	1	8,963	0.67	6,005
Totals					3,072,337

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Burden (labor) hour and cost estimates were originally developed under FDA contract by Eastern Research Group, Inc. (ERG), in 1996 when the CGMP/QS regulation became final. These figures are still accurate. Additional factors considered in deriving estimates included the following:

• Establishment Type: Query has been made of CDRH's registration/listing databank and has counted 8,963 domestic firms subject to CGMPs. In addition, hospitals that reuse or remanufacture devices are now considered manufacturers under new FDA guidance. After investigations of many hospitals and the changes in enforcements of FDA's requirements for hospitals, the number of reuse or remanufactures of single-use medical devices have decreased from the estimated 66 to an estimated 18 hospitals. Because the total number of registered firms is not static, the number of respondents will fluctuate from year to year resulting in slight changes to the overall burden. Currently, there are 8,963 firms subject to the CGMPs; an increase from the last renewal of 8,254.

• Potentially Affected Establishments: Except for manufacturers, not every type of firm is subject to every CGMP/QS requirement. For example, all are subject to FDA's quality policy regulations (§ 820.20(a)), document control regulations (§ 820.40), and other requirements, whereas only manufacturers and specification developers are subject to FDA's design controls regulations (§ 820.30). The type of firm subject to each requirement was identified by ERG.

FDA estimates the burden hours (and costs) based on the last approved renewal for this information collection.

FDA estimates that some 650 ''new'' establishments (marketing devices for the first time) will expend some 143,052 ''development'' hours on a one-time startup basis to develop records and procedures for the CGMP/QS regulation.

FDA estimates that annual labor hours are apportioned as follows: (1) 40 percent goes to requirements dealing with manufacturing specifications, process controls, and the DHR; (2) 20 percent goes to requirements dealing with components and acceptance activities; (3) 25 percent goes to requirements dealing with equipment, records (the DMR and QSR), complaint investigations, labeling/packaging and reprocessing/investigating product nonconformance; and 15 percent goes to quality audit, traceability, handling, distribution, statistical, and other requirements.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13152 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0357]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Procedures for the Safe and Sanitary Processing and Importing of Fish and Fishery Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 2007 (72 FR 10222), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0354. The approval expires on June 30, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13153 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0236]

Agency Information Collection Activities; Proposed Collection; Comment Request; Presubmission Conferences, New Animal Drug Applications and Supporting Regulations and Guidance 152, and Form FDA 356V

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on paperwork associated with applications for new animal drugs.

DATES: Submit written or electronic comments on the collection of information by *September 7, 2007.*

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Presubmission Conferences, New Animal Drug Applications and Supporting Regulations and Guidance 152, and Form FDA 356V—21 CFR 514.5, 514.1, 514.4, 514.8, (OMB Control Numbers 0910–0555, 0910–0032, 0910–0356, 0910–0522, and 0910–0600)—Extension

Under section 512(b)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(3)), any person intending to file a New Animal Drug Application (NADA) or supplemental NADA or a request for an investigational exemption under section 512(j) of the act is entitled to one or more conferences with FDA to reach an agreement acceptable to FDA establishing a submission or investigational requirement. FDA and industry have found that these meetings increased the efficiency of the drug development and drug review processes.

Section 514.5 (21 CFR 514.5), describes the procedures for requesting, conducting, and documenting presubmission conferences. Section 514.5(b) describes the information that must be included in a letter submitted by a potential applicant requesting a presubmission conference, including a proposed agenda and a list of expected participants. Section 514.5(d) describes the information that must be provided by the potential applicant to FDA at least 30 days prior to a presubmission conference. This information includes a detailed agenda, a copy of any materials to be presented at the conference, a list of proposed indications and, if available, a copy of the proposed labeling for the product under consideration, and a copy of any background material that provides scientific rationale to support the potential applicant's position on issues listed in the agenda for the conference. Section 514.5(f) discusses the content of the memorandum of conference that will be prepared by FDA and gives the potential applicant an opportunity to seek correction to or clarification of the memorandum. The OMB control number for the collection of presubmission conference information is 0910–0555.

Under section 512(b)(1) of the act, any person may file an NADA seeking approval to legally market a new animal drug. Section 512(b)(1) sets forth the information required to be submitted in an NADA. FDA allows applicants to submit a complete NADA or to submit information in support of an NADA for phased review followed by submission of an administrative NADA when FDA finds all the applicable technical sections are complete.

Section 514.1 (21 CFR 514.1) interprets section 512(b)(1) of the act and further describes the information that must be submitted as part of a NADA and the manner and form in which the NADA must be assembled and submitted. The application must include safety and effectiveness data, proposed labeling, product manufacturing information, and where necessary, complete information on food safety (including microbial food safety) and any methods used to determine residues of drug chemicals in edible tissue from food producing animals. Guidance 152 outlines a risk assessment approach for evaluating the microbial food safety of antimicrobial new animal drugs. FDA requests that an applicant accompany NADAs, supplemental NADAs, and requests for phased review of data to support NADAs, with the Form FDA 356V to ensure efficient and accurate processing of information to support new animal drug approval. The OMB control number for the NADA and the form 356V is 0910–0032, and the control number for Guidance 152 ''Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern'' is 0910–0522. This information collection also combines several other OMB control numbers: OMB control number 0910–0356 and OMB control number 0910–

0600 that will be assigned to the collection of information under revised § 514.8, effective February 12, 2007. The Animal Drug Availability Act of 1996 required FDA to further define the term ''substantial evidence'' of effectiveness. Following notice and comment rulemaking, FDA further defined substantial evidence at § 514.4 (21 CFR 514.4) (OMB control number 0910–0356). Because § 514.4 is only a definition, it should not be viewed as creating an additional collection burden; the collection of substantial evidence occurs as part of an NADA under § 514.1. FDA also recently revised § 514.8 (21 CFR 514.8) to implement the provisions of section 116 of the Food and Drug Administration Modernization Act of 1997 (71 FR 74766, December 13, 2006; OMB control number pending). Section 514.8 describes the information that must be submitted as part of a supplemental application to support proposed changes to an approved NADA. An applicant may reference existing information from the NADA in the supplemental NADA, but must submit some subset of information required in § 514.1 to support the proposed changes. The total burden hours for each of these CFR sections are found in table 1 of this document.

FDA estimates the burden of the collections of information described in this notice as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/FDA Form No.	No. of Respondents	Annual Frequency per Respondent	Total Annual Responses	Hours per Response	Total Hours
514.5(b), (d), (f)	134	.7	93	50	4,650
514.1 and 514.6	134	.1	19	212	4,028
514.4	134	0	0	0	0
514.8(b)	134	3.2	425	35	14,875
514.8(c)(1)	134	0.1	14	71	994
514.8(c)(2) and (c)(3)	134	.4	53	20	1,060
514.11	134	.1	19	1	19
558.5(i)	134	.01	1.0	5	5
514.1(b)(8) and 514.8(c)(1)[2]	134	.1	10	90	900
FDA Form 356V	134	5.8	778	5	3,890
Total Hours					30,421

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] NADAs and supplements regarding antimicrobial animal drugs that use a recommended approach to assessing antimicrobial concerns as part of the overall preapproval safety evaluation.

Number of respondents. Based on the number of sponsors subject to animal drug user fees, FDA estimates that there are 134 respondents. We use this estimate consistently throughout the table and calculate the ''annual frequency per respondent'' by dividing the total annual responses by number of respondents. Following is a description of how we estimated the total annual responses and calculated total paperwork burden hours by type of submission.

Presubmission conferences (§ 514.5). Over the past 5 fiscal years, from October 1, 2001, through September 30, 2006, FDA estimates it has conducted an average of 93 presubmission conferences per year. FDA estimates that preparing the paperwork to request the meeting, providing the advance materials, and commenting on the memorandum of conference will take approximately 50 hours. Thus, the total burden hours for presubmission conferences is estimated to be 4,650 hours.

NADA (§ 514.1 and 21 CFR 514.6). Over the past 5 fiscal years, FDA has received an average of 19 NADAs per year. FDA estimates that preparing the paperwork required for an NADA under § 514.1, whether all of the information is submitted with the NADA or the applicant submits information for phased review followed by an Administrative NADA that references that information, will take approximately 212 hours. Thus, the total burden hours for the submission of an NADA with any amendments are estimated to be 4,028 hours.

Substantial evidence (§ 514.4). Because § 514.4 only defines substantial evidence, it should not be viewed as creating an additional collection burden. The collection of information to demonstrate substantial evidence occurs as part of an NADA under § 514.1. There is no additional paperwork burden under § 514.4.

Supplements fall into one of three categories:

- Manufacturing supplements described at § 514.8(b);
- Section 514.8(b)(1) supplements (i.e., supplements seeking changes, other than in manufacturing or labeling, in an established condition of an approval beyond the variations already provided for in the approved application) described at § 514.8(c)(1); and
- Labeling supplements described at 514.8(c)(2) and (c)(3).

An applicant may rely on information and data already filed to support those aspects of the NADA for which there are no changes. Thus, an applicant submitting a supplement should only have to prepare supporting information for those aspects of the application for which there are changes and the paperwork burden will be a percentage of the burden of preparing an NADA.

Manufacturing supplements (§ 514.8(b)). Over the past 5 fiscal years, FDA has received an average of 425 manufacturing supplements annually. FDA estimates that it takes on average 35 hours (1/6 of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to

support approval of manufacturing changes. This results in total of 14,875 burden hours.

Supplements seeking approval of changes in intended uses or conditions of use (§ 514.8(c)(1)). Over the past 3 fiscal years, October 1, 2003, through September 2006, FDA has received an average of 14 supplements annually seeking approval for changes in intended uses or conditions of use. FDA used a 3-year average for this calculation because data for the previous 2 years for this category of supplements was not tracked as an independent number. FDA estimates that it takes an average of 71 hours (approximately 1/3 of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to support approval for such changes. This results in a total of 994 burden hours.

Labeling Supplements (§ 514.8(c)(2) and (c)(3)). Over the past 5 fiscal years, FDA has received an average of 53 labeling supplements annually. FDA estimates that it takes an average of 20 hours (approximately 1 percent of the time it takes to prepare the paperwork to support a full NADA) to prepare the paperwork to support approval of a labeling change. This results in a total of 1,060 burden hours.

Freedom of Information Summary (§ 514.11 (21 CFR 514.11)). Regulations under § 514.11 require the preparation of a summary of the safety and effectiveness data and information submitted with or incorporated by reference in an approved NADA and that the summary be publicly released when the approval is published in the **Federal Register**. This summary, generally referred to as the Freedom of Information (FOI) Summary, may be prepared by FDA or FDA may require the applicant to prepare the summary (§ 514.11(e)(ii)). In the past, FDA has required the applicant to prepare the FOI Summary. Currently, FDA generally takes responsibility for preparing the FOI Summary. Thus, the paperwork burden on applicants to prepare an FOI Summary has significantly decreased. Based on the estimate of 19 NADAs received annually and an estimate that applicants now spend little or no time preparing the FOI summary, the estimated burden hours are 19 hours.

Requirements for liquid medicated feeds (§ 558.5(i) (21 CFR 558.5(i)). Generally, specific labeling is required to make sure that certain drugs, approved for use in animal feed or drinking water but not in liquid medicated feed, are not diverted to use in liquid feeds. Section 558.5(i) permits an applicant to seek a waiver from this requirement (§ 558.5(h)) if there is evidence that it is unlikely a new animal drug would be used in the manufacture of a liquid medicated feed. If FDA receives one NADA per year seeking approval of the use of a liquid medicated feed and on average it takes 5 hours to prepare the request for waiver, the estimated paperwork burden is 5 hours.

Risk assessment of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern. (§§ 514.1(b)(8) and 514.8(c)(1)). FDA estimates that it receives 10 risk assessments evaluating the microbial food safety of antimicrobial new animal drugs per year. FDA estimates that it takes on average 90 hours to put together the references and other materials in the format recommended by Guidance 152 and to summarize the hazards and associated risk(s). Thus, the total burden hours for preparing such risk assessments for submission to FDA are estimated to be 900 hours.

Form FDA 356V. FDA requests that an applicant fill out and send in with NADAs and supplemental NADAs, and requests for phased review of data to support NADAs, a Form FDA 356V to ensure efficient and accurate processing of information to support new animal drug approval. Over the past 5 fiscal years, FDA has received an average of 511 NADAs and supplements and 267 submissions of data to support NADAs. FDA estimates that it takes an average of 5 hours to read the instructions and fill out Form FDA 356V and organize the information that it will accompany. This results in a total of 3,890 burden hours.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13195 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0240]

Agency Information Collection Activities; Proposed Collection; Comment Request, Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's patent term restoration regulations on due diligence petitions for regulatory review period revision. Where a patented product must receive FDA approval before marketing is permitted, the Office of Patents and Trademarks may add a portion of the FDA review time to the term of a patent. Petitioners may request reductions in the regulatory review time if FDA marketing approval was not pursued with ''due diligence.''

DATES: Submit written comments on the collection of information by September 7, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice

of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Patent Term Restoration, Due Diligence Petitions, Filing, Format, and Content of Petitions—21 CFR Part 60 (OMB Control Number 0910–0233—Extension)

FDA's patent extension activities are conducted under the authority of the Drug Price Competition and Patent Term Restoration Act of 1984 (21 U.S.C. 355(j)) and the Animal Drug and Patent Term Restoration Act of 1988 (35 U.S.C. 156). New human drug, animal drug, human biological, medical device, food additive, or color additive products regulated by FDA must undergo FDA safety, or safety and effectiveness, review before marketing is permitted. Where the product is covered by a patent, part of the patent's term may be consumed during this review, which diminishes the value of the patent. In enacting the Drug Price Competition and Patent Term Restoration Act of 1984 and the Animal Drug and Patent Term Restoration Act of 1988, Congress sought to encourage development of new, safer, and more effective medical and food additive products. It did so by authorizing the U.S. Patent and Trademark Office (PTO) to extend the patent term by a portion of the time during which FDA's safety and effectiveness review prevented marketing of the product. The length of the patent term extension is generally limited to a maximum of 5 years, and is calculated by PTO based on a statutory formula. When a patent holder submits an application for patent term extension to PTO, PTO requests information from FDA, including the length of the regulatory review period for the patented product. If PTO concludes that the product is eligible for patent term extension, FDA publishes a notice that describes the length of the regulatory review period and the dates used to calculate that period. Interested parties may request, under § 60.24 (21 CFR 60.24), revision of the length of the regulatory review period, or may petition under § 60.30 (21 CFR 60.30) to reduce the regulatory review period by any time where marketing approval was not pursued with ''due diligence.'' The statute defines due diligence as ''that degree of attention, continuous directed effort, and timeliness as may reasonably be expected from, and are ordinarily exercised by, a person during a regulatory review period.'' As provided in § 60.30(c), a due diligence petition ''shall set forth sufficient facts, including dates if possible, to merit an investigation by FDA of whether the applicant acted with due diligence.'' Upon receipt of a due diligence petition, FDA reviews the petition and evaluates whether any change in the regulatory review period is necessary. If so, the corrected regulatory review period is published in the **Federal Register**. A due diligence petitioner not satisfied with FDA's decision regarding the petition may, under § 60.40 (21 CFR 60.40), request an informal hearing for reconsideration of the due diligence determination. Petitioners are likely to include persons or organizations having knowledge that FDA's marketing permission for that product was not actively pursued throughout the regulatory review period. The information collection for which an extension of approval is being sought is the use of the statutorily created due diligence petition.

Since 1992, nine requests for revision of the regulatory review period have been submitted under § 60.24. Four regulatory review periods have been altered. Two due diligence petitions have been submitted to FDA under § 60.30. There have been no requests for hearings under § 60.40 regarding the decisions on such petitions.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
60.24(a)	9	1	9	100	900
60.30	2	0	2	50	100
60.40	0	0	0	0	0
Total					1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13269 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007C–0245]

Nippon Oil Corp.; Filing of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nippon Oil Corp. has filed a petition proposing that the color additive regulations be amended to provide for the safe use of *Paracoccus carotinifaciens* granules as a color additive in the feed of salmonid fish to enhance the color of their flesh.

FOR FURTHER INFORMATION CONTACT: Mical E. Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration,

5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1278.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e(d)(1)), notice is given that a color additive petition (CAP 7C0283) has been filed by Nippon Oil Corp., c/o Beckloff Assoc., 7400 West 110th St., suite 300, Overland Park, KS 66210. The petition proposes to amend the color additive regulations in 21 CFR part 73 to provide for the safe use of *Paracoccus carotinifaciens* granules as a color additive in the feed of salmonid fish to enhance the color of their flesh.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: June 28, 2007.

Laura M. Tarantino,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. E7–13161 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0221]

Otsuka Pharmaceutical Co., Ltd.; Withdrawal of Approval of a New Drug Application; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of June 14, 2007 (72 FR 32852). The agency issued a withdrawal of a new drug application (NDA) for RAXAR (grepafloxacin hydrochloride (HCl)) Tablets held by Otsuka Pharmaceutical Co., Ltd. (Otsuka), c/o Otsuka Pharmaceutical Development & Commercialization, Inc., 2440 Research Blvd., Rockville, MD 20850. The document published with typographical errors and cited a section of the Code of Federal Regulations that no longer exists. This document corrects those errors. The agency is also announcing the removal of RAXAR Tablets from the list of approved drug products in FDA's ''Approved Drug Products With Therapeutic Equivalence Evaluations'' (the Orange Book).

DATES: Effective July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. E7–11427, appearing on page 32852 in the **Federal Register** of Thursday, June 14, 2007, the following correction is made:

1. On page 32852, in the second and third columns, the **SUPPLEMENTARY INFORMATION** section is corrected to read:

SUPPLEMENTARY INFORMATION: In a letter dated March 5, 2003, Otsuka requested that FDA withdraw approval of NDA 20–695 for RAXAR (grepafloxacin HCl) Tablets, stating that the product was no longer being marketed. In FDA's acknowledgment letter of June 20, 2003, the agency informed Otsuka that RAXAR (grepafloxacin HCl) Tablets, indicated for the treatment of a variety of infections, had been removed from the market because of safety concerns; in its followup letter of January 12, 2007, the agency also informed Otsuka that it had determined that the RAXAR NDA should be withdrawn under § 314.150(d) (21 CFR 314.150(d)) because of its effect on cardiac repolarization, manifested as QTc interval prolongation on the electrocardiogram, which could put patients at risk of Torsade de Pointes. In its letter of March 20, 2007, Otsuka concurred in the agency's determination to initiate withdrawal of the RAXAR NDA and waived its opportunity for a hearing, provided under § 314.150(a) and (b).

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)), § 314.150(d), and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the NDA 20–695, and all amendments and supplements thereto, is withdrawn effective (see **DATES**). Distribution of this product in interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the act (21 U.S.C. 331(d)). Also, on the basis of the circumstances described in this document that led to the withdrawal of the approval of NDA 20–695, the agency will remove RAXAR (grepafloxacin HCl) Tablets from the list of drug products with effective approvals published in the Orange Book.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13160 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0524]

Guidance for Industry on ANDAs: Pharmaceutical Solid Polymorphism; Chemistry, Manufacturing, and Controls Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''ANDAs: Pharmaceutical Solid Polymorphism; Chemistry, Manufacturing, and Controls Information.'' The guidance is intended to assist applicants with the submission of abbreviated new drug applications (ANDAs) when a drug substance exists in polymorphic forms.

DATES: Submit written or electronic comments on agency guidance documents at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Andre Raw, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9310.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''ANDAs: Pharmaceutical Solid Polymorphism; Chemistry, Manufacturing, and Controls

Information.'' This guidance provides: (1) A framework for making regulatory decisions on drug substance sameness in terms of polymorphic form and (2) decision trees which provide a recommended course to monitor and control polymorphs in the drug substance and/or drug product when the drug substance exists in relevant polymorphic forms.

On December 20, 2004 (69 FR 75987), the FDA announced the availability of the draft version of this guidance. The public comment period closed on March 21, 2005. A number of comments were received, which the agency considered carefully as it finalized the guidance and made appropriate changes. Most of the changes to the guidance were made to clarify statements in the draft guidance.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on pharmaceutical solid polymorphism. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13171 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0249]

Draft Guidance for Industry: Preparation of Investigational Device Exemptions and Investigational New Drug Applications for Products Intended to Repair or Replace Knee Cartilage; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Preparation of IDEs and INDs for Products Intended to Repair or Replace Knee Cartilage'' dated July 2007. The draft guidance provides to sponsors recommendations about certain information that should be included in an investigational device exemption (IDE) or investigational new drug application (IND) for a product intended to repair or replace knee cartilage. The draft guidance, when finalized, will supplement other FDA publications on IDEs and INDs.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by October 9, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448; or the Division of Small Manufacturers, International, and Consumer Assistance (DSMICA) (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800; or by calling CDRH at 240–276–3150 or by faxing a request to CDRH at 240–276–3151. To receive an electronic copy, send an e-mail request to *dsmica@fda.hhs.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT:

Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210; or

Aric D. Kaiser, Center for Devices and Radiological Health (HFZ–410), 9200 Corporate Blvd., Rockville, MD 20850, 240–276–3676.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Preparation of IDEs and INDs for Products Intended to Repair or Replace Knee Cartilage'' dated July 2007. The draft guidance document provides to sponsors recommendations about certain information that should be included in an IDE or IND for a product intended to repair or replace knee cartilage. For the purposes of the draft guidance, a product intended to repair or replace knee cartilage, as with other articular cartilage repair or replacement products, may include a biologic, device, or combination product whose components would be individually regulated by CDRH and CBER.

FDA prepared this draft guidance to address issues that may arise in the development of articular cartilage repair or replacement products. The draft guidance also reflects input received from the public and the Cellular, Tissue, and Gene Therapies Advisory Committee (CTGTAC) at the March 3 to 4, 2005, CTGTAC meeting. The draft guidance, when finalized, will supplement other FDA publications on IDEs and INDs.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations.

These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 312 (on INDs) have been approved under OMB control number 0910–0014; and those in 21 CFR part 812 (on IDEs) have been approved under OMB control number 0910–0078.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm, http://www.fda.gov/cdrh/guidance.html*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13162 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007D–0125]

Draft Guidance for Industry: Evidence-Based Review System for the Scientific Evaluation of Health Claims; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''Guidance for Industry: Evidence-Based Review System for the Scientific Evaluation of Health Claims.'' This draft guidance updates the agency's approach to the review of the publicly available scientific evidence for significant scientific agreement (SSA) and qualified health claims. FDA is taking this action to inform interested persons of the system it intends to use to review the scientific evidence in the evaluation of SSA and qualified health claims.

DATES: Submit written or electronic comments on the draft guidance document by September 7, 2007.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Nutritional Products, Labeling and Dietary Supplements (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one-self-addressed adhesive label to assist the office in processing your request, or include a fax number to which the draft guidance may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www/fda/gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Paula Trumbo, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 310–436–2579.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled ''Guidance for Industry: Evidence-Based Review System for the Scientific Evaluation of Health Claims.'' The Nutrition Labeling and Education Act of 1990 (NLEA) was designed to give consumers more scientifically valid information about foods they eat. Among other provisions, NLEA directed FDA to issue regulations providing for the use of statements that describe the relationship between a substance and a disease (''health claims'') in the labeling of foods, including dietary supplements, after such statements have been reviewed and authorized by FDA. For these health claims, that is, statements about substance/disease relationships, FDA has defined the term ''substance'' by regulation as a specific food or food component (§ 101.14(a)(2) (21 CFR 101.14(a)(2)). An authorized health claim may be used on both conventional foods and dietary supplements, assuming that the substance in the product and the product itself meet the appropriate standards in the authorizing regulation. Health claims are directed to the general population or designated subgroups (e.g., the elderly) and are intended to assist the consumer in maintaining healthful dietary practices.

In evaluating a petition for an SSA health claim submitted under § 101.70 (21 CFR 101.70), FDA considers whether the evidence supporting the relationship that is the subject of the claim meets the SSA standard. This standard derives from section 403(r)(3)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i)), which provides that FDA shall authorize a health claim to be used on conventional foods if the agency ''determines, based on the totality of the publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.'' This scientific standard was prescribed by statute for conventional food health claims; by regulation, FDA adopted the same standard for dietary supplements health claims (see § 101.14(c)).

The genesis of qualified health claims was the court of appeals decision in *Pearson* v. *Shalala* (*Pearson*). In that case, the plaintiffs challenged FDA's decision not to authorize health claims for four specific substance/disease relationships for dietary supplements. Although the district court ruled for FDA (14 F. Supp. 2d 10 (D.D.C. 1998)), the U.S. Court of Appeals for the DC Circuit reversed the lower court's decision (164 F.3d 650 (DC Cir. 1999)). The appeals court held that the First Amendment does not permit FDA to reject health claims that the agency determines to be potentially misleading unless the agency also reasonably determines that a disclaimer would not eliminate the potential deception. The appeals court also held that the Administrative Procedure Act required FDA to clarify the SSA standard for authorizing health claims.

On December 22, 1999, FDA announced the issuance of a guidance entitled ''Guidance for Industry: Significant Scientific Agreement in the Review of Health Claims for Conventional Foods and Dietary Supplements'' (64 FR 71794). This guidance document was issued to clarify FDA's interpretation of the SSA standard in response to the court of appeals second holding in *Pearson*.

On December 20, 2002, the agency announced its intention to extend *Pearson* to health claims for conventional foods (67 FR 78002). Recognizing the need for an approach for scientific evaluations for qualified health claims, the task force on ''Consumer Health Information for Better Nutrition'' was formed. As part of the task force's final report,[1] FDA developed an interim evidence-based review system that the agency intended to use to evaluate the substance/disease relationships that are subjects of qualified health claims.

In reviewing both the December 22, 1999, guidance document and the 2003 task force report, it became apparent to the agency that the components of the scientific review process for an SSA health claim and qualified health claim are very similar. Because of the similarity between the scientific reviews for SSA and qualified health claims, FDA intends to generally use the approach set out in this draft guidance for evaluating the scientific evidence in petitions that are submitted for an SSA health claim or qualified health claim.

The primary purpose of this document is to set out FDA's current thinking on the process for evaluating the scientific evidence for a health claim, the meaning of the SSA standard in section 403(r)(3) of the act and § 101.14(c), and credible scientific evidence to support a qualified health claim.

This draft guidance is being issued consistent with FDA's good guidance practice regulations (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the scientific review process for SSA and qualified health claims. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 101.14 and 101.70 have been approved under OMB control number 0910–0381.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.cfsan.fda.gov/guidance.html*.

Dated: June 28, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–13274 Filed 7–6–07; 8:45 am]

BILLING CODE 4160–01–S

[1]See guidance entitled ''Interim Evidence-based Ranking System for Scientific Data,'' July 10, 2003 (*http://www.cfsan.fda.gov/~dms/hclmgui4.html*).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities; Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimated burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Office of Health Information Technology, Health Center Controlled Networks Progress Reports—New

The Office of Health Information Technology (OHIT), Division of State and Community Assistance (DSCA) plans to collect network outcome measures, conduct evaluation of those measures, and create an electronic reporting system for the following new 2007 grant opportunities: Health Information Technology Planning Grants, Electronic Health Record Implementation Health Center Controlled Networks, Health Information Technology Innovations for Health Center Controlled Networks, and High Impact Electronic Health Records Implementation for Health Center Controlled Networks and Large Multi Site Health Centers.

In order to help carry out its mission, DSCA has created a set of performance measures that grantees will use to evaluate the effectiveness of their service programs and monitor their progress through the use of performance reporting data.

OHIT will develop an electronic performance measurement reporting instrument with HRSA's Office of Information Technology. The instrument will be developed to accomplish the following goals: To monitor improved access to needed services, to evaluate the productivity and efficiency of the networks, and to monitor patient outcome measures. Grantees will submit their Progress Reports in a mid-year report and an accumulative annual progress report each fiscal year of the grant.

The estimates of burden are as follows:

Application	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Planning	12	2	24	18	432
Electronic Health Records Implementation	8	2	16	18	288
Innovations Category 1	7	2	14	18	252
Innovations Category 2	5	2	10	18	180
High Impact	8	2	16	18	288
Totals	40		80		1,440

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: June 28, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–13167 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Reporting Form for the MCHB National Hemophilia Program Grantees and Hemophilia Treatment Center (HTC) Affiliates Having Factor Replacement Product (FRP) Programs

The Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is planning to implement an annual reporting form required of grantees of the MCHB National Hemophilia Program and their HTC affiliates having a factor replacement product (FRP) program. The purpose of the form is to provide systematic information and data comprising a financial overview of the FRP programs of the HTCs receiving funding through grantees of the MCHB National Hemophilia Program. The proposed form will constitute a reporting requirement for the MCHB National Hemophilia Program grantees and their affiliate HTCs having FRP programs.

Data from the form will provide quantitative information on the financial and services provision aspects of each of the HTC FRP programs under each of the MCHB National Hemophilia Program grantees, specifically: (a) Patient FRP program participation, (b) FRP program revenue, (c) FRP program costs, (d) FRP program net income, and (e) use of FRP program net income. This form will provide data useful to grantees and their affiliate HTCs having FRP programs as well as to the MCHB National Hemophilia Program. The data will be used to assess FRP program performance including FRP program operational costs appropriateness, FRP program cost efficiency, and FRP program services benefits–information that is essential to evaluating HTCs having FRP programs, grantees, and the MCHB National Hemophilia Program.

Each HTC having an FRP program is to submit its report to the grantee and each grantee is to submit the individual reports of each of their affiliate HTCs having an FRP program to the MCHB National Hemophilia Program as a part of their annual grant application.

The estimated response burden for grantees is as follows:

Form	Number of respondents	Average number of responses per respondent	Total responses	Hours per response	Total burden hours
Factor Replacement Product (FRP) Data Sheet	68	1	68	30	2,040

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 28, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–13168 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: "Health Care and Other Facilities" Project Status Update Form: NEW

The Health Resources and Services Administration's Health Care and Other Facilities (HCOF) program provides earmarked funds to health-related

facilities for construction-related activities and/or capital equipment purchases. Awarded facilities are required to provide a periodic (quarterly for construction-related projects, annually for equipment only projects) update of the status of the funded project until it is completed. The monitoring period averages about 3 years, although some projects take up to 5 years to complete. The information collected from these updates is vital to program management staff to determine whether projects are progressing according to the established timeframes, meeting deadlines established in the Notice of Grant Award (NGA), and drawing down funds appropriately. The data collected from the updates is also shared with the Division of Grants Management Operations (DGMO) and the Division of Engineering Services (DES) for their assistance in the overall evaluation of each project's progress.

An electronic form has been developed for progress reporting for the HCOF program. This form will provide awardees access to directly input the required status update information in a timely, consistent, and uniform manner. The electronic form will minimize burden to respondents and will inform respondents when there are missing data elements prior to submission.

The estimate of burden for the form is as follows:

Project type	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Construction-Related	395	4	1,580	.5	790
Equipment Only	523	1	523	.5	262
Total	918		2,103		1,052

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 28, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–13169 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data System for Organ Procurement and Transplantation Network and Associated Forms (OMB No. 0915–0157)—Revision

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour system to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to indicate the disease severity of transplant candidates, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used to develop transplant, donation and allocation policies, to determine if institutional members are complying with policy, to determine member specific performance, to ensure patient safety when no alternative sources of data exist and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

Revisions in the 26 data collection forms are intended to implement approved reduction in data collection for candidates and recipients, to provide additional information specific to pediatric patients, and to clarify existing questions.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Deceased Donor Registration	58	215	12,470	0.4200	5,237.4000
Death referral data	58	12	696	10.0000	6,960.0000
Living Donor Registration	711	10	7,110	0.4100	2,915.1000
Living Donor Follow-up	711	18	12,798	0.3300	4,223.3400
Donor Histocompatibility	154	95	14,630	0.0600	877.8000
Recipient Histocompatibility	154	172	26,488	0.1100	2,913.6800
Heart Candidate Registration	135	23	3,105	0.2800	869.4000
Lung Candidate Registration	67	27	1,809	0.2800	506.5200

ESTIMATES OF ANNUALIZED HOUR BURDEN—Continued

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Heart/Lung Candidate Registration	59	1	59	0.2800	16.5200
Thoracic Registration	135	27	3,645	0.4400	1,603.8000
Thoracic Follow-up	135	229	30,915	0.4130	12,767.8950
Kidney Candidate Registration	250	133	33,250	0.2800	9,310.0000
Kidney Registration	250	69	17,250	0.4400	7,590.0000
Kidney Follow-up	250	544	136,000	0.3332	45,315.2000
Liver Candidate Registration	125	89	11,125	0.2800	3,115.0000
Liver Registration	125	54	6,750	0.4000	2,700.0000
Liver Follow-up	125	383	47,875	0.3336	15,971.1000
Kidney/Pancreas Candidate Registration	146	12	1,752	0.2800	490.5600
Kidney/Pancreas Registration	146	7	1,022	0.5300	541.6600
Kidney/Pancreas Follow-up	146	65	9,490	0.5027	4,770.6230
Pancreas Candidate Registration	146	7	1,022	0.2800	286.1600
Pancreas Registration	146	3	438	0.4400	192.7200
Pancreas Follow-up	146	23	3,358	0.4133	1,387.8614
Intestine Candidate Registration	45	8	360	0.2400	86.4000
Intestine Registration	45	4	180	0.5300	95.4000
Intestine Follow-up	45	17	765	0.5059	387.0135
Post Transplant Malignancy	711	6	4,266	0.0800	341.2800
Total	923		388,628		131,472.4329

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Karen Matsuoka, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 28, 2007.

Caroline Lewis,

Associate Administrator for Management.

[FR Doc. E7–13170 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice Regarding the 340B Drug Pricing Program; Children's Hospitals

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: Section 340B of the Public Health Service Act (section 340B) and section 1927(a) of the Social Security Act (section 1927(a)) implement a drug pricing program in which manufacturers who sell covered outpatient drugs to covered entities must agree to charge a price that will not exceed an amount determined under a statutory formula. Section 6004 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (section 6004) added children's hospitals to the list of covered entities eligible to access 340B discounted drugs. The purpose of this notice is to inform interested parties of proposed guidelines regarding the addition of children's hospitals that meet certain requirements, specifically: (1) The process for the addition of children's hospitals to the 340B Program; and (2) the obligation of manufacturers to provide the statutorily mandated discount to children's hospitals. These proposed guidelines will not take effect until final guidelines are issued.

DATES: The public is invited to comment on the proposed guidelines by September 7, 2007. After consideration of the submitted comments, the Health Resources and Services Administration (HRSA) will issue the final guidelines.

ADDRESSES: Address all comments to Mr. Bradford R. Lang, Public Health Analyst, Office of Pharmacy Affairs (OPA), Healthcare Systems Bureau (HSB), HRSA, 5600 Fishers Lane, Parklawn Building, Room 10C–03, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mr. Jimmy Mitchell, Director, OPA, HSB, HRSA, 5600 Fishers Lane, Parklawn Building, Room 10C–03, Rockville, MD 20857, or by telephone through the Pharmacy Services Support Center at 1–800–628–6297.

SUPPLEMENTARY INFORMATION:

(A) Background

Section 602 of Public Law 102–585, the Veterans Health Care Act of 1992, enacted section 340B, Limitation on Prices of Drugs Purchased by Covered Entities and added certain implementation provisions for the 340B Program to section 1927(a) of the Social Security Act. Section 340B contains the majority of the requirements for covered entities participating in the 340B Program, while the relevant provisions of section 1927(a) of the Social Security Act provide primarily for the requirement that manufacturers provide the statutorily mandated discount to covered entities.

Section 340B contains a list of covered entities that are eligible to receive discounts through the 340B Program. The list includes entities such as Federally Qualified Health Centers, State-operated AIDS drug purchasing assistance programs, and certain disproportionate share hospitals. Children's hospitals were not included as covered entities under section 340B in the Veterans Health Care Act of 1992 as enacted.

Section 6004 added children's hospitals as covered entities eligible to access 340B discounted drugs. To accomplish this, section 6004 did not amend section 340B (which contains many of the requirements for covered entities). Section 6004 amended section 1927(a) of the Social Security Act (which primarily contains requirements for manufacturers' participation) to add children's hospitals to the 340B Program.

To be eligible for the 340B Drug Pricing Program, section 1927(a), as amended by section 6004, requires children's hospitals to meet the requirements of clauses (i) and (iii) of section 340B(a)(4)(L) of the Public Health Service Act, which contain

provisions for State or local government affiliations and non-participation in group purchasing organizations. In addition, children's hospitals must meet the requirements of clause (ii) of such section, which contains requirements for the provision of indigent care, if such section ''were applied by taking into account the percentage of care provided by the hospital to patients eligible for medical assistance'' under Medicaid.

(B) Obligation of Manufacturers To Provide 340B Discounts to Children's Hospitals

Section 1927(a)(5)(A) of the Social Security Act requires manufacturers to enter into agreements with the Secretary that meet the requirements of section 340B with respect to covered outpatient drugs purchased by a covered entity. Section 1927(a)(5)(B), as amended by section 6004, defines covered entities for purposes of section 1927(a)(5) as those covered entities listed in the Public Health Service Act and certain children's hospitals. As section 1927(a)(5)(A) requires manufacturers to enter into agreements ''with respect to covered outpatient drugs purchased by a covered entity,'' and covered entity is defined as including children's hospitals for purposes of section 1927, manufacturers are required to extend 340B pricing to eligible children's hospitals.

The Pharmaceutical Pricing Agreements (PPA) between the Secretary and each manufacturer require manufacturers to provide 340B discounted covered outpatient drugs to covered entities. Given the clear congressional intent in Section 6004 to expand the category of covered entities, the PPAs currently in place effectively require manufacturers to provide 340B discounts to children's hospitals without need for further amendment to currently existing PPAs.

(C) Process for Admission of Children's Hospitals to the 340B Program

(1) Children's Hospitals Participation

Children's hospitals participation in the 340B Drug Pricing Program is voluntary. Consistent with the participation of other covered entities, once a children's hospital has elected to participate in the program, it must wait to enter or withdraw from the program until the next official updating of the 340B covered entity database. OPA will update this list two weeks before the beginning of each calendar quarter. Participating children's hospitals must comply with all program guidelines for covered entities until the date they are removed from the 340B covered entity database. OPA will accept applications from children's hospitals for entry into the 340B Program as of the date of publication of the final notice of these guidelines.

(2) Certification by Children's Hospitals Prior to 340B Drug Pricing Program Entry

As with other covered entities, prior to entry into the 340B Drug Pricing Program, children's hospitals will be required to provide OPA with a certification regarding several different program requirements.

As a threshold matter, a hospital wishing to qualify for the 340B Program as a children's hospital must demonstrate that the hospital is a ''children's hospital'' as defined by section 6004. Section 6004 requires that a hospital wishing to qualify as a children's hospital covered entity must (1) satisfy the definition of ''children's hospital'' contained in section 1886(d)(1)(B)(iii) of the Social Security Act; and (2) meet minimum requirements for the receipt of an additional payment under Medicare pursuant to section 1886(d)(5)(F)(i) of the Social Security Act (if such clause were applied by taking into account the percentage of care provided by the hospital to Medicaid patients). Given the reliance of section 6004 on Medicare payment provisions for the definition of ''children's hospital,'' a hospital will need to demonstrate that it has been provided a Medicare provider number identifying the hospital as a ''children's hospital'' (i.e., a hospital with a 3300 series Medicare provider number).

Prior to entry into the 340B Program, a children's hospital must certify that it will abide by all the requirements of section 340B that all other covered entities abide by (e.g., prohibition on resale of covered outpatient drugs; prohibition on duplicate discounts or rebates). While children's hospitals are not explicitly mentioned in section 340B, it is implicit in section 1927(a) of the Social Security Act that children's hospitals abide by the requirements of section 340B. Section 1927(a) provides that manufacturers must have entered into agreements with the Secretary that meet the requirements of section 340B and several of the provisions contained in these agreements concern covered entities' compliance with provisions of section 340B. Furthermore, it is within the Secretary's authority under section 340B to create guidelines necessary for the implementation of the program. Unless children's hospitals are subject to all of the same rules as other covered entities, the inclusion of children's hospitals in the 340B Program would be difficult, if not impossible.

Prior to entry into the 340B Program a children's hospital must certify compliance (along with the date of compliance) with clauses (i), (ii), and (iii) of section 340B(a)(4)(L) (in accordance with section 1927(a)(5)(B) of the Social Security Act). To comply with section 340B(a)(4)(L)(i), a children's hospital will have to certify (and include such supporting documentation as requested by OPA) that the children's hospital is:

(1) Owned or operated by a unit of State or local government;

(2) a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government; or

(3) A private non-profit hospital under contract with State or local government to provide health care services to low income individuals who are not eligible for Medicare or Medicaid.

To comply with section 340B(a)(4)(L)(ii), a children's hospital will have to certify (and include such supporting documentation as requested by OPA) that the children's hospital:

(1) Is located in an urban area, has 100 or more beds, and can demonstrate that its net inpatient care revenues (excluding any of such revenues attributable to Medicare), during the cost reporting period in which the discharges occur, for indigent care from State and local government sources and Medicaid exceed 30 percent of its total of such net inpatient care revenues during the period; or

(2) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) greater than 11.75 percent.

To comply with section 340B(a)(4)(L)(iii), a children's hospital will have to certify that the children's hospital will not participate in a group purchasing organization or group purchasing arrangement for covered outpatient drugs as of the effective date in the 340B covered entity database.

Prior to entry into the 340B Program, OPA requires certification of a children's hospital's compliance with section 340B(a)(4)(L)(ii). In addition to having a 3300 series Medicare provider identification number, initially, OPA will seek verification of compliance based on the Medicare cost report submitted by the children's hospital to the Centers for Medicare and Medicaid Services (CMS). Given that children's hospitals are not eligible for the

prospective payment system, the materials submitted by any particular children's hospital may not provide the required verification. To the extent that OPA is unable to obtain independent verification, a children's hospital will be expected to verify that the children's hospital meets the requirements of section 340B(a)(4)(L)(ii) if requested by OPA.

OPA is considering whether it would be appropriate to require a statement from an independent auditor certifying that a children's hospital meets the requirements of section 340B(a)(4)(L)(ii) in those cases where there is no established method of verification analogous to that utilized to annually certify DSH eligibility in the 340B Drug Pricing Program. OPA invites comments from stakeholders on the feasibility of an independent auditor to verify eligibility of children's hospitals. OPA also seeks comments from children's hospitals as to the relative burden that an independent auditor statement may entail and welcomes alternate proposals as to how to best ensure the integrity of the 340B Drug Pricing Program while minimizing costs.

(3) Eligibility for Retroactive Discounts

Section 6004 indicates that the amendment authorizing entry of children's hospitals into the 340B Program ''shall apply to drugs purchased on or after the date of the enactment of this Act.'' Section 6004 was enacted on February 8, 2006. Therefore, once they are admitted to the 340B Program, children's hospitals are eligible for 340B drug pricing retroactive to February 8, 2006. However, a children's hospital will be eligible for retroactive discounts only to the extent that it has satisfied all requirements for participation in the 340B program back to the date discounts are requested.

Similar to when the 340B Program was first started, children's hospitals that participate in the program will be eligible for retroactive discounts. Until 120 days after publication of the final notice, children's hospitals which have been included in OPA's database of covered entities may request retroactive discounts (discounts, rebates, or account credit) from pharmaceutical manufacturers for covered outpatient drugs that satisfy all the following conditions:

(1) The covered outpatient drugs must have been purchased on or after February 8, 2006;

(2) The covered outpatient drugs must not have generated Medicaid rebates (the children's hospital must have appropriate documentation to demonstrate this); and

(3) The covered outpatient drugs must have been purchased on or after the date on which the children's hospital satisfied all requirements for participation in the 340B Program as outlined in section (C)(2) of this notice.

In order to satisfy the last condition listed above, a children's hospital must be able to demonstrate, at a minimum, that as required by section 340B(a)(4)(L)(iii) of the Public Health Service Act the children's hospital did not have a group purchasing agreement for covered outpatient drugs and satisfied the requirements of section 340B(a)(4)(L)(i) and 340B(a)(4)(L)(ii) at the time the covered outpatient drugs for which rebates are requested were purchased.

Dated: June 29, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–13239 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

American Indians Into Medicine; Notice of Competitive Grant Applications for American Indians Into Medicine Program

Announcement Type: Initial.

Funding Opportunity Number: HHS–2007–IHS–INMED–0001.

CFDA Number: 93.970.

Key Dates:

Application Deadline: August 16, 2007.

Application Review: August 21, 2007.

Application Notification: August 27, 2007.

Anticipated Award Start Date: September 1, 2007.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces that competitive grant applications are being accepted for the American Indians into Medicine Program. These grants are established under the authority of 25 U.S.C. 1616g(a) of the Indian Health Care Improvement Act, as amended by Public Law (Pub. L.) 102–573. The purpose of the Indians into Medicine program is to augment the number of American Indian/Alaska Native (AI/AN) health professionals serving AI/AN by encouraging them to enter the health professions and removing the multiple barriers to their entrance into IHS and private practice among AI/AN communities. For the purpose of maintaining and expanding the Indians into Medicine program two grants will be funded. One grant will be funded at $300,000 and a second grant will be funded at $60,000. Each grant will have different criteria which will be listed separately in this announcement.

This program is described at 93.970 in the Catalog of Federal Domestic Assistance. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led activity for setting priority areas. This program announcement is related to the priority area of Educational and Community-based programs. Potential applicants may obtain a copy of Healthy People 2010, summary report in print, Stock No. 017–001–00547–9, or via CD–ROM, Stock No. 107–001–00549–5, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may access this information via the Internet at the following Web site: *www.health.gov/healthypeople.*

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

II. Award Information

Type of Awards: Grant.

Estimated Funds Available: The total amount identified for Fiscal Year 2007 is $360,000 to provide support for an estimated two awards. The awards are for 12 months in duration and the awards are approximately $300,000 for one grant award and $60,000 for a second grant award. Future awards issued under this announcement are subject to the availability of funds.

Anticipated Number of Awards: An estimated two awards will be made under the program. Applicants may apply for both grants but only one grant will be awarded per applicant.

Project Period: 36 months = $300,000 grant award; 12 months = $60,000 grant award.

Award Amount: $300,000, per year for one grant award and $60,000, per year for a second grant award.

III. Eligibility Information

1. *Eligible Applicants:*

Public and nonprofit private colleges and universities with medical and other allied health programs are eligible to apply for the grants. Public and nonprofit private colleges that operate nursing programs are not eligible under this announcement since the IHS currently funds the Nursing Recruitment grant program.

The existing INMED grant program at the University of North Dakota has as its target population Indian Tribes primarily within the States of North Dakota, South Dakota, Nebraska, Wyoming, and Montana. A college or university applying under this announcement must propose to conduct its program among Indian Tribes in States not currently served by the University of North Dakota INMED program.

2. *Cost Sharing/Matching:*

This announcement does not require matching funds or cost sharing.

3. *Other Requirements:*

Required Affiliations—The grant applicant must submit official documentation indicating Tribal cooperation with and support of the program within the schools on its reservation. Documentation must be in the form prescribed by the Tribes governing body, i.e., letter of support or Tribal resolution. Documentation must be submitted from every Tribe ''affected'' by the grant program. If application budgets exceed the stated dollar amount that is outlined within this announcement, it will not be considered for funding. One grant will be funded at $300,000 and a second grant will be funded at $60,000. Each grant will have different criteria which will be listed separately in this announcement. Please specify which grant you are applying for. Applicants may apply for both grants but only one grant will be awarded per applicant.

IV. Application and Submission Information

1. Applicant package may be found in *www.grants.gov* (Grants.gov) or at *http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.* Information regarding the electronic application process may be directed to Michelle G. Bulls, at 301–443–6528 or the *Grants.gov* Helpdesk 1–800–518–4726. The entire application package is available at: *http://www.grants.gov/Apply.* Detailed application instructions for this announcement are downloadable on *Grants.gov.*

2. Content and Form of Application Submission:

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 7 typed pages that includes the other submission requirements below. The 7 page narrative does not include the work plan, standard forms, Tribal resolutions or letters of support (if necessary), table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to the IHS grants with the exception of the Lobbying and Discrimination public policy.

—Include Letter of Intent requirements under Public Policy Requirements.

3. *Submission Dates and Times:*

Applications must be submitted electronically through *Grants.gov* by 12 midnight Eastern Standard Time (EST). If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the applicant should contact Michelle G. Bulls, Grants Policy Staff, fifteen days prior to the application deadline and advise of the difficulties that your organization is experiencing. The grantee must obtain prior approval, in writing (e-mails are acceptable) allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies may be sent to the appropriate grants contact that is listed in Section IV above. Applications not submitted through *Grants.gov*, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing, will be returned to the applicant and will not be considered for funding.

4. *Intergovernmental Review:*

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions:*

- Pre award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74 all pre award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason the applicant does not receive an award or if the award to the recipient is less than anticipated.
- The available funds are inclusive of direct and appropriate indirect costs.
- Only one grant will be awarded per applicant.
- IHS will not acknowledge receipt of applications.

Electronic Submission—The preferred method for receipt of applications is electronic submission through *Grants.gov*. However, should any technical challenges arise regarding the submission, please contact *Grants.gov* Customer Support at 1 (800) 518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday through Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call (301) 443–6290 and identify the need for assistance regarding your *Grants.gov* application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registry (CCR) and/or *Grants.gov* registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications.

To submit an application electronically, please use the *http://www.Grants.gov/Apply* site. Download a copy of the application package, on the *Grants.gov* Web site, complete it offline and then upload and submit the application via the *Grants.gov* site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on line, please directly contact *Grants.gov* Customer Support at: *http://www.grants.gov/CustomerSupport.*
- Upon contacting *Grants.gov* obtain a tracking number of proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy must be obtained.
- If it is determined that a formal wavier is necessary, the applicant must submit a request, in writing (e-mails are acceptable), to *Michelle.Bulls@ihs.gov* that includes a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard copy application package must be downloaded by the applicant from *Grants.gov*, and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, Suite 120, Rockville, MD 20852 by the due date, August 16, 2007.
- Upon entering the *Grants.gov* site, there is information available that outlines the applicant requirements regarding electronic submission of an application through *Grants.gov*, as well

as the hours of operation. Applicants must not wait until the deadline date to begin the application process through *Grants.gov* as the registration process for CCR could take up to fifteen working days.

- To use *Grants.gov* you, as the applicant, must have a Duns and Bradstreet (DUNS) Number and register in the CCR. You should allow a minimum of ten working days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Please use the optional attachment feature in *Grants.gov* to attached additional documentation that may be requested by IHS.
- If Tribal resolutions or letters of support are required, please include them as an attachment in your electronic application.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number. The Indian Health Service, DGO will retrieve your application from *Grants.gov*. DGO will not notify applicants that the application has been received.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You may search for the downloadable application package by either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2007–IHS INMED–0001.

Again, e-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister*.

More detailed information regarding these registration processes can be found at *http://www.grants.gov*.

V. Application Review Information

1. Criteria for Applicants Applying for the $300,000 Grant Award

A. Introduction and Potential Effectiveness of Project (30 pts.)

(1) Describe your legal status and organization.

(2) State specific objectives of the project, which are measurable in terms of being quantified, significant to the needs of Indian people, logical, complete and consistent with the purpose of 25 U.S.C. 1616g.

(3) Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

(4) Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the time frame needed to accomplish each task. Time frames should be projected in a realistic manner to assure that the scope of work can be completed within each budget period.

(5) In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training in such health professions.

(6) State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

(7) Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

(8) Identify who will perform the evaluation and when.

B. Project Administration (20 pts.)

(1) Provide an organizational chart and describe the administrative, managerial and organizational arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

(2) Provide the name and qualifications of the project director or other individuals responsible for the conduct of the project; the qualifications of the principle staff carrying out the project; and a description of the manner in which the application's staff is or will be organized and supervised to carry out the proposed project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

(3) Describe any prior experience in administering similar projects.

(4) Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

(5) Describe the ability to provide outreach and recruitment for health professions to Indian communities including elementary and secondary schools and community colleges located on Indian reservations which will be served by the program.

(6) To the maximum extent feasible, employ qualified Indians in the program.

C. Accessibility to Target Population (20 pts.)

(1) Describe the current and proposed participation of Indians (if any) in your organization.

(2) Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

(3) Describe the methodology to be used to access the target population.

(4) Identify existing university tutoring, counseling and student support services.

D. Relationship of Objectives to Manpower Deficiencies (20 pts.)

(1) Provide data and supporting documentation to substantiate need for recruitment.

(2) Indicate the number of potential Indian students to be contacted and recruited as well as potential cost per student recruited. Those projects that have the potential to serve a greater number of Indians will be given first consideration.

(3) Describe methodology to locate and recruit students with educational potential in a variety of health care

fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such as pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS Nursing Recruitment grant program.

Project Budget (10 pts.)

(1) Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant. List equipment purchases necessary for the conduct of the project.

(2) The available funding level of approximately $300,000 is inclusive of both direct and indirect costs. Indirect costs are calculated using 8 percent of the total direct costs as required by HHS Grants Policy for training grants. Because this project is for a training grant, the HHS Grants Policy Statement, Rev. 01/07 limits reimbursement of indirect costs to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other than agencies of State and local government.

(3) The applicant may include as a direct cost student support costs related to tutoring, counseling, and support for students enrolled in a health career program of study at the respective college or university. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INMED program may apply for funding from the IHS Scholarship Programs.

(4) Projects requiring a second and third year must include a program narrative and categorical budget and justification for each additional year of funding requested (this is not considered part of the 7-page narrative).

(5) Provide budgetary information for summary preparatory programs for Indian students, who need enrichment in the subjects of math and science in order to pursue training in the health profession.

Multi-Year Project Requirements

Applications must include a narrative, budget, and budget justification for the second and third years of funding.

Appendix to include:

a. Resumes and position descriptions

b. Organizational Chart

c. Work Plan

d. Tribal Resolution(s)/letters of support

e. Position Descriptions for Key Staff

Criteria for Applicants Applying for the $60,000 Grant Award

F. Introduction and Potential Effectiveness of Project (30 points)

(1) Describe your legal status and organization.

(2) State specific objectives of the project, which are measurable in terms of being significant to the needs of Indian people, logical, complete and consistent with the purpose of 25 U.S.C. 1612g.

(3) Describe briefly what the project intends to accomplish. Identify the expected results, benefits, and outcomes to be derived from each objective of the project.

(4) Provide a project specific work plan (milestone chart) which lists each objective, the tasks to be conducted in order to reach the objective, and the time frame needed to accomplish each task. Time frames should be projected in a realistic manner to assure that the scope of work can be completed within each budget period.

(5) In the case of proposed projects for identification of Indians with a potential for education or training in the health professions, include a method for assessing the potential of interested Indians for undertaking necessary education or training such health professions.

(6) State clearly the criteria by which the project's progress will be evaluated and by which the success of the project will be determined.

(7) Explain the methodology that will be used to determine if the needs, goals, and objectives identified and discussed in the application are being met and if the results and benefits identified are being achieved.

(8) Identify who will perform the evaluation and when.

G. Project Administration (20 pts.)

(1) Provide an organizational chart and describe the administrative, managerial and organization arrangements and the facilities and resources to be utilized to conduct the proposed project (include in appendix).

(2) Provide the name and qualifications of the project director and of other individuals responsible for the conduct of the project. Include biographical sketches of key personnel (or job descriptions if the position is vacant) (include in appendix).

(3) Discuss the commitment of the organization, i.e., although not required, the level of non-Federal support. List the intended financial participation, if any, of the applicant in the proposed project specifying the type of contributions such as cash or services, loans of full or part-time staff, equipment, space, materials or facilities or other contributions.

(4) To the maximum extent feasible, employ qualified Indians in the program.

H. Accessibility to Target Population (20 pts.)

(1) Describe the current and proposed participation of Indians (if any) in your organization.

(2) Identify the target Indian population to be served by your proposed project and the relationship of your organization to that population.

(3) Describe the methodology to be used to access the target population.

(4) Identify existing university tutoring, counseling and student support services.

I. Relationship of Objectives to Manpower Deficiencies (20 pts.)

(1) Provide data and supporting documentation to substantiate need for recruitment.

(2) Describe methodology to locate and recruit students with educational potential in a variety of health care fields. Primary recruitment efforts must be in the field of medicine with secondary efforts in other allied health fields such a pharmacy, dentistry, medical technology, x-ray technology, etc. The field of nursing is excluded since the IHS does fund the IHS Nursing Recruitment grant program.

J. Project Budget (10 pts.)

(1) Clearly define the budget. Provide a justification and detailed breakdown of the funding by category for the first year of the project. Information on the project director and project staff should include salaries and percentage of time assigned to the grant.

(2) The available funding level of approximately $60,000 is inclusive of both direct and indirect costs. Indirect costs are calculated using 8 percent of the total direct costs as required by HHS Grants Policy for training grants. Because this project is for a training grant, the HHS Grants Policy Statement, Rev. 01/07 limits reimbursement of indirect costs to the lesser of the applicant's actual indirect costs or 8 percent of total direct costs (exclusive of tuition and related fees and expenditures for equipment) is applicable. This limitation applies to all institutions of higher education other

than agencies of State and local government.

(3) The applicant may include as a direct cost student support costs related to tutoring, counseling, and support for students enrolled in a health career program of study at the respective college or university. Tuition and stipends for regular sessions are not allowable costs of the grant; however, students recruited through the INMED program may apply for funding from the IHS Scholarship Programs.

Appendix to include:

a. Resumes and position descriptions

b. Organizational Chart

c. Work Plan

d. Tribal Resolution(s)/letters of support

e. Position Descriptions for Key Staff

2. Review and Selection Process

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed by an Objective Review Committee (ORC) in accordance with IHS objective review procedures. The objective review process ensures a nationwide competition for limited funding. The ORC will be comprised of IHS (60% or less) or other Federal individuals and (40% or more) non-Federal individuals with appropriate expertise. The ORC will review each application against established criteria. Based upon the evaluation criteria, the reviewer will assign a numerical score to each application, which will be used in making the final funding decision. Approved applications scoring less than 60 points will not be considered for funding.

The results of the review are forwarded to the Director, Office of Public Health Support (OPHS), for final review and approval. The Director, OPHS, will also consider the recommendations from the Division of Health Professions Support and the Division of Grants Operations (DGO).

3. Anticipated Announcement and Award Dates

The IHS anticipates an awards start date of September 1, 2007.

VI. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGO and will be mailed via postal mail on or before August 27, 2007 to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted.

2. Administrative Requirements

Grants are administered in accordance with the following documents:

- This Program Announcement.
- 45 CFR Part 92, A Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments, or 45 CFR Part 74, A Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non Profit Organizations, and Commercial Organizations.
- Grants Policy Guidance: HHS Grants Policy Statement, October 2006.
- Cost Principles: OMB Circular A–87, State, Local and Indian (Title 2 Part 225).
- Administrative Requirements: OMB Circular A–122, A Non profit Organizations (Title 2 Part 230).
- Audit Requirements: OMB Circular A–133, Audits of States, Local Governments, and Non profit Organizations.

3. Indirect Costs

This section applies to all grant recipients that request indirect cost in their application. In accordance with HHS Grants Policy Statement, Part II 27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If a current rate is not on file with the awarding office, the award shall include funds for reimbursement of indirect costs. However, the indirect cost portion will remain restricted until the current rate is provided to DGO.

Generally, indirect costs rates for IHS Tribal organization grantees are negotiated with the Division of Cost Allocation (DCA) *http://rates.psc.gov/* and indirect cost rates that are for IHS funded federally recognized Tribes are negotiation with the Department of Interior. If your organization has questions regarding the indirect cost policy, please contact the DGO at 301–443–5204.

4. Reporting

A. *Progress Report.* Program progress reports are required semi-annually. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. *Financial Status Report.* Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting.

C. *Reports.* Grantees are responsible and accountable for accurate reporting of the Progress Reports and Financial Status Reports which are due semi-annually. Financial Status Reports (SF–269) are due 90 days after each budget period and the final SF–269 must be verified from the grantee records on how the value was derived. Grantees must submit reports in a reasonable period of time.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the Hearing Impaired Is Available at: TTY 301–443–6394

VII. Agency Contacts

For program information, contact Ms. Jackie Santiago, Office of Public Health Support, Division of Health Professions Support, 801 Thompson Avenue, Suite 120, Rockville, Maryland 20852 (301) 443–3396. For grant application and business management information, contact Ms. Martha Redhouse, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, Suite

120, Rockville, Maryland 20852 (301) 443–5204.

Dated: July 2, 2007.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. 07–3310 Filed 7–6–07; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (ie., the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

Title: Federal Emergency Management Agency (FEMA) Individual Assistance Customer Satisfaction Surveys.

OMB Number: 1660–0036.

Abstract: Federal agencies are required to survey their customers to determine the kind and quality of services customers want and their level of satisfaction with existing services. FEMA Managers use the survey results to measure program performance against standards for performance and customer service; measure achievement of Government Performance and Results Act of 1993 (GPRA) and strategic planning objectives; and generally gauge and make improvements to disaster services that increase customer satisfaction and program effectiveness.

Affected Public: Individuals and households, businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 32,407 for surveys and 1,368 for focus groups.

Estimated Time Per Respondent: 0.25 hours for each survey and average of 1.63 hours for a focus group.

Estimated Total Annual Time Burden: 8,791.75 hours.

Annual Frequency of Response: 1.

Comments: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Nathan Lesser, Desk Officer, Department of Homeland Security/FEMA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974. Comments must be submitted on or before August 9, 2007.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Chief, Records Management, FEMA, 500 C Street, SW., Room 609, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: June 19, 2007.

John A. Sharetts-Sullivan,

Chief, Records Management and Privacy Information Resources Management Branch, Information Technology Services Division, Office of Management Directorate, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E7–13184 Filed 7–6–07; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1708–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1708–DR), dated June 11, 2007, and related determinations.

DATES: *Effective Date:* June 27, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 11, 2007.

Caldwell, Clinton, Linn, and Sullivan Counties for Public Assistance.

Lafayette County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–13185 Filed 7–6–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5118–N–03]

Notice of Proposed Information Collection: Comment Request; Disaster Recovery Grant Reporting System

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 7, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian L. Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4176, Washington, DC 20410; telephone: 202–708–2374 (this is not a toll-free number) or e-mail Ms. Deitzer at *Lillian_L._Deitzer@HUD.gov* for a copy of the proposed form and other available information.

FOR FURTHER INFORMATION CONTACT: Mark Mitchell, Deputy Director, Disaster Recovery and Special Issues Division, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451

7th Street, SW., Washington, DC 20410; telephone number: (202) 708–3587, ext. 3363 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Recovery Grant Reporting System.

OMB Control Number, if applicable: 2506–0165.

Description of the need for the information and proposed use: HUD needs to collect information with the Disaster Recovery Grant Reporting System to comply with quarterly Congressional reporting requirements with respect to the use of Community Development Block Grant (CDBG) funds awarded under several appropriations for disaster recovery assistance and for other related program management purposes. Use of this system for reporting purposes is mandatory. Once submitted to HUD, information is public.

Agency form numbers, if applicable: NA.

Members of Affected Public: State, Local or Tribal government.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	44	4		32		5,632
	9	4		90		3,240

Total Estimated Burden Hours: 8,872.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: July 3, 2007.

Nelson R. Bregón,

General Deputy Assistant Secretary.

[FR Doc. E7–13258 Filed 7–6–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14952–A, F–14952–B, F–14952–C, F–14952–D; 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 Unalakleet Native Corporation. The lands are in the vicinity of Unalakleet, Alaska, and are located in:

Lot 17, U.S. Survey No. 5285, Alaska.
Containing 115.02 acres.

Lot 2, U.S. Survey No. 9684, Alaska.
Containing 119.97 acres.

Lot 3, U.S. Survey No. 9684, Alaska.
Containing 39.99 acres.

U.S. Survey No. 9699, Alaska.
Containing 79.99 acres.
Aggregating 354.97 acres.

Kateel River Meridian, Alaska

T. 17 S., R. 9 W.
Secs. 3 and 10;
Secs. 35 and 36.
Containing 2,560 acres.

T. 18 S., R. 9 W.
Secs. 1 to 4, inclusive.
Containing 2,560 acres.

T. 16 S., R. 10 W.
Secs. 6 and 7.
Containing 1,253.13 acres.

T. 19 S., R. 10 W.
Secs. 27 and 34.
Containing 1,280 acres.

T. 20 S., R. 10 W.
Secs. 2, 3 and 10;
Secs. 11, 14 and 15;
Secs. 22 and 27.
Containing 5,120 acres.

T. 21 S., R. 11 W.
Secs. 15, 21 and 28;
Secs. 29, 31 and 32.
Containing 3,804.32 acres.

T. 16 S., R. 13 W.
Secs. 5 to 8, inclusive.
Containing 641 acres.
Aggregating 17,218.45 acres.
Total aggregate is 17,573.42 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Unalakleet Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

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 August 8, 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.

Robert Childers,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. E7–13260 Filed 7–6–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–330–07–1610–DR–082A]

Notice of Availability of Record of Decision for the Lake Havasu Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and the Bureau of Land Management (BLM) management policies, the BLM announces the availability of the Record of Decision (ROD)/Approved Resource Management Plan (RMP) for the Lake Havasu Field Office located in Arizona and California. The Arizona State Director will sign the ROD making the decisions in the Lake Havasu RMP effective immediately.

ADDRESSES: Printed copies and electronic copies (on CD-ROM) of the ROD/Approved RMP are available upon request from the Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. The document is also available via the internet *http://www.blm.gov/az.* To receive a copy of the document, contact the BLM via e-mail at *Lake_Havasu@blm.gov* or call (928) 505–1200.

FOR FURTHER INFORMATION CONTACT: Gina Trafton, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406. Contact via e-mail at *Lake_Havasu@blm.gov* or call (928) 505–1200.

SUPPLEMENTARY INFORMATION: One of the BLM's objectives during the planning process was to understand the views of various publics by providing opportunities for meaningful participation. Through communication media such as meetings, newsletters and news releases, the public was provided opportunities to identify issues that needed to be addressed. The public also provided comments during the 90-day public comment period on the Draft EIS; these comments were addressed in the Final EIS. The BLM coordinated with the four agencies that requested Cooperating Agency status (*i.e.* Arizona Department of Transportation, Arizona Game and Fish Department, Bureau of Reclamation and the Federal Highway Administration) and U.S. Fish and Wildlife Service, Arizona State Land Department, California Department of Fish and Game, adjacent BLM field offices, and other land managing agencies within the boundaries of the planning areas. The BLM also initiated consultation with tribes, who have oral traditions or cultural concerns relating to the planning area, or who are documented as having occupied or used portions of the planning area during prehistoric or historic times.

The Approved RMP includes strategies for protecting and preserving the biological, cultural, recreational, geological, educational, scientific, and scenic values that balance multiple uses of the BLM-administered lands throughout the Lake Havasu Field Office (LHFO) planning area. The planning area encompasses more than 1.3 million acres of BLM administered lands.

The Approved RMP designated five Areas of Critical Environmental Concern (ACECs): Beale Slough Riparian and Cultural ACEC (2,395 acres); Bullhead Bajada Natural and Cultural ACEC (7,090 acres); Crossman Peak Scenic ACEC (48,855 acres); Swansea Historic District ACEC (5,973 acres); and Three Rivers Riparian ACEC (2,246 acres). The following types of resource use limitations apply to these ACECs: (1) Grazing prescriptions are designed to achieve the desired plant community objectives; (2) Recreation facilities are limited to projects that protect ACEC values; (3) Camping is limited to developed or signed sites; and (4) Motorized travel is permitted only on designated open and signed routes.

The Preferred Alternative in the *Draft Resource Management Plan/Draft EIS* (published September 20, 2005) was revised to include comments received during the 90-day public comment period. The resultant alternative became the Proposed Plan in the *Proposed Resource Management Plan/Final EIS* (PRMP/FEIS), published September 22, 2006. The BLM has determined that Proposed Plan will provide an optimal balance between authorized resource use and the protection and long-term sustainability of sensitive resources within the planning area.

Neither the Arizona nor the California Governors' Offices identified any inconsistencies between the PRMP/FEIS and state or local plans, policies, and programs following the 60-day Governors' Consistency Reviews (initiated August 23, 2006, in accordance with planning regulations at 43 CFR 1610.3-2(e)).

One protest was received during the FEIS 30-day protest period. The Proposed Plan was clarified based on the one protest received. As a result, only minor editorial modifications were made in preparing the Approved RMP. These modifications provided further clarification of some of the decisions. Additional text was added to clarify the protection of wilderness characteristics as well as the impacts from Off-Highway Vehicles. The changes between the PRMP and the Approved RMP are clearly stated in sections entitled *Modifications and Clarifications* in the ROD. The resultant revised Proposed Plan is now called the ''Approved RMP'' and is attached to the ROD.

The Approved RMP does not contain Implementation Decisions. Future activity-level plans will address the implementation of the Approved RMP. These implementation plans will be accompanied by any required additional site-specific planning and NEPA analysis. Approval of an activity plan is an appealable decision). The appeal process will be set forth in the future individual implementation (activity or project level) plans.

Dated: May 1, 2007.

Michael A. Taylor,

Acting, Arizona State Director.

[FR Doc. E7–13241 Filed 7–6–07; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–1430–EU; WYW–128339]

Notice of Realty Action: Direct Sale of Public Lands in Sublette County, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes to sell a 40-acre parcel of public land in Sublette County, Wyoming, for the appraised fair market value to G&E Livestock to resolve an unintentional unauthorized use of public lands.

DATES: Comments regarding the proposed sale must be received by the BLM at the address below not later than August 23, 2007.

ADDRESSES: Send all written comments concerning this proposed sale to the Field Manager, BLM-Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901. Comments received in electronic form, such as e-mail or facsimile, will not be considered.

FOR FURTHER INFORMATION CONTACT: Patricia Hamilton, Realty Specialist, at the above address or at 307–352–0334.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of 43

CFR part 2710, the following described public land is proposed to be sold pursuant to the authority provided in Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended (43 U.S.C. 1713):

Sixth Principal Meridian

T. 29 N., R. 106 W.,
sec. 34, SW1/4SE1/4.

The area described contains 40 acres in Sublette County.

The appraised market value for this parcel is $6,400. The proposed sale is consistent with the objectives, goals, and decision of the BLM Green River Resource Management Plan, dated August 8, 1997, and the land is not required for other Federal purposes. The direct sale of this land to G&E Livestock will resolve an unintentional, unauthorized occupancy of public land managed by the BLM. In accordance with 43 CFR 2710.0–6(c)(3)(iii) and 43 CFR 2711.3–3(a), direct sale procedures are appropriate to resolve an inadvertent unauthorized occupancy of the land or to protect existing equities in the land. The unauthorized occupancy involves encroachment by an access road, two residences, and various ranch related structures such as a garage, grain silos and fence on the public land. In 1988, the BLM discovered the encroachment, and initiated formal procedures to authorize the existing ranch structures. An annual permit was approved to temporarily authorize the occupancy while a permanent resolution was sought. The sale, when completed, would add the public land to G&E Livestock's property, protect the improvements involved, and resolve the inadvertent encroachment. The parcel is the minimum size possible to ensure that all the improvements are included. G&E Livestock will be allowed 30 days from the receipt of a written offer to submit a deposit of at least 20 percent of the appraised value of the parcel, and 180 days thereafter to submit the balance.

On July 9, 2007 the above described land is segregated from appropriation under the public land laws, including the mining laws. The segregative effect of this notice shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation, or 2 years from the date of the publication of this notice in the **Federal Register**, whichever comes first.

The following reservations, rights, and conditions will be included in the patent that may be issued for the above parcel of Federal land:

1. A reservation of all minerals to the United States;

2. 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);

3. Those rights for road purposes granted to Sublette County, its successors or assigns by Right-of-Way Serial No. WYW160624, under Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761–1771; and

4. Those rights for electric power purposes granted to Pacific Power & Light, its successors or assigns by Right-of-Way Serial No. WYW137000, Under Title V of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1761–1771.

Detailed information concerning the proposed land sale, including sale procedures, appraisal, planning and environmental documents, and a mineral report is available for review at the BLM, Rock Springs Field Office at the above address. Normal business hours are 7:45 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit written comments to the BLM Field Manager at the above address. Comments received during this process, including respondent's name, address, and other contact information, will be available for public review. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, address, and other contact information (phone number, e-mail address, or fax number, etc.), from public review or disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will make available for public review, in their entirety, all comments submitted by businesses or organizations, including comments by an individual in his or her capacity as an official or representative of a business or organization.

Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of timely filed objections, this realty action will become the final determination of the Department of the Interior.

The land will not be offered for sale prior to September 7, 2007.

Authority: 43 CFR 2711.1–2(a)).

Michael R. Holbert,
Field Manager.

[FR Doc. E7–13166 Filed 7–6–07; 8:45 am]
BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

June 29, 2007.

SUMMARY: The plats of survey of the following described land was officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., June 29, 2007. All inquiries should be sent to the Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plats and field notes, in duplicate, of the dependent resurveys and corrective dependent resurvey of a portion of the subdivisional lines, the subdivision of certain sections, and metes-and-bounds surveys, in Townships 2 North, Ranges 76 (4 Sheets) and 77 West (5 Sheets), Sixth Principal Meridian, Colorado were accepted on April 10, 2007.

The plat, and field notes, in duplicate, of the dependent resurveys in Townships 17 South, Ranges 45 and 46 West, Sixth Principal Meridian, Colorado were accepted on April 17, 2007.

The plat and field notes, in duplicate, of the dependent resurvey and surveys in Township 51 North, Range 1 East, New Mexico Principal Meridian, Colorado were accepted on April 26, 2007.

This plat which includes the field notes, and is the entire record of this resurvey, in duplicate, in Township 33½ North, Range 17 West, Sec. 21, New Mexico Principal Meridian, Colorado were accepted on April 26, 2007.

The plat and field notes, in duplicate, of the dependent resurvey and surveys in Townships 50 and 51 North, Range 8 West, New Mexico Principal Meridian, Colorado, were accepted on April 27, 2007.

The plat, and field notes, in duplicate, of the dependent resurvey of a portion of the subdivisional lines and section subdivision of Section 23, Township 37

North, Range 7 East, New Mexico Principal Meridian, Colorado were accepted on May 16, 2007.

The plat and field notes, in duplicate, of the dependent resurvey of certain mineral claims in Township 43 North, Range 4 West, New Mexico Principal Meridian, Colorado, were accepted on June 6, 2007.

The plat, and field notes, in duplicate, of the dependent resurvey in Township 8 South, Range 76 West, and the plat, in duplicate, of the entire record, of the dependent resurvey of a portion of the west boundary of Township 9 South, Range 76 West, both of the Sixth Principal Meridian, Colorado were accepted on June 19, 2007.

Randall M. Zanon,

Chief Cadastral Surveyor for Colorado.

[FR Doc. E7–13186 Filed 7–6–07; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–487]

Wood Flooring and Hardwood Plywood: Competitive Conditions Affecting the U.S. Industries

AGENCY: United States International Trade Commission.

ACTION: Rescheduling of public hearing.

SUMMARY: The Commission has rescheduled the public hearing in this investigation from September 13, 2007, to October 3, 2007. As announced in the notice of institution of the investigation published in the **Federal Register** on April 20, 2007 (72 FR 19960), the hearing will be held at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC; it will begin at 9:30 a.m. Certain dates relating to the filing of written statements and other documents have been changed; the revised schedule of dates is set out immediately below. All other requirements and procedures set out in the notice published on April 20, 2007, continue to apply. In the event that, as of the close of business on September 12, 2007, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or nonparticipant may call the Secretary to the Commission (202–205–2000) after September 12, 2007, for information concerning whether the hearing will be held.

DATES: April 11, 2007: Date of institution.

September 12, 2007: Deadline for filing requests to appear at the public hearing.

September 19, 2007: Deadline for filing pre-hearing briefs and statements.

October 3, 2007, 9:30 a.m.: Public hearing.

October 24, 2007: Deadline for filing post-hearing briefs and statements.

January 11, 2008: Deadline for filing all other written statements.

June 6, 2008: Transmittal of report to the Committee on Finance.

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Fred Forstall, Co-Project Leader, (202–205–3443 or *alfred.forstall@usitc.gov*,) or David Ingersoll, Co-Project Leader, (202–205–2218 or *dave.ingersoll@usitc.gov*). For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *william.gearhart@usitc.gov*. The media should contact Margaret O'Laughlin, Office of External Relations at 202–205–1819 or *margaret.olaughlin@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet address (*http://www.usitc.gov*). Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Secretary at 202–205–2000.

Issued: July 3, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–13187 Filed 7–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–013]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 20, 2007 at 2:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1114–1115 (Preliminary) (Certain Steel Nails from China and the United Arab Emirates)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 30, 2007.)
5. Inv. Nos. 701–TA–447 and 731–TA–1116 (Preliminary) (Circular Welded Carbon-Quality Steel Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 23, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 30, 2007.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: July 3, 2007.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–13228 Filed 7–6–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–07–013]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: July 20, 2007 at 2:30 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–1114–1115 (Preliminary) (Certain Steel Nails from China and the United Arab Emirates)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before July 30, 2007.)
5. Inv. Nos. 701–TA–447 and 731–TA–1116 (Preliminary) (Circular Welded Carbon-Quality Steel Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on July 23, 2007; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before July 30, 2007.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: July 3, 2007.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E7–13234 Filed 7–6–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0037]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Letter Application to Obtain Authorization for the Assembly of a Non-sporting Rifle or Non-sporting Shotgun for the Purpose of Testing or Evaluation.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 83, pages 23846–23847 on May 1, 2007, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Letter Application to Obtain Authorization for the Assembly of a Non-sporting Rifle or Non-sporting Shotgun for the Purpose of Testing or Evaluation.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The information is required by ATF to provide a means to obtain authorization for the assembly of a non-sporting rifle or non-sporting shotgun for the purpose of testing or evaluation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 5 respondents, who will complete a written letter within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 3 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 2, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13236 Filed 7–6–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0038]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Application for Federal Firearms License (Collector of Curios and Relics).

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72 Number 83, page 23847 on May 1, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Application for Federal Firearms License (Collector of Curios and Relics).

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 7CR (5310.16). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: None. Abstract: The form is used by the public when applying for a Federal firearms license to collect curios and relics to facilitate a personal collection in interstate and foreign commerce. The information requested on the form establishes eligibility for the license.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 7,300 respondents will complete a 15 minute form.

(6) An estimate of the total burden (in hours) associated with the collection: There are an estimated 1,825 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Date: July 2, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13237 Filed 7–6–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0032]

Agency Information Collection Activities; Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Records of Acquisition and Disposition, Collectors of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 72, Number 83, page 23847 on May 1, 2007, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 8, 2007. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: none. Abstract: The recordkeeping requirement is for the purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 45,973 respondents. It is estimated that it takes 3 hours per year for line by line entry and that 45,973 licensees will participate.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 137,919 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: July 2, 2007.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E7–13238 Filed 7–6–07; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–61,712

Ghn Neon Incorporated; Garden Grove, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 20, 2007 in response to a petition filed by a company official on behalf of workers at GHN Neon Incorporated, Garden Grove, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 28th day of June 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–13172 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,157 and TA–W–61,157A]

Visteon Systems, LLC, Climate Control Division, Evaporators, Connersville, IN; Visteon Systems, LLC, Climate Control Division, Radiator/Heat Exchange, Connersville, IN; Including On-Site Leased Workers From CDI–IT Services and Synova, Employed Through IBM Corporation, Securitas Security Services USA, Inc., Premier Mfg. Services, Kleenaway Services, Waste Management Upstream, PMI, Inc., Coolant Controls and Pitney Bowes; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 23, 2007, applicable to workers of Visteon Systems, LLC, Climate Control Division, Evaporators, Connersville, Indiana and Visteon Systems, LLC Climate Control Division Radiator/Heat Exchange, Connersville, Indiana. The notice was published in the **Federal Register** on May 9, 2007 (72 FR 26424).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of evaporators and radiators/heat exchanges for the automotive industry.

The investigation revealed that the leased workers of the above listed firms were contracted to work on-site at the Connersville, Indiana location of Visteon Systems, LLC Climate Control Division. These workers provided a variety of functions supporting the production of evaporators and radiator/heat exchange units manufactured at the subject firm. The Department has determined that the above listed on-site worker groups are in support of the production of evaporators and radiator/heat exchange units at the subject firm and are sufficiently under the control of the subject firm.

Since the workers of Visteon Systems, LLC, Climate Control Division, Evaporators and Radiator/Heat Exchange, Connersville, Indiana are certified eligible to apply for ATAA, the Department is extending that eligibility to the employees of the above listed firms working on-site at the subject firm.

The intent of the Department's certification is to include all workers employed at Visteon Systems, LLC, Climate Control Division, Evaporators and Radiator/Heat Exchange, Connersville, Indiana who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–61,157 is hereby issued as follows:

Workers of Visteon Systems, LLC, Climate Control Division, Evaporators, Connersville, Indiana (TA–W–61,157) and Visteon Systems, LLC Climate Control Division, Radiator/Heat Exchange, Connersville, Indiana (TA–W–61,157A), including on-site leased workers from CDI–IT Services and Synova, employed through IBM Corporation, Securitas Security Services USA, Inc., Premier Mfg. Services, KleenAway Services, Waste Management Upstream, PMI, Inc., and Pitney Bowes, who became totally or partially separated from employment on or after March 19, 2006 through April 23, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 29th day of June 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–13174 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of June 18 through June 22, 2007.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under

the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,637; VyTech Industries, Inc., Elkhart, IN: June 5, 2006

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of section 222(a)(2)(A) (increased imports) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,610; Ogura Corporation, Madison Heights, MI: May 30, 2006

TA–W–61,629; Cooper Tools, Inc., Tools Operations, Dayton, OH: October 8, 2006

TA–W–61,235; WCI Steel, Inc., Warren, OH: April 2, 2006

TA–W–61,567; Oregon Woodworking Company, Bend, OR: May 21, 2006

TA–W–61,574; Century Truss Company of Michigan LLC, Brighton, MI: May 23, 2006

The following certifications have been issued. The requirements of section 222(a)(2)(B) (shift in production) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,413; Nautel Maine, Inc., Bangor, ME: April 5, 2006

TA–W–61,451; Irving Forest Products, Hardwood Division, Strong, ME: May 4, 2006

TA–W–61,581; Keykert USA Inc., On-Site Leased Workers of Online Employment, Webberville, MI: May 24, 2006

TA–W–61,644; Deere and Company, John Deere Cylinder Division, Leased Workers of Aerotex and Volt, Coon Rapids, MN: June 6, 2006

TA–W–61,649; Americ Disc DDL Georgia, On-Site Leased Workers From Productiv Staffing, Madison, GA: June 7, 2006

TA–W–61,504; Woodmarc Enterprises, LLC, A Subsidiary of Sentinel Acquisitions, LLC, Winterset, IA: May 10, 2006

TA–W–61,605; Yamaha Musical Products, Grand Rapids, MI: May 9, 2006

TA–W–61,605A; Yamaha Corporation of America, Grand Rapids, MI: May 9, 2006

TA–W–61,671; Faradyne Motors, A Joint Venture of ITT Industries and Pentair, Inc., Newark, NY: June 11, 2006

The following certifications have been issued. The requirements of section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

The following certifications have been issued. The requirements of section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of section 246 has not been met. Workers at the firm are 50 years of age or older.

TA–W–61,637; VyTech Industries, Inc., Elkhart, IN

The Department has determined that criterion (2) of section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None

The Department has determined that criterion (3) of section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,424; Hewlett Packard, Design Delivery Organization Operations, Image PermananceLab, Planning Div., Corvallis, OR

TA–W–61,424A; Hewlett Packard, Technology Delivery Operations, Process Development Operations Division, Corvallis, OR

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,467; Federal Mogul Corp., Sealing System Division, Tool Room, Frankfort, IN

TA–W–61,515; Invitrogen Corporation, BioDiscovery Division, San Francisco, CA

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,458; S & S Plastics, Inc., Hillside, NJ

TA–W–61,530; Track Corp, Spring Lake, MI

TA–W–61,545; Bell Sponging Co., Inc., Allentown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–61,287; Kelly Services, On-Site at Delphi (Through HSS Material), Saginaw, MI

TA–W–61,506; Celestica, Carrollton, TX

TA–W–61,598; Penn-Plax Inc., Hauppauge, NY

TA–W–61,615; American Food and Vending, Springhill, TN

TA–W–61,630; Qwest Services Corporation, A Subsidiary of Qwest Communications, Quality Assurance Team, Idaho Falls, ID

TA–W–61,633; World Wide Apparel Resources, Carteret, NJ

TA–W–61,641; Coresource, A Subsidiary of Trustmark Insurance, Jackson, MN

TA–W–61,682; NC Furniture House, Inc., Jamestown, NC

The investigation revealed that criteria of section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None

I hereby certify that the aforementioned determinations were issued during the period of June 18 through June 22, 2007. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 29, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–13173 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,524]

World Kitchen, LLC; Charleroi, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 16, 2007 in response to a petition filed by a company official on behalf of workers at World Kitchen, LLC, Charleroi, Pennsylvania. The workers at the subject facility produce Pyrex glass prep-ware, bake-ware and storage containers.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 29th day of June 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–13175 Filed 7–6–07; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Gulf States, Inc., River Bend Station, Unit 1; Notice of Consideration of Approval of Transfer of Facility Operating License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the direct transfer of the Facility Operating License (No. NPF–47) for the River Bend Station, Unit 1 (RBS), to the extent currently held by Entergy Gulf States, Inc. (EGS), as owner of RBS. The transfer would be to Entergy Gulf States Louisiana, L.L.C. (EGS–LA), a Louisiana limited liability company. Entergy Operations, Inc. (EOI), the licensed operator of the facility, will remain as such and will continue to operate RBS. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer.

According to an application for approval filed by EGS and EOI, both EGS and EOI are direct subsidiaries of Entergy Corporation. Under a proposed restructuring, EGS will merge into EGS-LA, with EGS-LA being the surviving entity. EGS–LA, will own all of EGS' Louisiana assets, including RBS, except for EGS' undivided ownership interests in Big Cajun, Unit 2 and the Nelson 6 coal plants, which will be jointly owned with Entergy Texas, Inc. (ETI), a company to be formed by EGS.

Once these and other steps of the restructuring are competed, EGS–LA will serve EGS' current retail customers in Louisiana and EGS' current wholesale customers, and ETI will serve EGS' current retail customers in Texas. EGS–LA's retail utility operations will be subject to the jurisdiction of the Louisiana Public Service Commission (LPSC) to the same extent that LPSC currently possesses jurisdiction over EGS' retail utility operations. EGS–LA will succeed to and assume all of EGS' jurisdictional tariffs, rate schedules, and service agreements, and provide electric service to EGS' customers without interruption.

EOI operates RBS pursuant to an Operating Agreement with EGS. EOI will continue to operate RBS and the current Operating Agreement will be amended to reflect the new owner of the plant. EOI will not be affected by the restructuring.

No physical changes to the RBS facility or operational changes are being proposed in the application.

The proposed amendment would replace references to Entergy Gulf States, Inc., in the license with references to Entergy Gulf States Louisiana, L.L.C., to reflect the proposed transfer.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license, if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility which does no more than conform the license to reflect the transfer action involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

Within 20 days from the date of publication of this notice, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart C ''Rules of General Applicability: Hearing Requests, Petitions to Intervene, Availability of Documents, Selection of Specific Hearing Procedures, Presiding Officer Powers, and General Hearing Management for NRC Adjudicatory Hearings,'' of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.309. Untimely requests and petitions may be denied, as provided in 10 CFR 2.309(c)(1), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.309(c)(1)(i)–(viii).

Requests for a hearing and petitions for leave to intervene should be served upon Terence A. Burke, Associate General Counsel—Nuclear, Entergy Services, Inc., 1340 Echelon Parkway, Jackson MS 39213; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.302 and 2.305.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated May 29, 2007, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 2nd day of July, 2007.

For the Nuclear Regulatory Commission.

Bhalchandra Vaidya,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E7–13259 Filed 7–6–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATES: Weeks of July 9, 16, 23, 30, August 6, 13, 2007.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of July 9, 2007

There are no meetings scheduled for the Week of July 9, 2007.

Week of July 16, 2007—Tentative

Wednesday, July 18, 2007

10 a.m.

Discussion of Security Issues (Closed—Ex. 1 & 3).

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—*www.nrc.gov.*

Week of July 23, 2007—Tentative

Tuesday, July 24, 2007

2 p.m.

Briefing on Palo Verde Nuclear Generating Station (Public Meeting) (Contact: Michael Markley, 301 415–5723).

This meeting will be webcast live at the Web address— *www.nrc.gov.*

Wednesday, July 25, 2007

2 p.m.

Discussion of Management Issues (Closed—Ex. 2).

Week of July 30, 2007—Tentative

There are no meetings scheduled for the Week of July 30, 2007.

Week of August 6, 2007—Tentative

There are no meetings scheduled for the Week of August 6, 2007.

Week of August 13, 2007—Tentative

There are no meetings scheduled for the Week of August 13, 2007.

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*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: July 3, 2007.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. 07–3326 Filed 7–5–07; 10:04 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Commonwealth of Pennsylvania: Draft NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the Commonwealth of Pennsylvania

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the Commonwealth of Pennsylvania.

SUMMARY: By letter dated November 9, 2006, Governor Edward G. Rendell of Pennsylvania requested that the U.S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the Commonwealth as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would give up, and Pennsylvania would take over, portions of the Commission's regulatory authority exercised within the Commonwealth. As required by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the Pennsylvania regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the draft NRC staff assessment, the adequacy of the Pennsylvania program, and the Commonwealth's program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Pennsylvania from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires July 18, 2007. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov.*

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Pennsylvania including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML070240128, ML063400549, ML070240055, ML063330295, ML070290041, ML070290046, ML070260116, ML070260179, ML070260026, ML070260119, ML070250054, ML063400559, ML070790604, ML070790609, ML070790612, ML070790616, ML070790620, and ML070890378.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew N. Mauer, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–3962 or e-mail to *anm@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Atomic Energy Act of 1954, as amended (Act) was added in 1959, the Commission has entered into Agreements with 34 States. The Agreement States currently regulate approximately 17,600 Agreement material licenses, while the NRC regulates approximately 4,400 licenses. Under the proposed Agreement, approximately 690 NRC licenses will transfer to Pennsylvania. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials[1] and activities that involve use of the materials.

In a letter dated November 9, 2006, Governor Rendell certified that the Commonwealth of Pennsylvania has a program for the control of radiation hazards that is adequate to protect public health and safety within Pennsylvania for the materials and activities specified in the proposed Agreement, and that the Commonwealth desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the Commonwealth of Pennsylvania requests authority over are:

(1) The possession and use of byproduct materials as defined in Section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in Section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in Section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of: byproduct materials as defined in Section 11e.(1), 11e.(3), or 11e.(4) of the Act; source; or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

- Specify the materials and activities over which authority is transferred;
- Specify the activities over which the Commission will retain regulatory authority;
- Continue the authority of the Commission to safeguard nuclear materials and restricted data;
- Commit the Commonwealth of Pennsylvania and NRC to exchange information as necessary to maintain coordinated and compatible programs;
- Provide for the reciprocal recognition of licenses;
- Provide for the suspension or termination of the Agreement; and
- Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the NRC Chairman and the Governor of Pennsylvania.

(c) The regulatory program is authorized by law under the Radiation Protection Act (35 P.S. §§ 7110.101–7110.703). Section 7110.201 provides the authority for the Governor to enter into an Agreement with the Commission. Pennsylvania law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the Commonwealth. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Pennsylvania licenses until the licenses expire or are replaced by State-issued licenses. NRC licenses transferred to Pennsylvania which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed under a Commission-approved decommissioning plan will continue as Pennsylvania licenses and will be terminated by Pennsylvania when the Commission-approved decommissioning plan has been completed.

Pennsylvania currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally-occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements. Under the proposed Agreement, Pennsylvania would assume regulatory authority for these radioactive materials. Therefore, if the proposed Agreement is approved, the Commission would terminate the time-limited waiver in Pennsylvania coincident with the effective date of the Agreement. Also, a notification of waiver termination would be provided in the **Federal Register** for the final Agreement.

(d) The NRC draft staff assessment finds that the Commonwealth of Pennsylvania Bureau of Radiation Protection of the Pennsylvania Department of Environmental Protection is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials

The NRC staff has examined the Pennsylvania request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement.''

(a) Organization and Personnel. The Agreement materials program will be located within the existing Bureau of Radiation Protection (BRP) of the Pennsylvania Department of Environmental Protection (PADEP). The Bureau will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BRP staff members are specified in the Commonwealth of Pennsylvania personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all have had additional training plus working experience in radiation protection. Supervisory level staff each have at least seven years working experience in radiation protection.

The BRP performed and the NRC staff reviewed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the BRP's staff analysis, the BRP has an adequate number of staff to regulate radioactive materials under the

[1] The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(3) of the Act; (c) byproduct materials as defined in Section 11e.(4) of the Act; (d) source materials as defined in Section 11z. of the Act; and (e) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

terms of the Agreement. The BRP will employ a staff with at least the equivalent of 17.2 full-time professional/technical and administrative employees for the Agreement materials program.

Pennsylvania has indicated that the BRP has an adequate number of trained and qualified staff in place. Pennsylvania has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff are working with NRC license reviewers in the NRC Region I Office and accompanying NRC staff on inspections of NRC licensees in Pennsylvania. Pennsylvania is also actively further supplementing their experience through direct meetings, discussions, and facility walk-downs with NRC licensees in Pennsylvania, and through self-study, in-house training, and formal training.

In the course of the NRC staff's continued interactions with Pennsylvania, the NRC staff will confirm the assurances that Pennsylvania provided concerning having an adequate number of trained and qualified staff in place, based on Pennsylvania's staff needs analysis and qualification procedures. Specifically, the NRC staff will verify how BRP staff fit into the qualification process, which staff are qualified in certain areas, and the basis for the determinations.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the Environmental Quality Board by Section 302 of the Pennsylvania Radiation Protection Act 1984–147, PADEP has the requisite authority to promulgate regulations for protection against radiation. The law provides PADEP the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that Pennsylvania adopted the relevant NRC regulations in 10 CFR parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 70, 71, and 150 into Pennsylvania Code Title 25, Environmental Protection by reference. The NRC staff also verified that Pennsylvania adopted the relevant NRC regulations in 10 CFR part 61 into Pennsylvania Code Title 25, Environmental Protection. The NRC staff also approved an order to implement Increased Controls requirements for risk-significant radioactive materials for certain Pennsylvania licensees under the proposed Agreement. As a result of the renumbering of 10 CFR part 71 in 2004, Pennsylvania is proceeding with necessary revisions to their regulations to ensure compatibility, that will be effective by October 1, 2007. Therefore, on the proposed effective date of the Agreement, Pennsylvania will have adopted an adequate and compatible set of radiation protection regulations which apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that Pennsylvania will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. Pennsylvania has also adopted by reference the NRC requirements for the storage of radioactive material and for the land disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) Transportation of Radioactive Material. Pennsylvania has adopted the NRC regulations in 10 CFR part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Pennsylvania will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. Pennsylvania has adopted by reference the Sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. Pennsylvania has adopted by reference the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. Pennsylvania has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. Pennsylvania has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The program has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. Pennsylvania has also adopted procedures for the enforcement of regulatory requirements, and is authorized by law to enforce the State rules using a variety of sanctions, including the imposition and collection of civil penalties, and the issuance of orders to suspend, modify or revoke licenses, or to impound materials.

(h) Regulatory Administration. Pennsylvania is bound by requirements specified in Commonwealth law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Pennsylvania law prescribes standards of ethical conduct for Commonwealth employees.

(i) Cooperation with Other Agencies. Pennsylvania law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Pennsylvania. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions required by 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Pennsylvania deems the termination to be final despite any other provisions of Commonwealth law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Pennsylvania under the plan so long as the licensee conforms to the approved plan.

Pennsylvania also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Pennsylvania Code provides exemptions from the Commonwealth's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Pennsylvania to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that Pennsylvania's program will continue to be compatible with the Commission's

program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Pennsylvania to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Section 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the Commonwealth of Pennsylvania in the application for an Agreement submitted by Governor Rendell on November 9, 2006, and the supporting information provided by the staff of the Bureau of Radiation Protection of the Pennsylvania Department of Environmental Protection, and concludes that, except as discussed above in Section II. ''Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials,'' (a) ''Organization and Personnel,'' of this document, the Commonwealth of Pennsylvania satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and therefore, meets the requirements of Section 274 of the Act. The proposed Pennsylvania program to regulate Agreement materials, as comprised of statutes, regulations, and procedures, is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

With respect to discussion above in Section II. ''Summary of the NRC Staff Assessment of the Pennsylvania Program for the Control of Agreement Materials,'' (a) ''Organization and Personnel,'' once the NRC staff confirms the assurances provided by Pennsylvania concerning staff training and qualifications, the staff will be able to conclude that area is satisfied.

Dated at Rockville, Maryland, this 2nd day of July, 2007.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

Appendix A—An Agreement Between the United States Nuclear Regulatory Commission and the Commonwealth of Pennsylvania for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the Commonwealth Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (the Act), to enter into agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the Commonwealth of Pennsylvania is authorized under the Pennsylvania Radiation Protection Act, Act of July 10, 1984, Pub. L. 688, No. 147, *as amended,* 35 P.S. § 7110.101 *et seq.*, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the Commonwealth of Pennsylvania certified on November 8, 2006, that the Commonwealth of Pennsylvania (the Commonwealth) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the Commonwealth covered by this Agreement, and that the Commonwealth desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the Commonwealth for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The Commonwealth and the Commission recognize the desirability and importance of cooperation between the Commission and the Commonwealth in the formulation of standards for protection against hazards of radiation and in assuring that Commonwealth and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the Commonwealth recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the Commonwealth acting on behalf of the Commonwealth as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass; and
6. The regulation of the land disposal of all byproduct, source, and special nuclear waste materials covered by this Agreement.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission; and
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article III

With the exception of those activities identified in Article II.A.1 through 4, this Agreement may be amended, upon application by the Commonwealth and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the Commonwealth may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the Commonwealth and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and Commonwealth programs for protection against hazards of radiation will be coordinated and compatible. The Commonwealth agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the Commonwealth and the Commission for protection against hazards of radiation and to assure that the Commonwealth's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The Commonwealth and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The Commonwealth and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the Commonwealth agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the Commonwealth agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the Commonwealth, or upon request of the Governor of the Commonwealth, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) Such termination or suspension is required to protect public health and safety, or (2) the Commonwealth has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the Commonwealth has failed to take necessary steps. The Commission shall periodically review actions taken by the Commonwealth under this Agreement to ensure compliance with Section 274 of the Act which requires a Commonwealth program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at [City, State] this [date] day of [month], [year].

For the United States Nuclear Regulatory Commission,

Dale E. Klein, Chairman.

For The Commonwealth of Pennsylvania,

Edward G. Rendell, Governor.

[FR Doc. E7–13262 Filed 7–6–07; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Special 301 Out-of-Cycle Review of the Russian Federation: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public.

SUMMARY: Section 182 of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2242), requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. (Section 182 is commonly referred to as the ''Special 301'' provisions of the Trade Act.) In addition, the USTR is required to determine which of these countries should be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's identification as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

On April 27, 2007, USTR announced the results of the 2007 Special 301 Review and stated that an Out-of-Cycle Review of the Russian Federation (''Russia'') would be conducted this year. Pursuant to this Out-of-Cycle Review of Russia, USTR requests written submissions from the public concerning Russia's acts, policies, and practices regarding the adequacy and effectiveness of Russia's intellectual property protection and enforcement. In particular, USTR requests that comments address Russia's implementation of the United States-Russia Bilateral IPR Agreement of November 19, 2006 (available on USTR's Web site at *http://www.ustr.gov).*

DATES: Submissions must be received on or before *10 a.m. on Monday, August 27, 2007.*

ADDRESSES: All comments should be addressed to *Jennifer Choe Groves,* Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the *numbers* ''zero-six-zero-six,'') with ''Russia Out-of-Cycle Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above.

FOR FURTHER INFORMATION CONTACT: *Jennifer Choe Groves,* Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative at (202) 395–4510.

SUPPLEMENTARY INFORMATION: Pursuant to Section 182 of the Trade Act, USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as Priority Foreign Countries. Acts, policies or practices that are the basis of a country's designation as a Priority Foreign Country are normally the subject of an investigation under the Section 301 provisions of the Trade Act.

USTR may not identify a country as a Priority Foreign Country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

On April 27, 2007, USTR announced the results of the 2007 Special 301 Review and stated that an Out-of-Cycle Review of Russia would be conducted this year. Pursuant to this Out-of-Cycle Review of Russia, USTR requests written submissions from the public concerning Russia's acts, policies, and practices regarding the adequacy and effectiveness of Russia's intellectual property protection and enforcement. In particular, USTR requests that comments address Russia's implementation of the United States-Russia Bilateral IPR Agreement of November 19, 2006 (available on USTR's Web site at *http://www.ustr.gov*).

Requirements for comments: Comments should include a description of experiences with respect to Russia in the field of intellectual property rights and the effect of Russian IPR acts, policies, and practices on U.S. industry. Comments should be as detailed as possible and should provide all necessary information for assessing the effect of Russia's acts, policies, and practices. Any comments that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses.

Comments must be in English. No submissions will be accepted via postal service mail. Documents should be submitted as either WordPerfect, MS Word, .pdf, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files. All comments and supporting documentation received by USTR will be made available to the public through electronic or other means. A submitter requesting that information contained in a comment be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. A non-confidential version of the comment must also be provided. For any document containing business confidential information, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the character ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Submissions should not include separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

DATES: Submissions must be received on or before *10 a.m. on Monday, August 27, 2007.*

All comments should be addressed to *Jennifer Choe Groves,* Director for Intellectual Property and Innovation and Chair of the Special 301 Committee, Office of the United States Trade Representative, and sent (i) electronically, to *FR0606@ustr.eop.gov* (please note, ''FR0606'' consists of the *numbers* ''zero-six-zero-six,'') with ''Russia Out-of-Cycle Review'' in the subject line, or (ii) by fax, to (202) 395–9458, with a confirmation copy sent electronically to the email address above.

Public inspection of submissions: (1) Within one business day of receipt, non-confidential submissions will be placed in a public file open for inspection at the USTR reading room, Office of the United States Trade Representative, Annex Building, 1724 F Street, NW., Room 1, Washington, DC. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling Jacqueline Caldwell at (202) 395–6186. The USTR reading room is open to the public from 10 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday.

Christopher S. Wilson,

Acting Assistant USTR for Intellectual Property and Innovation.

[FR Doc. E7–13257 Filed 7–6–07; 8:45 am]

BILLING CODE 3190–W7–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Revision of a Currently Approved Collection: OPM Forms 1496 and 1496A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for revision of a currently approved collection. OPM Forms 1496 and 1496A, Application for Deferred Retirement (Separations on or after October 1, 1956) are used by eligible former Federal employees to apply for a deferred Civil Service annuity. Two forms were needed because there was a major revision in the law effective October 1, 1956; this affected the general information provided with both forms. However, we will no longer maintain a clearance of the OPM 1496, the waning population affected by this form is less than ten respondents a year. We are therefore requesting clearance of the revised OPM 1496A.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,800 OPM Form 1496A will be completed annually. We estimate it takes approximately 1 hour to complete this form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13210 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 25–14 and RI 25–14A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995 and 5 CFR part 1320), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–14, Self-Certification of Full-Time School Attendance For The School Year, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(4)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25–14A, Information and Instructions for Completing the Self-Certification of Full-Time School Attendance, provides instructions for completing the Self-Certification of Full-Time School Attendance For The School Year Survey form.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 14,000 RI 25–14 forms are completed annually. We estimate it takes approximately 12 minutes to complete the form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *MaryBeth Smith-Toomey@opm.gov.* Please include your mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13215 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 20–7 and RI 30–3

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

We estimate 12,480 RI 20–7 forms are completed annually. The form requires approximately 30 minutes for completion. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. The form requires approximately 1 hour for completion. The annual burden is 250 hours. The total annual burden is 6,490.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Tricia Hollis,

Chief of Staff, U.S. Office of Personnel Management.

[FR Doc. E7–13220 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 2808

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 2808, Designation of Beneficiary: Civil Service Retirement System (CSRS), is used by persons covered by CSRS to designate a beneficiary to receive the lump sum payment due from the Civil Service Retirement and Disability Fund in the event of their death.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 2,000 forms will be completed annually. The form takes approximately 15 minutes to complete. The annual burden is estimated at 500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13221 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 94–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 94–7, Death Benefit Payment Rollover Election for Federal Employees Retirement System (FERS), provides FERS surviving spouses and former spouses with the means to elect payment of FERS rollover-eligible benefits directly or to an Individual Retirement Arrangement.

Comments are particularly invited: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection or other forms of information technology.

Approximately 1,850 RI 94–7 forms will be completed annually. The form takes approximately 60 minutes to complete. The annual burden is 1,850 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald W. Melton, Deputy Assistant Director, Retirement Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13240 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension of a Currently Approved Information Collection: RI 30–10

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension of a currently approved information collection. RI 30–10, Disabled Dependent Questionnaire, is used to collect sufficient information about the medical condition and earning capacity for the Office of Personnel Management to be able to determine whether a disabled adult child is eligible for health benefits coverage and/or survivor annuity payments under the Civil Service Retirement System or the Federal Employees Retirement System.

Approximately 2,500 RI 30–10 forms are completed annually. The form takes approximately 1 hour to complete. The annual estimated burden is 2,500 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13244 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving a disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov.*

Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540; and renda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13246 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 98–7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 98–7, We Need Important Information About Your Eligibility for Social Security Disability, is used by OPM to verify receipt of Social Security Administration (SSA) disability benefits, to lessen or avoid overpayment to Federal Employees Retirement System (FERS) disability retirees. It notifies the annuitant of the responsibility to notify OPM if SSA benefits begin and the overpayment that will occur with the receipt of both benefits.

Comments are particularly invited: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection or other forms of information technology.

Approximately 3,000 RI 98–7 forms will be completed annually. The form takes approximately 5 minutes to complete. The annual burden is 250 hours. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination, Contact:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13282 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for the Review of a Revised Information Collection: Form DPRS–2809

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. DPRS–2809, Request to Change Federal Employees Health Benefits (FEHB) Enrollment for Spouse Equity/Temporary Continuation of Coverage (TCC) Enrollees/Direct Pay Annuitants, is used by former spouses, Temporary Continuation of Coverage recipients, and Direct Pay Annuitants who are eligible to elect, cancel, or change health benefits enrollment during open season.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 27,000 DPRS–2809 forms are completed annually. We estimate it takes approximately 45 minutes to complete the forms. The annual burden is 20,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to: Ronald E. Ostrich, Chief, Program Planning & Evaluation Group, Insurances Services Program, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3650.

For Information Regarding Administrative Coordination, Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

U.S. Office of Personnel Management.

Tricia Hollis,

Chief of Staff.

[FR Doc. E7–13289 Filed 7–6–07; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

Facility Tours

AGENCY: Postal Regulatory Commission.

ACTION: Notice of Commission tours.

SUMMARY: On Monday, July 9, 2007, Postal Regulatory Commissioners and advisory staff members will tour an *Amazon.com* facility in New Castle, Delaware and the United States Postal Service processing and distribution plant in Philadelphia, Pennsylvania. The purpose of the tours is to observe operations.

DATES: July 9, 2007.

FOR FURTHER INFORMATION CONTACT: Ann C. Fisher, Chief of Staff, Postal Regulatory Commission, at 202–789–6803 or *ann.fisher@prc.gov.*

Dated: July 2, 2007.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 07–3305 Filed 7–6–07; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 10–D; OMB Control No. 3235–0604; SEC File No. 270–544.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget this request for extension of the previously approved collection of information discussed below.

Form 10–D (17 CFR 249.312) is used by asset-backed issuers to file periodic distribution reports pursuant to Section 13 and 15(d) under the Securities Exchange Act 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*) within 15 days after each required distribution date. The information provided by Form 10–D is mandatory and all information is made available to the public upon request. Form 10–D takes approximately 30 hours per response to prepare and is filed by 9,500 respondents. We estimate that 75% of the 30 hours per response (22.5 hours) is prepared by the company for a total annual reporting burden of 213,750 hours (22.5 hours per response × 9,500 responses).

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.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 28, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13164 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 6h–1; SEC File No. 270–497; OMB Control No. 3235–0555.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Securities Exchange Act of 1934 (''Act'') requires national securities exchanges and national securities associations that trade security futures products to establish listing standards that, among other things, require: (1) Trading in such products not be readily susceptible to price manipulation; and (2) the market trading a security futures product to have in place procedures to coordinate trading halts with the listing market for the security or securities underlying the security futures product. Rule 6h–1 under the Act [1] implements these statutory requirements and requires national securities exchanges and national securities associations that trade security futures products: (1) To use final settlement prices for cash-settled security futures that fairly reflect the opening price of the underlying security or securities, and (2) to have rules providing that the trading of a security futures product based on a single security shall be halted at all times that a regulatory halt has been instituted for the underlying security, and that the trading of a security futures product based on a narrow-based security index shall be halted at all times that a regulatory halt has been instituted for one or more of the underlying securities that constitute 50 percent or more of the market capitalization of the narrow-based security index.

It is estimated that approximately seventeen respondents will incur an average burden of ten hours per year to comply with this rule, for a total burden of 170 hours. At an average cost per hour of approximately $197, the resultant total cost of compliance for the respondents is $33,490 per year (seventeen entities × ten hours/entity × $197/hour = $33,490).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Comments should be directed to: R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted within 60 days of this notice.

Dated: July 2, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13176 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 19d–3; SEC File No. 270–245; OMB Control No. 3235–0204.

[1] 17 CFR 240.6h–1.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 19d–3 (17 CFR 240.19d–3)—Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Association, or Prohibitions or Limitations of Access to Services Imposed by Self-Regulatory Organizations.

Rule 19d–3 under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of applications to the Commission by persons desiring stays of final disciplinary sanctions and summary action of self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency. The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 15 respondents will utilize this application procedure annually, with a total burden of 270 hours, for all respondents to complete all submissions. This figure is based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3 is 18 hours. The average cost per hour, to complete each submission, is approximately $101. Therefore, the total cost of compliance for all respondents is $27,270. (15 submissions × 18 hours × $101 per hour).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *David_Rostker@omb.eop.gov* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13177 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 19d–1; SEC File No. 270–242; OMB Control No. 3235–0206.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 19d–1—Notices by Self-Regulatory Organizations of Final Disciplinary Actions, Denials Bars, or Limitations Respecting Membership, Association, or Access to Services, and Summary Suspensions

Rule 19d–1(17 CFR 240.19d–1) (''Rule'') under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission: (1) To determine whether the matter should be called up for review on the Commission's own motion; and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1175 hours, based upon past submissions. This figure is based on 10 respondents, spending approximately 117.5 hours each. Each respondent submitted approximately 235 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, the total cost of compliance for all the respondents is $118,675. (10 respondents × 235 responses per respondent × .5 hrs per response × $101 per hour).

The filing of notices pursuant to the Rule is mandatory for the SROs, but does not involve the collection of confidential information. Rule 19d–1 does not have a retention of records requirement.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *David_Rostker@omb.eop.gov* and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: July 2, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13178 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27879; 812–13375]

Aston Funds and Aston Asset Management LLC; Notice of Application

June 29, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

Summary of the Application: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

Applicants: Aston Funds (the ''Trust'') and Aston Asset Management LLC (''Aston'').

Filing Dates: The application was filed on April 9, 2007, and amended on June 29, 2007.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 24, 2007 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Aston, 222 North LaSalle Street, Suite 2600, Chicago, Illinois 60601, Attention: Cathy G. O'Kelly, Esquire.

FOR FURTHER INFORMATION CONTACT: Lewis B. Reich, Senior Counsel, at (202) 551–6919, or, Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 100 F Street, NE., Washington, DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. Aston, a Delaware corporation, serves as the investment adviser to twenty-one series of the Trust (such series, the ''Funds'') and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended (the ''Advisers Act'').[1]

2. Aston serves as investment adviser pursuant to an investment advisory agreement between the Trust, on behalf of the Funds, and Aston (the ''Management Agreement'') that was approved by the Trust's Board of Trustees (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in Section 2(a)(19) of the Act (''Independent Trustees''), and each Fund's shareholder(s). The Management Agreement permits Aston to enter into separate investment advisory agreements (''Sub-Advisory Agreements'') with sub-advisers (''Sub-Advisers''). Each Sub-Adviser is, and any future Sub-Adviser will be, registered under the Advisers Act. Each Sub-Advisory Agreement provides that each Sub-Adviser will provide an investment program for the Fund with respect to the portion of the assets allocated to it by Aston, including investment research and management with respect to securities and investments, and determine what securities and other investments will be purchased, retained or sold. Aston monitors and evaluates the Sub-Advisers and recommends to the Board their hiring, termination, and replacement. Aston recommends Sub-Advisers based on a number of factors discussed in the application used to evaluate their skills in managing assets pursuant to particular investment objectives. Aston compensates the Sub-Adviser of each Fund out of the fee paid to Aston by that Fund under the Management Agreement.

3. Applicants request an order to permit Aston, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Sub-Adviser that is an ''affiliated person'' (as defined in Section 2(a)(3) of the Act) of a Fund or Aston other than by reason of serving as a Sub-Adviser to one or more of the Funds (''Affiliated Sub-Adviser''). None of the current Sub-Advisers to the Funds are Affiliated Sub-Advisers.

4. Applicants also request an exemption from the various disclosure provisions described below that may require each Fund to disclose fees paid by Aston to the Sub-Advisers. An exemption is requested to permit each Fund to disclose (both as a dollar amount and as a percentage of the Fund's net assets): (a) Aggregate fees paid to Aston and Affiliated Sub-Advisers; and (b) aggregate fees paid Sub-Advisers other than Affiliated Sub-Advisers (''Aggregate Fee Disclosure''). If a Fund employs an Affiliated Sub-Adviser, the Fund will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 14(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''Exchange Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's

[1] The applicants also request that any relief granted pursuant to the application apply to future series of the Trust and any other existing or future registered open-end management investment company and its series that: (a) Are advised by Aston or any entity controlling, controlled by, or under common control with Aston; (b) use the manager of managers structure described in the application; and (c) comply with the terms and conditions in the application (included in the term ''Funds''). The Trust is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Fund contains the name of a Sub-Adviser, as defined below, the name of Aston or the name of any entity controlling, controlled by, or under common control with Aston, that serves as the primary investment adviser to the Fund, will precede the name of the Sub-Adviser.

fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholders reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any persons, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

7. Applicants assert that the Funds' shareholders rely on Aston to select the Sub-Advisers best suited to achieve a Fund's investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by traditional investment advisory firms. Applicants state that requiring shareholder approval of each Sub-Advisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude Aston from acting promptly in a manner considered advisable by the Board. Applicants also note that the Management Agreement will remain fully subject to section 15(a) of the Act and rule 18f–2 under the Act.

8. Applicants assert that many investment advisers use a ''posted'' rate schedule to set their fees. Applicants state that while investment advisers are willing to negotiate fees lower than those posted in the schedule, they are reluctant to do so where the fees are disclosed to other prospective and existing customers. Applicants submit that the requested relief will encourage potential Sub-Advisers to negotiate lower sub-advisory fees with Aston, the benefits of which may be passed on to Fund shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the Application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. The prospectus for each Fund will disclose the existence, substance and effect of any order granted pursuant to this Application. In addition, each Fund will hold itself out to the public as employing the manager of managers structure described in the Application. The prospectus will prominently disclose that Aston has ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisers and recommend their hire, termination, and replacement.

3. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. Aston will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser, without such agreement, including compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. When a Sub-Adviser change is proposed for a Fund with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which Aston or the Affiliated Sub-Adviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Sub-Adviser, Aston will furnish the shareholders of the affected Fund all information about the new Sub-Adviser that would be contained in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of the new Sub-Adviser. To meet this condition, Aston will provide shareholders of the affected Fund with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Exchange Act, except as modified by the order to permit Aggregate Fee Disclosure.

7. Aston will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets, and, subject Board oversight, will: (a) Set a Fund's overall investment strategies; (b) evaluate, select, and recommend Sub-Advisers to manage all or part of the Fund's assets; (c) when appropriate, allocate and reallocate the Fund's assets among multiple Sub-Advisers; (d) monitor and evaluate the performance of the Sub-Advisers; and (e) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or director or officer of Aston will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Sub-Adviser, except for: (a) Ownership of interests in Aston or any entity that controls, is controlled by, or is under common control with Aston; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

9. Independent legal counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

10. Aston will provide the Board, no less frequently than quarterly, with information about the profitability of Aston on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

11. Whenever a Sub-Adviser is hired or terminated, Aston will provide the Board with information showing the expected impact on Aston's profitability.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. The requested order will expire on the effective date of Rule 15a–5 under the Act, if adopted.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13191 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of July 9, 2007:

An Open Meeting will be held on Wednesday, July 11, 2007 at 10 a.m., in the Auditorium, Room L–002. A Closed Meeting will be held on Thursday, July 12, 2007 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Open Meeting scheduled for Wednesday, July 11, 2007 at 10 a.m. will be:

The Commission will consider whether to adopt a new antifraud rule under Section 206 of the Investment Advisers Act of 1940. The new rule would prohibit advisers to certain pooled investment vehicles from making false or misleading statements to, or otherwise defrauding, investors or prospective investors in those pooled vehicles.

The subject matter of the Closed Meeting scheduled for Thursday, July 12, 2007 will be:

Formal orders of investigations;
Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings of an enforcement nature;
Resolution of litigation claims; and
Other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 3, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–13272 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55997; File No. PCAOB–2007–01]

Public Company Accounting Oversight Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Adjusting Implementation Schedule of Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles

July 2, 2007.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on April 3, 2007, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change described in Items I and II below, which items have been prepared by the Board. The PCAOB has designated the proposed rule change as ''constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule'' under Section 19(b)(3)(A)(i) of the Securities Exchange Act of 1934 (as incorporated, by reference, into Section 107(b)(4) of the Act), which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Board's Statement of the Terms of Substance of the Proposed Rule

The PCAOB is filing with the SEC an adjustment of the implementation schedule for Rule 3523, Tax Services for Persons in Financial Reporting Oversight Roles. Specifically the Board will not apply Rule 3523 to tax services provided on or before July 31, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins. The PCAOB is not proposing any textual changes to the Rules of the PCAOB.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rule and discussed any comments it received on the proposed rule. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule

(a) Purpose

On July 26, 2005, the Board adopted certain rules related to registered public accounting firms' provision of tax services to public company audit clients. The rules were designed to address certain concerns related to auditor independence when auditors sell personal tax services to individuals who play a direct role in preparing the financial statements of public company audit clients or market or otherwise opine in favor of aggressive tax shelter schemes. As part of this rulemaking, the Board adopted Rule 3523, which provides that a registered firm, subject to certain exceptions, is not independent of an audit client if the firm, or an affiliate of the firm, provides tax services during the audit and professional engagement period[1] to a person in, or an immediate family member of a person in, a financial reporting oversight role at an audit client. Rule 3523 was approved by the Securities and Exchange Commission (''SEC'') on April 19, 2006.

On October 31, 2006, the Board adjusted the implementation schedule for Rule 3523, as it applies to tax services provided during the period subject to audit but before the professional engagement period, so that the Board could revisit this aspect of the

[1] Consistent with the SEC's independence rules, 17 CFR 210.2–01(f)(5), the phrase ''audit and professional engagement period'' is defined to include two discrete periods of time. The ''audit period'' is the period covered by any financial statements being audited or reviewed. Rule 3501(a)(iii)(1). The ''professional engagement period'' is the period beginning when the accounting firm either signs the initial engagement letter or begins audit procedures and ends when the audit client or the accounting firm notifies the SEC that the client is no longer that firm's audit client. Rule 3501(a)(iii)(2).

rule.[2] On April 3, 2007, the Board issued a concept release to solicit comment on the possible effects on a firm's independence of providing tax services to a person covered by Rule 3523 during the portion of the audit period that precedes the beginning of the professional engagement period, and other practical consequences of applying the restrictions imposed by Rule 3523 to that portion of the audit period. The Board has determined to further adjust the implementation schedule for Rule 3523 in order to allow sufficient time for consideration of commenters' views. Specifically, the Board will not apply Rule 3523 to tax services provided on or before July 31, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.

No other aspect of the Board's rules on independence and tax services is affected by this extension. As of November 1, 2006, registered firms have been required to comply with Rule 3523 as it relates to tax services provided while they serve as auditor of record for an audit client—that is, during the ''professional engagement period.'' In addition, with one exception, all other PCAOB rules concerning independence, tax services, and contingent fees that were adopted by the Board on July 26, 2005 and approved by the SEC on April 19, 2006 are now in effect.[3]

(b) Statutory Basis

The statutory basis for the proposed rule change is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Board's Statement on Comments on the Proposed Rule Received From Members, Participants or Others

The Board did not solicit or receive written comments on the proposed rule change.

[2] See PCAOB Release No. 2006–006 (October 31, 2006), at 2. Specifically, the Board stated that Rule 3523 will not apply to tax services provided on or before April 30, 2007, when those services are provided during the audit period and are completed before the professional engagement period begins.

[3] With respect to tax services provided to audit clients whose audit committees pre-approve tax services pursuant to policies and procedures, Rule 3524 will not apply to any such tax service that is begun by April 20, 2007. See PCAOB Release No. 2006–001 (March 28, 2006), at 2–3, PCAOB Release No. 2005–020 (November 22, 2005) at 2–3, and PCAOB Release No. 2005–14 (July 26, 2005) at 47–48.

III. Date of Effectiveness of the Proposed Rule and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (as incorporated, by reference, into Section 107(b)(4) of the Act) and paragraph (f) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/pcaob.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number PCAOB–2007–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number PCAOB–2007–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/pcaob.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCAOB. 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. All submissions should refer to File Number PCAOB–2007–01 and should be submitted on or before July 30, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–13136 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55984; File No. SR–CBOE–2007–53]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to an Administrative CBOE Billing Rule

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the CBOE. On June 28, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make a change to an administrative CBOE billing rule. The text of the proposed rule change is available at the CBOE, on the Exchange's Web site at *http://www.cboe.org/legal,* and in the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 3.23 requires all CBOE members, other than lessor members, to designate a CBOE Clearing Member for the payment of CBOE invoices by means of the Exchange's Integrated Billing System (''IBS''). From time to time, vendors have requested the Exchange to act as their billing agent for vendor invoices for Exchange-related services provided to members. The Exchange would like to enter into arrangements with vendors under which the Exchange would collect payment from members for vendor invoices for Exchange-related services.[3] Some of these arrangements may involve payment by the vendor to the Exchange for performing this billing service, and some may involve no payment to the Exchange as mutually agreed by the vendor and the Exchange.

The Exchange proposes to amend Rule 3.23 to make explicit that the Exchange may collect such vendor fees that are designated by the Exchange from members via the IBS. The proposed rule change would benefit Exchange members in that it would allow members to pay vendor invoices for Exchange-related services along with all of their Exchange invoices via the IBS instead of having to receive and pay multiple invoices. The proposed rule change would also benefit vendors in that it would relieve vendors of the responsibility for individually billing and collecting from each of their CBOE member customers.

2. Statutory Basis

The proposed rule change is an administrative rule change that is designed to facilitate the efficiency of Exchange operations and to ease administrative burdens on Exchange members by improving CBOE billing procedures. Therefore, the Exchange believes that the proposed rule change is consistent with the requirements provided under Section 6(b)(5)[4] of the Act that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f)(3) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2007–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–53 and should be submitted on or before July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13165 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[3] The Exchange represents that, in the Exchange's written agreement with each vendor for which the Exchange will collect payments via IBS, the Exchange will require the vendor to include a provision in the vendor's written agreement with each member from which payments via IBS will be collected in which the member authorizes CBOE to assess and collect from the member through CBOE's billing procedures and automated systems, on behalf of the vendor, the fees assessed by the vendor to the member for the vendor's service. *See* Amendment No. 1 to the proposed rule change.

[4] 15 U.S.C. 78(f)(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(3).

[7] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on June 28, 2007, the date on which CBOE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55994; File No. SR–ISE–2007–37]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change as Modified by Amendment No. 1 Thereto Relating to Cancellation Fees

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2007, the International Securities Exchange, LLC (the ''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the ISE. On June 20, 2007, the ISE filed Amendment No. 1 to the proposed rule change. The ISE has filed the proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees regarding its cancellation fee. The text of the proposed rule change is available at ISE, the Commission's Public Reference Room, and *http://www.iseoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the ISE's cancellation fee. The Exchange currently has a cancellation fee of $1.50 that applies to Electronic Access Members (''EAMs'') that cancelled at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member or an introducing broker executed that month. Further, all orders from the same clearing EAM for itself or an introducing broker, executed in the same series on the same side of the market at the same price within a 30 second period, are aggregated and counted as one executed order for purposes of this fee. The Exchange adopted this fee to recover the costs associated with processing multiple cancellations. The Exchange now proposes to exclude broker-dealer orders, including non-member market maker (FARMM) orders, from this fee by charging this fee for public customer orders only. Non-customers already pay transaction fees, which helps address cancellation costs, while the ISE currently excludes most public customer orders from transaction fees.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change establishes or changes a due, fee, or other charged imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(2)[6] thereunder. At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2007–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2007–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2).

[7] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on June 20, 2007, the date on which the Exchange filed Amendment No. 1.

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2007–37 and should be submitted on or before July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13158 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56004; File No. SR–NASD–2004–130]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Relating to Amendments to Rule 2320(g) (Three Quote Rule) and Corresponding Recordkeeping Requirements under Rule 3110(b)

July 2, 2007.

I. Introduction

On August 27, 2004, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 2320(g) (''Three Quote Rule'') to exempt from the Three Quote Rule certain transactions in foreign securities of a foreign issuer that are part of an index calculated by the FTSE Group. On May 8, 2006, NASD filed Amendment No. 1 to the proposed rule change.[3] On October 19, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as modified by Amendment No. 2, was published for comment in the **Federal Register** on October 31, 2006.[5] The Commission received ten comment letters on the proposal.[6] On April 3, 2007, NASD filed Amendment No. 3 to the proposed rule change[7] and a response to the comment letters.[8] This order provides notice of Amendment No. 3 and approves the proposed rule change as modified by Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

Currently, the Three Quote Rule requires NASD members who execute a transaction in a non-exchange-listed security[9] for or with a customer to contact and obtain the quotations from three dealers (or all dealers if less than three) to determine the best inter-dealer market for that security. The Three Quote Rule, however, does not apply if two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis. NASD proposes to expand the categories of transactions that would be exempted from the Three Quote Rule. First, NASD proposes to exempt a transaction for or with a customer in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index, if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction is in effect in any foreign market on which such security is listed. Second, in response to comments following publication of its proposal, NASD proposes to codify certain exemptions previously issued by NASD staff under the Three Quote Rule's exemptive process.[10] Specifically, NASD proposes to exempt a transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security that is listed on a Canadian exchange as long as the customer order is executed by the NASD member or a person associated with the member on a Canadian exchange in an agency or riskless principal capacity and the member or a person associated with the member conducts regular and rigorous reviews of the equality of the execution of such orders in such securities, pursuant to the member's duty of best execution. NASD has also proposed to amend its recordkeeping requirement to provide a corresponding exclusion with respect to these proposed exemptions.

Under the proposed rule change, NASD members would continue to be required to comply with their best execution obligations under NASD Rule 2320 and, to the extent applicable, the suitability obligations under NASD Rule 2310.

III. Summary of Comments and NASD's Response

The Commission received ten comment letters on the proposal.[11] NASD submitted the NASD Response Letter,[12] and corresponding Amendment No. 3 to address the issue regarding application of the proposed rule change to Canadian-listed securities that was raised by the commenters. While some commenters expressed general support for NASD's proposal to exempt from the Three Quote Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded in its entirety the text of the original filing.

[4] Amendment No. 2 replaced and superseded in its entirety the text of the original filing, as amended.

[5] *See* Securities Exchange Act Release No. 54650 (October 25, 2006), 71 FR 63812 (''Notice'').

[6] *See* letters from James Duncan, Senior Vice President & Director, International Trading, and Andrew Jappy, Chief Information Officer & EVP, Canaccord Capital Corporation, dated November 21, 2006 (''Canaccord Letter''); Achilles M. Perry, Associate General Counsel, CIBC World Markets Corp., dated November 21, 2006 (''CIBC Letter''); Grant Vingoe, Esq., Partner, Arnold Porter LLP, dated November 21, 2006 (''Arnold Porter Letter''); Bill Yancey, Chairman of the Board, and John C. Giesea, President and CEO, Security Traders Association, dated November 21, 2006 (''STA Letter''); Rik Parkhill, Executive Vice President, TSX Group, Inc., President, TSX Markets, dated November 29, 2006 (''TSX Letter''); George W. Lennon, President, Canadian Security Traders Association, Inc., dated December 1, 2006 (''CSTA Letter''); Christopher Climo, Managing Director, Compliance and Chief Compliance Officer, TD Securities, Inc., dated December 7, 2006 (''TD Securities Letter''); James E. Twiss, Chief Policy Counsel, Market Regulation Services Inc., dated December 8, 2006 (''RS Letter''); Debra V. Moore, Manager—NASDAQ/OTC Equity Trading, and Glenn A. Hoback, Implementation Consultant—Internal Controls, Wachovia Securities, LLC, dated December 14, 2006 (''Wachovia Letter''); and Bryce Engel, Chief Brokerage Operations Officer, TD AMERITRADE, Inc., dated December 21, 2006 (''TD Ameritrade Letter'').

[7] In Amendment No. 3, NASD proposes, among other things, to codify the existing exemptions relating to transactions in a non-exchange-listed security (as defined below) that are securities listed on a Canadian exchange.

[8] *See* letter from Andrea D. Orr, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, Commission, dated April 3, 2007 (''NASD Response Letter'').

[9] NASD Rule 6610(c) defines the term ''non-exchange-listed security'' as ''any equity security that is not traded on any national securities exchange'' and ''shall not include 'restricted securities,' as defined by SEC Rule 144(a)(3) under the Securities Act of 1933, nor any securities designated in the PORTAL Market, the Rule 6700 Series.''

[10] *See, e.g.,* Letter to Kenneth W. Perlman, General Counsel, Mayer & Schweitzer, Inc., from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc., on May 29, 1998.

[11] *See supra* note 6.

[12] *See supra* note 8.

foreign securities that are part of the FTSE All-World Index,[13] all of the commenters objected to NASD's proposed withdrawal of the exemptions from the Three Quote Rule for Canadian issuers' securities. Specifically, NASD proposed to withdraw all existing exemptions granted under the Three Quote Rule with respect to Canadian securities executed on a Canadian exchange in an agency or riskless principal basis.[14] Were these exemptions withdrawn, NASD members would be required to comply with the Three Quote Rule in connection with transactions in Canadian securities that are not part of the FTSE All-World Index. The commenters argued that this result would be contrary to the duty of best execution,[15] would cause significant delays in execution,[16] and would increase the cost of transactions in Canadian securities that are not part of the FTSE All-World Index.[17]

In light of the comments, NASD revised its previous position and clarified that the proposal would not supersede any exemptions previously granted. Contemporaneously with the NASD Response Letter, NASD filed Amendment No. 3 to codify the relief previously granted in the existing exemptions.

IV. Discussion

After careful review, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the regulations thereunder applicable to NASD.[18] In particular, the Commission believes that the proposal is consistent with section 15A(b)(6) of the Act[19] and section 15A(b)(9) of the Act.[20] Section 15A(b)(6) of the Act requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 15A(b)(9) of the Act requires that rules of an association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Commission approved NASD's proposal to institute the Three Quote Rule in 1988.[21] The Three Quote Rule was an amendment to NASD's interpretation relating to best execution of retail transactions in non-Nasdaq securities. The Three Quote Rule's purpose is to assure that NASD members fulfill their duty to provide customers with best execution for transactions in non-exchange-listed securities, especially illiquid securities with non-transparent prices. The Commission subsequently approved NASD's proposal providing NASD staff authority to grant exemptions from the Three Quote Rule in 1997.[22] Subsequently, NASD granted exemptions from the Three Quote Rule for customer transactions in Canadian securities executed on a Canadian exchange.[23] In 2000, the Commission approved NASD's proposal to limit the Three Quote Rule's applicability to those situations when fewer than two priced quotes for a non-Nasdaq security are posted in an inter-dealer quotation medium.[24]

The Commission finds that NASD's proposal to add the two new exceptions to the Three Quote Rule is consistent with the Act. In its order granting NASD staff exemptive authority with respect to the Three Quote Rule, the Commission noted that ''one situation where exemptive relief might be applied would be trading in certain foreign securities. In some circumstances the foreign exchange market may constitute the best market for the securities that are listed on that market, and the time delay involved in contacting three dealers in advance of a customer transaction could hinder obtaining the best execution for the customer.''[25]

Thus, the Commission believes that it is reasonable for NASD to exempt from the Three Quote Rule transactions in a foreign security that are included in the FTSE All-World Index and transactions in a security listed on a Canadian exchange, subject to the conditions specified in the amended Three Quote Rule. The Commission notes that, whether or not a transaction in a non-exchange-listed security is subject to the Three Quote Rule, the NASD member executing the transaction must satisfy its duty of best execution.

V. Accelerated Approval

The Commission finds good cause to approve NASD's proposal, as amended, prior to the thirtieth day after the amendment is published for comment in the **Federal Register** pursuant to section 19(b)(2) of the Act. NASD submitted Amendment No. 3 in response to comments received on its proposal. The amendment codifies exemptions NASD staff previously issued under the Three Quote Rule's exemptive process,[26] and as described above, proposes a corresponding exclusion to the recordkeeping requirements if a member establishes and documents the exemption. Accordingly, Amendment No. 3 does not raise any new issues.

The Commission therefore finds good cause to approval NASD's proposal on an accelerated basis.

VI. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2004–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2004–130. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent

[13] *See, e.g.*, Canaccord Letter, CIBC Letter, STA Letter, TSX Letter, CSTA Letter, and TD Ameritrade Letter.

[14] *See* Notice, *supra* note 5, 71 FR at 63813 n.13.

[15] *See, e.g.*, Canaccord Letter, STA Letter, TXS Letter, CSTA Letter, RS Letter, and Wachovia Letter.

[16] *See, e.g.*, Canaccord Letter, CIBC Letter, Arnold Porter Letter, STA Letter, TD Securities Letter, Wachovia Letter, and TD Ameritrade Letter.

[17] *See, e.g.*, STA Letter and TD Securities Letter.

[18] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78o–3(b)(6).

[20] 15 U.S.C. 78o–3(b)(9).

[21] *See* Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

[22] *See* Securities Exchange Act Release No. 39266 (October 22, 1997), 62 FR 56217 (October 29, 1997).

[23] *See supra* note 10.

[24] *See* Securities Exchange Act Release No. 43319 (September 21, 2000), 65 FR 58589 (September 29, 2000). Pursuant to this exception, if two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis, then NASD members are not required to obtain quotes from three dealers.

[25] Securities Exchange Act Release No. 39266 (October 22, 1997), 62 FR 56217 (October 29, 1997).

[26] *See supra* note 22.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–130 and should be submitted on or before July 30, 2007.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–NASD–2004–130), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13200 Filed 7–6–07;8:45 am]

BILLING CODE 8010–01–P

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56003; File No. SR–NASD–2007–028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Order Audit Trail System

July 2, 2007.

On April 17, 2007, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 6951 and 6954 to require members that transmit an intermarket sweep order (''ISO'') to another member, electronic communications network, nonmember, or exchange to record and report the fact that the order was an ISO. On May 18, 2007, NASD filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 31, 2007.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD,[4] and, in particular, section 15A(b)(6) of the Act[5] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

On June 9, 2005, the Commission adopted Regulation NMS,[6] which among other things, adopted an Order Protection Rule[7] that requires trading centers to establish, maintain, and enforce policies and procedures designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. One of the exceptions from the Order Protection Rule is when the transaction that constitutes a trade-through[8] is ''effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.''[9]

The purpose of the proposed rule change is to require member firms to record the fact that an order in an OATS-eligible security is an ISO when the member routes an ISO to another member or non-member. The member would be required to include this information in the Route Report it submits to NASD pursuant to the OATS Rules.[10] This requirement should ensure that NASD knows that the order was an ISO and can utilize that information when reviewing audit trails.[11]

The Commission believes that the proposed rule change is consistent with the Act and should enhance OATS data and help ensure that the NASD is able to more effectively monitor compliance with Regulation NMS.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NASD–2007–028), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13201 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 55806 (May 23, 2007), 72 FR 30406 (the ''Notice'').

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] 17 CFR 242.611.

[8] A ''trade-through'' is ''the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.'' *See* 17 CFR 242.600(b)(77).

[9] *See* 17 CFR 242.611(b)(6). The phrase ''intermarket sweep order'' is defined as ''a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders.'' The proposed rule change adopts this same definition of intermarket sweep order for purposes of the OATS Rules. *See* 17 CFR 242.600(b)(30).

[10] When a member transmits an order in an OATS-eligible security to another member, electronic communications network, non-member, or exchange for handling or execution, the routing member is required to submit a Route Report to NASD. The categories of information that a member must include in a Route Report are set forth in NASD Rule 6954(c) and in the *OATS Reporting Technical Specifications* published by NASD.

[11] As discussed in the Notice, firms will not be required to begin using the ISO routing method code on Route Reports until February 4, 2008, but the code will be available for use by firms immediately on approval. Firms are encouraged to use the ISO code as soon as possible to facilitate NASD's ability to determine whether the trade was made in reliance on an ISO exception from the Order Protection Rule.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55995; File No. SR–NYSE–2007–58]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 104.10(6)

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the New York Stock Exchange LLC, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend for three (3) months the current pilot related to specialist stabilization requirements operating pursuant to Exchange Rule 104.10(6) (Specialist Transactions in Active Securities that Establish or Increase the Specialist's Position) (''Stabilization Pilot''),[5] that is scheduled to terminate on June 30, 2007. Additionally, the Exchange seeks to make technical changes to Rule 104.10 to correct the numbering of certain subparagraphs of the Rule. The text of the proposed rule change is available on NYSE's Web site at *http://www.nyse.com,* at NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the operation of the Stabilization Pilot pursuant to Exchange Rule 104.10(6) from June 30, 2007 to September 30, 2007. The Exchange is further requesting through this filing to make technical amendments to the Rule in order to correct the numbering of certain subparagraphs.

a. Stabilization Pilot

On December 1, 2006, the Commission approved changes to NYSE Rules 104.10(5) and 104.10(6) governing specialist stabilization requirements.[6] The amendments to the Rule moved away from defining stabilization in terms of the last sale to focus on market conditions, the type of trade in question and the specialist's existing position. The amendments to Exchange Rule 104.10(6) govern Conditional Transactions (as defined below) in active securities.[7]

Pursuant to the Stabilization Pilot, specialists can trade in active securities that establish or increase a position by reaching across the market to trade in the Exchange published bid (in the case of a specialist's sale) or offer (in the case of a specialist's purchase) when such bid (offer) is priced below (above) the last differently priced published bid (offer) (''Conditional Transaction''). A specialist is allowed to execute Conditional Transactions without restriction as to price provided the specialist follows said transaction with an appropriate transaction on the opposite side of the market commensurate with the size of the specialist's transaction, which is referred to as ''appropriate re-entry.''[8]

The Exchange states that the Stabilization Pilot provides the specialist with the ability to effect transactions for its dealer account to provide support to the Hybrid Market. The Exchange believes that the specialists have a greater ability to position themselves to provide more liquidity against market trend and thus moderate volatility. The Exchange, therefore, requests that the Stabilization Pilot be extended for three (3) months to continue to afford specialists this needed flexibility to continue their adaptation to the new challenges of the Hybrid Market. The Exchange believes that extension of the Stabilization Pilot will continue to allow specialists to effectively manage their inventory in order to provide liquidity during times of market volatility. As such, the Exchange requests that the Commission extend the Stabilization Pilot to September 30, 2007.

b. Technical Amendments to the Rule

The Exchange is also seeking to make technical amendments to Rule 104.10, including to correct the numbering of certain subparagraphs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[9] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change also is designed to support the principles of Section 11A(a)(1)[10] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221 (December 8, 2006) (SR–NYSE 2006–76).

[6] *See* Securities Exchange Act Release No. 54860, *supra* note 5.

[7] ''Active'' securities are: (a) Securities comprising the S&P 500(r) Stock Index; (b) securities trading on the Exchange during the first five trading days following their initial public offering of such securities; and (c) securities that have been designated as ''active'' by a Floor Official subject to the provisions of the Rule.

[8] ''Appropriate re-entry'' for Conditional Transactions shall mean the specialist's stabilization obligation to re-enter a transaction on the opposite side of the market at or before the price participation point (''PPP''). The PPP is an Exchange-issued minimum guideline that identifies the price at or before which a specialist is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee a specialist is meeting his or her obligations.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78k–1(a)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and Rule 19b–4(f)(6) thereunder.[12] As required under Rule 19b–4(f)(6)(iii),[13] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) [15] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii),[16] which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Stabilization Pilot to continue without interruption through September 30, 2007 and provide the Exchange and the Commission additional time to evaluate the pilot.[17] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–58 and should be submitted on or July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Florence E. Harmon

Deputy Secretary.

[FR Doc. E7–13154 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] *Id.*

[17] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55992; File No. SR–NYSE–2007–57]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Moratorium on the Qualification and Registration of New Registered Competitive Market Makers and New Competitive Traders, Governed by Rules 107A and 110, Respectively, for an Additional Three Months

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 28, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend for three months the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to Exchange Rule 107A and Competitive Traders (''CTs'') pursuant to Exchange Rule 110. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for three months the current moratorium related to the qualification and registration of RCMMs pursuant to Exchange Rule 107A and CTs pursuant to Exchange Rule 110.

On September 22, 2005, the Exchange filed SR–NYSE–2005–63 [3] with the Commission proposing to implement a moratorium on the qualification and registration of new RCMMS and CTs (''Moratorium''). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKET℠ (''Hybrid Market'').[4]

The phased-in implementation of the Hybrid Market has required the Exchange to extend the Moratorium.[5] During each phase of the Hybrid Market, new system functionality is included in the operation of Exchange systems and new data has been generated. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market.

The Exchange now proposes to extend the Moratorium, as amended,[6] for an additional three months in order to allow the Exchange to continue its analysis of the viability of RCMMs and CTs in the Hybrid Market. On January 25, 2007, the Exchange began programming its systems to implement Phase IV of the Hybrid Market. Phase IV modifications to all systems on the Floor were completed on or about February 27, 2007. The Exchange has continued to review data related to RCMMs and CTs during this time; however, more time is needed to provide the Exchange with an adequate sample period to make a more informed decision as to the viability of RCMMs and CTs in the Hybrid Market. As such, the Exchange requests to extend the Moratorium for an additional three months to complete its analysis.

The Exchange will issue an Information Memo announcing the extension of the Moratorium. The review is currently estimated to be completed on or about September 28, 2007.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [7] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [10] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the moratorium to continue without interruption so that the Exchange may have additional time to fully analyze the future viability of RCMMs and CTs in the Hybrid Market. For these reasons, the Commission designates that the proposed rule change become operative immediately. [12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–57 on the subject line.

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[3] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[4] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (establishing the Hybrid Market).

[5] *See* Securities Exchange Act Release Nos. 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); and 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113).

[6] *See* Securities Exchange Act Release No. 53549 (March 24, 2006), 71 FR 16388 (March 31, 2006) (SR–NYSE–2006–11) (making certain amendments to the Moratorium).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–57 and should be submitted on or before July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13156 Filed 7–6–07; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55985; File No. SR–NYSEArca–2007–47]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to List and Trade Shares of the iShares FTSE EPRA/NAREIT Asia Index Fund

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares (''Shares'') of the iShares® [3] FTSE EPRA/NAREIT Asia Index Fund (''Fund'') of the iShares Trust (''Trust'') pursuant to NYSE Arca Equities Rule 5.2(j)(3). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''iShares'' is a registered trademark of Barclays Global Investors, N.A.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list Shares of the Fund. The Trust is an open-end management company with over 100 separate investment portfolios and is registered under the Investment Company Act of 1940 (''1940 Act''). [4] The Fund would seek investment results that correspond generally to the price and yield performance, before fees and expenses, of the FTSE EPRA/NAREIT Asia Index (''Underlying Index'' or ''Index''). The Underlying Index measures the stock performance of companies engaged in the ownership and development of the Asian real estate market. Because all of the securities included in the Underlying Index are issued by companies engaged in the ownership and development of the Asian real estate market, the Fund would always be concentrated in the Asian real estate industry. The Fund would only concentrate its investments in a particular industry or group of industries to approximately the same extent as the Index is so concentrated.

Under NYSE Arca Equities Rule 5.2(j)(3), the Exchange may list and/or trade ''Investment Company Units'' (''ICUs'') [5] pursuant to unlisted trading privileges (''UTP''). The Fund does not meet the ''generic'' listing requirements of NYSE Arca Equities Rule 5.2(j)(3) applicable to the listing of ICUs based on international or global indexes adopted pursuant to Rule 19b–4(e) under the Act,[6] and thus cannot be listed without a filing made pursuant to Rule 19b–4 under the Act. Specifically, the Underlying Index does not meet the requirement of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) that, for component stocks that in the aggregate account for at least 90% of the weight of the Underlying Index, each of such stocks must have a minimum

[4] *See* Post-Effective Amendment No. 78 to the Trust's Registration Statement on Form N–1A, as filed with the Commission on April 23, 2007 and accompanying Statement of Additional Information (''SAI'') (File Nos. 333–92935 and 811–09729) (''Registration Statement''). The Trust was established as a Delaware statutory trust on December 16, 1999.

[5] *See* Securities Exchange Act Release Nos. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (approving, among other things, the listing and trading of ICUs); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (approving generic listing standards for ICUs); and 55621 (April 12, 2007), 72 FR 19571 (April 18, 2007) (SR–NYSEArca–2006–86) (approving generic listing standards for ICUs based on international or global indexes).

[6] 17 CFR 240.19b–4(e).

worldwide monthly trading volume during each of the last six months of at least 250,000 shares.[7]

The Exchange notes that the Commission has previously approved an exchange rule for the trading of funds based upon indexes that did not meet the six month volume requirement.[8]

Operation of the Fund

Barclays Global Fund Advisors (''BGFA''), a subsidiary of Barclays Global Investors, N.A. (''BGI''), would be the investment adviser (''Advisor'') to the Fund. The Advisor is registered as an investment adviser under section 203 of the Investment Advisers Act of 1940 (''Advisers Act'').[9] As the Advisor, BGFA would have overall responsibility for the general management and administration of the Trust. BGFA would provide an investment program for the Fund and would manage the investment of the Fund's assets. In seeking to achieve a Fund's investment objective, BGFA would use teams of portfolio managers, investment strategists, and other investment specialists. BGFA would also arrange for transfer agency, custody, fund administration, and all other non-distribution-related services necessary for the Fund to operate. While the Fund would be managed by the Advisor or portfolio manager, the Trust's Board of Trustees would have responsibility for the overall management and operations of the Fund.

The Index Provider

FTSE International Limited (''FTSE'') (''Index Provider'') is the provider of the Index. FTSE is an independent company whose sole business is the creation and management of indices and associated data services. FTSE is a joint venture between The Financial Times and the London Stock Exchange and ''FTSE™'' is a trademark owned jointly by the London Stock Exchange plc and The Financial Times Limited. FTSE calculates over 60,000 indices daily, including more than 600 real-time indices. ''NAREIT®'' is a trademark of National Association of Real Estate Investment Trusts (''NAREIT''). Both the FTSE and NAREIT trademarks are used by FTSE under license. ''EPRA®'' is the trademark of the European Public Real Estate Association (''EPRA''). FTSE is neither a registered broker dealer nor is it affiliated with the Trust, BGFA, or its affiliates, or SEI Investments Distribution Co. (''SEI''), the distributor of the Fund (as discussed below).[10] BGI has entered into a license agreement with FTSE to use the Underlying Index and is sub-licensing rights in the Underlying Index to the Trust at no charge.

Administrator, Custodian, and Transfer Agent

Investors Bank & Trust Company (''Investors Bank'') would serve as administrator, custodian, and transfer agent for the Fund (''Administrator''). Under the Administration Agreement with the Trust, the Administrator would provide necessary administrative, legal, tax, accounting, and financial reporting services for the maintenance and operations of the Trust and the Fund. Under the Custodian Agreement with the Trust, the Administrator would maintain cash, securities, and other assets of the Trust and the Fund and would keep all necessary accounts and records. The Administrator would be required to deliver securities held by the Administrator and make payments for securities purchased by the Trust for the Fund. Also, under a Delegation Agreement, the Administrator may appoint certain foreign custodians or foreign custody managers for Fund investments outside the United States. Pursuant to a Transfer Agency and Service Agreement with the Trust, the Administrator would act as a transfer agent for the Fund's authorized and issued shares of beneficial interest, and as dividend disbursing agent of the Trust.

The Distributor

SEI would be the distributor of shares of the Trust (''Distributor''). The Distributor has entered into a Distribution Agreement with the Trust pursuant to which it would distribute Shares of the Fund. Shares would be offered continuously for sale by the Fund through the Distributor only in Creation Unit Aggregations (as described more fully below). Shares in less than Creation Unit Aggregations would not be distributed by the Distributor. The Distributor would deliver the prospectus and, upon request, the Statement of Additional Information (''SAI'') to persons purchasing Creation Unit Aggregations and would maintain records of both orders placed with it and confirmations of acceptance furnished by it. The Distributor is a broker-dealer registered under the Act and a member of NASD.

The Fund intends to qualify as a ''regulated investment company'' (''RIC'') under the Internal Revenue Code (''Code''). The Fund must, among other things, meet certain diversification tests imposed by the Code to satisfy RIC requirements.[11]

Description of the Fund and the Underlying Index

The Underlying Index is sponsored by the Index Provider. The Index Provider determines the relative weightings of the securities in the Underlying Index and publishes information regarding the market value of the Underlying Index.

The Advisor would use a ''passive'' or ''indexing'' approach to try to achieve the Fund's investment objective. The Fund would not try to ''beat'' the index it tracks and would not seek temporary defensive positions when markets decline or appear overvalued. Indexing eliminates the chance that the Fund may substantially outperform the Underlying Index, but also may eliminate some of the risk of active management, such as poor security selection. Indexing seeks to achieve lower costs and better after-tax performance by keeping portfolio turnover low in comparison to actively managed investment companies.

The Fund would invest at least 90% of its assets in the securities of its Underlying Index or in American Depositary Receipts, Global Depositary Receipts or European Depositary Receipts representing securities in the Underlying Index. The Fund may invest the remainder of its assets in securities not included in the Underlying Index, but which the Advisor believes would help the Fund track the Underlying

[7] Component stocks in the aggregate accounting for 89.3% of the weight of the Underlying Index had a minimum worldwide monthly trading volume during each of the last six months of at least 250,000 shares, as of May 2, 2007. Source: Bloomberg.

[8] *See* Securities and Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the following funds for trading under unlisted trading privileges on the New York Stock Exchange (''NYSE''): (1) Vanguard Total Stock Market VIPERs; (2) iShares Russell 2000 Index Funds; (3) iShares Russell 2000 Value Index Funds; and (4) iShares Russell 2000 Growth Index Fund.)

[9] 15 U.S.C. 80b.

[10] *See* e-mail on June 28, 2007 from Tim Malinowski, Director, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division of Market Regulation (''Division''), Commission (''June 28th E-mail'').

[11] Among these is a requirement that, at the close of each quarter of the Fund's taxable year: (i) At least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other RICs, and other securities, with such other securities limited for the purpose of this calculation with respect to any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer; and (ii) not more than 25% of the value of its total assets may be invested in securities of any one issuer, or two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Code) and that are engaged in the same or similar trades or business (other than U.S. government securities or other RICs).

Index. For example, the Fund may invest in securities not included in the Underlying Index to reflect various corporate actions (such as mergers) and other changes in the Underlying Index (such as reconstitutions, additions, and deletions). The Fund also may invest its other assets in futures contracts or other derivatives related to the Underlying Index, as well as cash and cash equivalents, including shares of money market funds affiliated with the Advisor. The Advisor would use a representative sampling indexing strategy for the Fund.[12]

The Advisor expects that, over time, the correlation between the Fund's performance and that of the Underlying Index, before fees and expenses, would be 95% or better. A correlation percentage of 100% would indicate perfect correlation. The difference between 100% correlation and the Fund's actual percentage correlation with the Underlying Index is called ''tracking error.'' The Fund's use of a representative sampling indexing strategy can be expected to result in greater tracking error than if the Fund used a replication indexing strategy. ''Replication'' is an indexing strategy in which a fund invests in substantially all of the securities in its underlying index in approximately the same proportions as in the underlying index.

The Underlying Index is included in the FTSE EPRA/NAREIT Global Real Estate Index Series (''FTSE EPRA/NAREIT Indices''). The FTSE EPRA/NAREIT Indices are primarily rule-based, but are also monitored by the applicable regional FTSE EPRA/NAREIT Global Index Advisory Committees. FTSE EPRA/NAREIT defines the Global Real Estate market as: North America (including Canada and the United States), Europe (including Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Sweden, Switzerland and the United Kingdom (including the Channel Islands)) and Asia (including Australia, Hong Kong, Japan, New Zealand, South Korea, and Singapore). In determining geographic allocations, FTSE EPRA/NAREIT primarily considers the REIT's country of incorporation and listing. The FTSE EPRA/NAREIT Indices are free float-adjusted market capitalization weighted.

To qualify for inclusion in the FTSE EPRA/NAREIT Indices, a company must be a closed-end company and listed on an official stock exchange and meet certain trading volume requirements as determined by FTSE EPRA/NAREIT.[13] Also, companies must meet geographic financial standards demonstrating that a majority of a company's earnings or bulk of total assets is the result of real estate activity as determined by FTSE EPRA/NAREIT. Relevant real estate activities are defined as the ownership, trading and development of income-producing real estate.

The components of the FTSE EPRA/NAREIT Indices are generally required to meet the following criteria where applicable: to be added to the Index, at the quarterly review, non-components must have an investable market capitalization equal to or greater than the amounts as determined by FTSE EPRA/NAREIT.[14] An existing component of the FTSE EPRA/NAREIT Indices would be removed from the Indices unless it has an investable market capitalization above certain thresholds determined by FTSE EPRA/NAREIT.

Under normal circumstances, the quarterly review occurs on the Wednesday following the first Friday of March, June, September and December, using data from the close of business on the first Friday of March, June, September and December. Adjustments in stock weightings and components resulting from the periodic assessment become effective on the next trading day following the third Friday of March, June, September and December.

In between reviews, a new issue with an investable market capitalization (*i.e.*, after the application of investability weightings) of equal or greater than the amounts as determined by FTSE EPRA/NAREIT for the respective region would be included into the FTSE EPRA/NAREIT Indices after the close of business on the first day of trading of the new issue.

The FTSE EPRA/NAREIT Indices are calculated in real time and generally published throughout the business day, and distributed primarily through international data vendors. Daily values are also made available to major newspapers and can be found at the FTSE Web site and the EPRA Web site. The FTSE EPRA/NAREIT Indices are published and calculated using trading values (real-time throughout the day, and closing values at the end of the day) and WM/Reuters Closing Spot Rates for currency values. The Fund would issue and redeem, on a continuous basis, shares at its net asset value (''NAV'') only in blocks of 50,000 shares or multiples thereof (each, a ''Creation Unit'' or a ''Creation Unit Aggregation'').

Only certain large institutional investors known as Authorized Participants (as defined below) may purchase or redeem Creation Units directly with the Fund at the NAV. These transactions are usually in exchange for a basket of securities similar to the Fund's portfolio and an amount of cash. Except when aggregated in Creation Units, Shares of the Fund are not redeemable securities. Shareholders who are not Authorized Participants may not redeem shares directly from the Fund.

The Fund would impose a purchase transaction fee and a redemption transaction fee to offset transfer and other transaction costs associated with the issuance and redemption of Creation Units. Purchasers and redeemers of Creation Units for cash are required to pay an additional variable charge to compensate for brokerage and market impact expenses. The creation and redemption transaction fees for creations and redemptions in-kind for the Fund are described in the Fund's prospectus.

All orders to purchase Shares of the Fund in Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either: (i) A ''Participating Party,'' *i.e.*, a broker-dealer or other participant in the clearing process through the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC''), a clearing agency that is registered with the Commission (''Clearing Process''); or (ii) a Depository Trust Company (''DTC'') Participant that has executed a ''Participant Agreement'' with the Distributor.

Consideration for Purchase of Creation Units

The consideration for purchase of Creation Unit Aggregations of the Fund generally consists of the in-kind deposit of a designated portfolio of equity securities, the Deposit Securities, which constitutes a substantial replication, or a portfolio sampling representation, of the stocks included in the Fund's Underlying Index and an amount of

[12] ''Representative sampling'' is an indexing strategy that involves investing in a representative sample of the securities, included in the Underlying Index, that collectively have an investment profile similar to the Underlying Index. The securities selected are expected to have, in the aggregate, investment characteristics (based on factors such as market capitalization and industry weightings), fundamental characteristics (such as return variability, earnings valuation, and yield), and liquidity measures similar to those of the Underlying Index. The Fund may or may not hold all of the securities that are included in the Underlying Index.

[13] All securities in the Index are listed on exchanges with last-sale reporting. *See* e-mail on June 13, 2007 from Tim Malinowski, Director, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division, Commission (''June 13th E-mail'').

[14] *See* June 13th E-mail.

cash (''Cash Component'') computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation.

The Cash Component is sometimes also referred to as the ''Balancing Amount.'' The Cash Component serves the function of compensating for any difference between the NAV per Creation Unit Aggregation and the Deposit Amount. The Cash Component is an amount equal to the difference between the NAV of the shares (per Creation Unit Aggregation) and the ''Deposit Amount,'' which is an amount equal to the market value of the Deposit Securities. If the Cash Component is a positive number (*i.e.*, the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the creator would deliver the Cash Component. If the Cash Component is a negative number (*i.e.*, the NAV per Creation Unit Aggregation is less than the Deposit Amount), the creator would receive the Cash Component. Computation of the Cash Component excludes any stamp duty or other similar fees and expenses payable upon transfer of beneficial ownership of the Deposit Securities, which shall be the sole responsibility of the Authorized Participant.

BGFA, through the NSCC, makes available on each business day, prior to 9:30 a.m. Eastern Time, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund. Such Deposit Securities are applicable, subject to any adjustments as described below, to effect creations of Creation Unit Aggregations of the Fund until such time as the next-announced composition of the Deposit Securities is made available. The identity and number of shares of the Deposit Securities required for the Fund Deposit changes as rebalancing adjustments and corporate action events are reflected from time to time by BGFA with a view to the investment objective of the Fund. The composition of the Fund may also change in response to adjustments to the weighting or composition of the component securities of the Underlying Index.

In addition, the Trust reserves the right to permit or require the substitution of an amount of cash (*i.e.*, a ''cash in lieu'' amount) to be added to the Cash Component to replace any Deposit Security that may not be available in sufficient quantity for delivery or that may not be eligible for transfer through the systems of DTC or the Clearing Process. The Trust also reserves the right to permit or require a ''cash in lieu'' amount where the delivery of the Deposit Security by the Authorized Participant would be restricted under the securities laws or where the delivery of the Deposit Security to the Authorized Participant would result in the disposition of the Deposit Security by the Authorized Participant becoming restricted under the securities laws, or in certain other situations. The adjustments described above would reflect changes known to BGFA on the date of announcement to be in effect by the time of delivery of the Fund Deposit, in the composition of the Underlying Index or resulting from certain corporate actions.

Redemption of Shares in Creation Units

Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through Investors Bank and only on a business day. The Fund would not redeem Shares in amounts less than Creation Unit Aggregations. A beneficial owner must accumulate enough Shares in the secondary market to constitute a Creation Unit Aggregation to have such Shares redeemed by the Trust. There can be no assurance, however, that there would be sufficient liquidity in the public trading market at any time to permit assembly of a Creation Unit Aggregation. Investors should expect to incur brokerage and other costs in connection with assembling a sufficient number of Shares to constitute a redeemable Creation Unit Aggregation.

With respect to the Fund, BGFA, through the NSCC and the Distributor, would make available immediately prior to 9:30 a.m. Eastern Time on each business day, the identity of the Fund securities that would be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit Aggregation would generally consist of Fund Securities—as announced on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (''Cash Redemption Amount''), less a redemption transaction fee as described below. If the Fund Securities have a value greater than the NAV of the Shares, a compensating cash payment equal to the difference must be made by or through an Authorized Participant by the redeeming shareholder.

Redemptions of shares for Fund Securities would be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Unit Aggregations for cash to the extent that the Trust could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. An Authorized Participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit Aggregation, may be paid an equivalent amount of cash. This would specifically prohibit delivery of Fund Securities that are not registered in reliance upon Rule 144A under the Securities Act of 1933 (''Securities Act'') to a redeeming beneficial owner that is not a ''qualified institutional buyer,'' as such term is defined under Rule 144A of the Securities Act. The Authorized Participant may request the redeeming beneficial owner of the shares to complete an order form or to enter into agreements with respect to such matters as compensating cash payment.

The right of redemption may be suspended or the date of payment postponed for the Fund: (i) For any period during which the Exchange is closed (other than customary weekend and holiday closings); (ii) for any period during which trading on the Exchange is suspended or restricted; (iii) for any period during which an emergency exists as a result of which disposal of the shares of the Fund or determination of the Fund's NAV is not reasonably practicable; or (iv) in such other circumstances as is permitted by the Commission.

Dividends and Distributions

Dividends from net investment income, if any, would be declared and paid at least annually by the Fund. Distributions of net realized securities gains, if any, generally would be declared and paid once a year, but the Trust may make distributions on a more frequent basis for the Fund. The Trust reserves the right to declare special distributions if, in its reasonable

discretion, such action is necessary or advisable to preserve the status of the Fund as a RIC or to avoid imposition of income or excise taxes on undistributed income.

Dividends and other distributions on shares would be distributed on a pro-rata basis to beneficial owners of such shares. Dividend payments would be made through DTC Participants to beneficial owners then of record with proceeds received from the Fund.

Dividend Reinvestment Service

No dividend reinvestment service would be provided by the Trust. Broker-dealers may make available the DTC book-entry Dividend Reinvestment Service for use by beneficial owners of the Fund for reinvestment of their dividend distributions. Beneficial owners should contact their broker to determine the availability and costs of the service and the details of participation therein. Brokers may require beneficial owners to adhere to specific procedures and timetables. If this service is available and used, dividend distributions of both income and realized gains would be automatically reinvested in additional whole shares of the Fund purchased in the secondary market.

Availability of Information Regarding Shares and Underlying Index

The Advisor, through the NSCC, would make available on each business day, prior to 9:30 a.m. Eastern Time, a list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit (based on information at the end of the previous business day) for the Fund.

Additional information regarding the indicative value of shares of the Fund, also known as the ''indicative optimized portfolio value'' (''IOPV''), would be disseminated at least every 15 seconds through the Consolidated Tape from 9:30 a.m. to 4:15 p.m. Eastern Time by the Exchange or a major market data vendor. If the IOPV does not change during the Exchange's Opening Session or Late Trading Session, then the last official calculated IOPV would remain available to investors.[15] The IOPV does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a ''real-time'' update of the NAV, which is computed only once a day. The IOPV is generally determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities held by the Fund.

According to the Fund's Registration Statement, Investors Bank would calculate the NAV for the Fund generally once daily Monday through Friday generally as of the regularly scheduled close of business of the NYSE (normally 4 p.m. Eastern Time) on each day that the NYSE is open for trading, based on prices at the time of closing, provided that: (i) Any assets or liabilities denominated in currencies other than the U.S. dollar shall be translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more major banks or dealers that makes a two-way market in such currencies (or a data service provider based on quotations received from such banks or dealers); and (ii) U.S. fixed income assets may be valued as of the announced closing time for trading in fixed income instruments on any day that the Securities Industry and Financial Markets Association (SIFMA) announces an early closing time. The NAV of the Fund would be calculated by dividing the value of the net assets of the Fund (*i.e.*, the value of its total assets less total liabilities) by the total number of outstanding shares of the Fund, generally rounded to the nearest cent.

In calculating a Fund's NAV, a Fund's investments are generally valued using market valuations. If current market valuations are not readily available or such valuations do not reflect current market values, the affected investments would be valued using fair value pricing pursuant to the pricing policy and procedures approved by the Board of Trustees. The frequency with which a Fund's investments are valued using fair value pricing is primarily a function of the types of securities and other assets in which a Fund invests pursuant to its investment objective, strategies, and limitations.[16] Because foreign markets may be open on different days than the days during which a shareholder may purchase the Fund's Shares, the value of the Fund's investments may change on days when shareholders are not able to purchase the Fund's Shares.

The value of assets denominated in foreign currencies is converted into U.S. dollars using exchange rates deemed appropriate by BGFA. Any use of a different rate from the rates used by an Index Provider may adversely affect a Fund's ability to track its Underlying Index.

The NAV for the Fund would be calculated and disseminated daily. In addition, the Trust's Web site would include the Fund's Prospectus and SAI, information regarding the Underlying Index for the Fund, the prior business day's NAV, and the mid-point of the bid-ask spread at the time of calculation of the NAV (''Bid/Ask Price''), a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV, the component securities of the Underlying Index, and a description of the methodology used in these computations. The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the exchange on which the shares are listed for trading. The Exchange would also make available quotation information including Total Cash Amount Per Creation Unit, Shares Outstanding, and the Fund's NAV on a daily basis by means of CTA and CQ High Speed Lines.

BGFA has informed the Exchange that the Fund would make the Fund's NAV available to all market participants at the same time. If the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund Shares.

The closing prices of the Fund's Deposit Securities are readily available from, as applicable, the relevant exchange, automated quotation systems, and published or other public sources or on-line information services that are major market data vendors, such as Bloomberg or Reuters. Similarly, information regarding market prices and volume of Shares would be broadly available on a real-time basis throughout the trading day. Quotation and last-sale information for the Shares would be widely disseminated pursuant to the CTA Plan. The previous day's closing price and volume information for the Shares would be published daily in the financial sections of many newspapers.

The value of the Underlying Index would be updated intra-day as individual component securities change in price and would be widely disseminated at least every 60 seconds

[15] *See* e-mail on June 21, 2007 from Andrew Stevens, Assistant General Counsel, NYSE Group, Inc. to Mitra Mehr, Special Counsel, Division, Commission. All of the exchanges on which the underlying components of the Index trade will be closed during the Exchange's Opening Session. *See* June 13th E-mail.

[16] Valuing a Fund's investments using fair value pricing would result in using prices for those investments that may differ from current market valuations. Use of fair value prices and certain current market valuations could result in a difference between the prices used to calculate a Fund's NAV and the prices used by the Fund's Underlying Index, which in turn could result in a difference between the Fund's performance and the performance of the Fund's Underlying Index.

throughout NYSE Arca Marketplace trading hours (4 a.m. to 8 p.m. Eastern Time) by one or more major market data vendors. If the official index value does not change during some or all of the period when trading is occurring on the NYSE Arca Marketplace (for example, for indexes of non-U.S. component stocks because of time zone differences or holidays in the countries where such indexes' component stocks trade), then the last calculated official index value would remain available throughout NYSE Arca Marketplace trading hours.

The Underlying Index

As of May 2, 2007, the FTSE EPRA/NAREIT Asia Index component securities had a market capitalization of approximately $300,860,000,000, representing 85 securities. The average market capitalization was approximately $3,540,000,000. The five highest weighted securities represented approximately 39.44% of the index weight. The heaviest weighted security represented approximately 10.2% of the index weight.[17]

Criteria for Initial and Continued Listing

The Shares would be required to satisfy the criteria for initial and continued listing of ICUs under NYSE Arca Equities Rules 5.2(j)(3) (including the ''generic'' listing standards under Commentary .01 except the trading volume requirement of Commentary .01(a)(B)(2)) [18] and 5.5(g)(2). For instance, a minimum of two Creation Units (at least 100,000 Shares) would be required to be outstanding at the start of trading. This minimum number of Shares required to be outstanding at the start of trading would be comparable to requirements that have been applied to previously listed series of ICUs. The Exchange believes that the proposed minimum number of Shares outstanding at the start of trading is sufficient to provide market liquidity.

The continued listing criteria for ICUs under NYSE Arca Equities Rule 5.5(g)(2) provide that the Exchange would consider the suspension of trading and delisting (if applicable) of the Shares in any of the following circumstances:

- Following the initial 12-month period beginning upon the commencement of trading of the Shares of the Fund, there are fewer than 50 record and/or beneficial holders of such Shares for 30 or more consecutive trading days;
- The value of the Underlying Index of the Fund is no longer calculated or available; or
- Such other event occurs or condition exists that, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

In addition, the Exchange would remove the Shares from trading and listing upon termination of the Trust. The Exchange represents the Trust is required to comply with Rule 10A–3 under the Act [19] for the initial and continued listing of the Shares.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Fund on the Exchange are the same as those set forth in NYSE Arca Equities Rule 7.34 (4 a.m. to 8 p.m. Eastern Time). The minimum trading increment for shares of the Fund on the Exchange would be $0.01.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (i) The extent to which trading is not occurring in the securities comprising an Underlying Index and/or the financial instruments of a Fund; or (ii) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in the Shares could be halted pursuant to the Exchange's ''circuit breaker'' rule [20] or by the halt or suspension of trading of the underlying securities. If the IOPV or the Index value is not being calculated or widely disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or wide dissemination of the IOPV or the Index value occurs. If the interruption to the calculation or wide dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption.[21]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

The Exchange's current trading surveillance focuses on detecting when securities trade outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG.[22] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange would inform its ETP Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin would discuss the following: (i) The procedures for purchases and redemptions of Shares in Creation Unit Aggregations (and that Shares are not individually redeemable); (ii) NYSE Arca Equities Rule 9.2(a),[23] which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (iii) how information regarding the IOPV is disseminated; (iv) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (v) trading information.

In addition, the Bulletin would reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Bulletin

[17] Source: Bloomberg.

[18] *See* June 28th E-mail, *supra* note 10.

[19] 17 CFR 240.10A–3.

[20] *See* NYSE Arca Equities Rule 7.12.

[21] *See* NYSE Arca Equities Rule 5.5(g)(2)(b).

[22] For a list of the current members and affiliate members of ISG, *see http://www.isgportal.com.* The Exchange notes that not all of the underlying securities may trade on exchanges that are members or affiliate members of the ISG.

[23] NYSE Arca Equities Rule 9.2(a) provides that an ETP Holder, before recommending a transaction, must have reasonable grounds to believe that the recommendation is suitable for its customer based on any facts disclosed by the customer as to his other security holdings and as to his financial situation and needs. Further, the rule provides, with a limited exception, that prior to the execution of a transaction recommended to a non-institutional customer, the ETP Holder shall make reasonable efforts to obtain information concerning the customer's financial status, tax status, investment objectives, and any other information that it believes would be useful to make a recommendation. *See* Securities Exchange Act Release No. 54045 (June 26, 2006), 71 FR 37971 (July 3, 2006) (SR–PCX–2005–115).

would also discuss any exemptive, no-action, and interpretive relief granted by the Commission from section 11(d)(1) of the Act[24] and certain rules under the Act, including Rule 10a-1, Regulation SHO, Rule 10b–10, Rule 14e–5, Rule 10b–17, Rule 11d1–2, Rules 15c1–5 and 15c1–6, and Rules 101 and 102 of Regulation M under the Act.

The Bulletin would also disclose that the NAV for the Shares would be calculated after 4 p.m. Eastern Time each trading day.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[25] in general, and furthers the objectives of section 6(b)(5),[26] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2007–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–47 and should be submitted on or before July 30, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[27] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[28] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Although NYSE Arca Equities Rule 5.2(j)(3) permits the Exchange to either originally list and trade ICUs or trade ICUs pursuant to UTP, the Shares do not meet the ''generic'' listing requirements of NYSE Arca Rule 5.2(j)(3) (permitting listing in reliance upon Rule 19b–4(e) under the Act[29]) because the components of the Index underlying the Fund do not meet the initial listing requirements of Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3). Commentary .01(a)(B)(2) to NYSE Arca Equities Rule 5.2(j)(3) requires that, upon the initial listing of any series of ICUs, the component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio each must have a minimum worldwide trading volume during each of the last six months of at least 250,000 shares. The Exchange represents that Index component stocks each having a worldwide monthly trading volume of at least 250,000 shares in the aggregate accounted for 89.3% of the weight of the Underlying Index in the aggregate during each month from November 2006 through April 2007.[30] Because such percentage misses the minimum required threshold by approximately 0.7%, the Shares cannot be listed and traded pursuant to NYSE Arca Equities Rule 5.2(j)(3). The Commission believes, however, that the listing and trading of the Shares, would be consistent with the Act. The Commission notes that it has previously approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain quantitative generic listing criteria by only a slight margin.[31]

[24] 15 U.S.C. 78k(d)(1).

[25] 15 U.S.C. 78f(b).

[26] 15 U.S.C. 78f(b)(5).

[27] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 240.19b–4(e).

[30] *See* supra note 7.

[31] *See* Securities Exchange Act Release Nos. 55890 (June 8, 2007), 72 FR 33264 (June 15, 2007) (NYSEArca–2007–37) (approving the listing and trading of shares of four funds of StateShares, Inc. where the Underlying Index of each fund did not meet the requirement of NYSE Arca's generic listing standards that component stocks representing at least 90% of the weight of each Underlying Index have a minimum monthly trading volume during each of the last six months of at least 250,000 shares); 55699 (May 3, 2007), 72 FR 26435 (May 9, 2007) (SR–NYSEArca–2007–27) (approving the listing and trading of shares of the iShares FTSE NAREIT Residential Index Fund where the weighting of the five highest components of the underlying index was marginally higher than that required by NYSE Arca's generic listing standards); and 52826 (November 22, 2005), 70 FR 71874 (November 30, 2005) (SR–NYSEArca–2005–67) (approving the listing and trading of shares of the iShares Dow Jones U.S. Energy Sector Index Fund and the iShares Dow Jones U.S.

Continued

The Commission further believes that the proposal is consistent with section 11A(a)(1)(C)(iii) of the Act,[32] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotation and last-sale information for the Shares will be widely disseminated pursuant to the CTA Plan. Moreover, the Index value will be calculated and disseminated at least every 60 seconds throughout NYSE Arca's three trading sessions, and the IOPV will be calculated and disseminated every 15 seconds during the Exchange's Core Trading Session. The NAV of the Fund will be calculated and disseminated once each trading day. The Fund's Web site would include, among other things, the Fund's prospectus and SAI, the prior business day's closing NAV, a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV, the component securities of the Underlying Index, and a description of the methodology used in these computations. In sum, the Commission believes that the proposal is reasonably designed to facilitate access to and provide fair disclosure of information that could assist investors in properly valuing the Shares.

The Commission finds that the Exchange's proposed rules and procedures for trading of the Shares are consistent with the Act. The Shares will trade as equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange would utilize its existing surveillance procedures applicable to derivative products to monitor trading in the Shares. These procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules. The Exchange may obtain information via the ISG from other exchanges that are members or affiliates of the ISG.

2. The Index Provider is neither a registered broker-dealer nor is it affiliated with the Trust, the Advisor (or its affiliates), or the Distributor.

3. If the IOPV or the Index value applicable to a series of Shares is not being calculated and disseminated as required, the Exchange may halt trading during the day in which the interruption to the calculation or dissemination of the IOPV or the Index value occurs. If the interruption to the calculation and dissemination of the IOPV or the Index value persists past the trading day in which it occurred, the Exchange would halt trading no later than the beginning of the trading day following the interruption. If the Exchange becomes aware that the NAV is not disseminated to all market participants at the same time, the Exchange would halt trading in the Fund Shares.

4. Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares.

This order is conditioned on the Exchange's adherence to the foregoing representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. The Commission notes that it has previously approved exchange rules that contemplate the listing and trading of derivative securities products based on indices that were composed of stocks that did not meet certain generic listing criteria by similar amounts.[33] Although the Fund Shares do not meet the initial ''generic'' listing requirement of NYSE Arca Equities Rule 5.2(j)(3) and therefore cannot be listed pursuant to Rule 19b–4(e), the Commission believes that the Shares are substantially similar to the other ICUs trading on the Exchange and will otherwise comply with all other ''generic'' listing requirements under Commentary .01(a)(B) to NYSE Arca Equities Rule 5.2(j)(3).[34] The listing and trading of the Shares do not appear to present any new or significant regulatory concerns. Therefore, the Commission believes that accelerating approval of this proposal would allow the Shares to trade on the Exchange without undue delay and should generate additional competition in the market for such products.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[35] that the proposed rule change (SR–NYSEArca–2007–47), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Florence E. Harmon,

Deputy Secretary.

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Telecommunications Sector Index Fund where the weightings of the most heavily weighted component stock and the five highest components of the underlying indexes, respectively, were higher than that required by NYSE Arca, Inc.'s relevant generic listing standards). *See also* Securities Exchange Act Release No. 46306 (August 2, 2002), 67 FR 51916 (August 9, 2002) (SR–NYSE–2002–28) (approving the trading pursuant to UTP of shares of Vanguard Total Stock Market—VIPERs, iShares Russell 2000 Index Funds, iShares Russell 2000 Value Index Funds and iShares Russell 2000 Growth Funds, none of which met the trading volume requirement of the generic listing criteria for NYSE).

[32] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[33] *See supra* note 31.

[34] *Id.*

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55951; File No. SR–Phlx–2007–35]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Options on Commodity Pool ETFs

June 25, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. On May 23, 2007, Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend certain rules to permit the listing and trading of options on equity interests issued by trust issued receipts (''Commodity TIRs''), partnership units, and other entities (referred herein to as ''Commodity Pool ETFs'') that hold or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 is incorporated in this notice.

invest in commodity futures products. The text of the proposed rule change is available on Phlx's Web site at *http://www.phlx.com,* at Phlx's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to enable the listing and trading on the Exchange of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products. As a result, Commodity Pool ETFs are subject to the Commodity Exchange Act due to their status as a commodity pool,[4] and therefore, are regulated by the Commodity Futures Trading Commission (''CFTC'').[5] Commodity Pool ETFs may hold or trade in one or more types of investments that may include any combination of securities, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts.

Currently, Commentary .06 to Phlx Rule 1009 provides that securities deemed appropriate for options trading shall include shares or other securities (''Exchange-Traded Fund Shares'') that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as a national market system security, and that represent an interest in a registered investment company organized as an open-end management investment company, a unit investment trust or a similar entity which holds securities constituting or otherwise based on or representing an investment in an index or portfolio of securities.

The Exchange proposes to amend Commentary .06 to Rule 1009 to expand the type of options to include the listing and trading of options based on shares of Commodity Pool ETFs (the ''Shares'') that may hold or invest directly or indirectly in commodity futures products, including but not limited to, commodity futures contracts, options on commodity futures contracts, swaps, and forward contracts. As part of this revision to Commentary .06 to Rule 1009, the Exchange proposes to add subsection (b)(iv) requiring for Commodity Pool ETFs that a comprehensive surveillance sharing agreement be in place with the marketplace or marketplaces with last sale reporting that represent(s) the highest volume in such commodity futures contracts and/or options on commodity futures contracts on the specified commodities or non-U.S. currency, which are utilized by the national securities exchange where the underlying Commodity Pool ETFs are listed and traded.

As set forth in proposed amended Commentary .06 to Rule 1009, Commodity Pool ETFs must be traded on a national securities exchange or through the facilities of a national securities association and must be reported as a national market security. In addition, shares of Commodity Pool ETFs must meet either: (i) The criteria and guidelines under Commentary .01 to Rule 1009; or (ii) be available for creation or redemption each business day in cash or in kind from the commodity pool, trust, or similar entity at a price related to net asset value. In addition, the commodity pool, trust or other similar entity shall provide that shares may be created even though some or all of the securities needed to be deposited have not been received by the commodity pool, trust or other similar entity, provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the commodity pool, trust, or other similar entity which underlies the option as described in the prospectus.

New Commentary .08 to Rule 1010 defines ''Partnership Units.'' The definition tracks the definition that recently has been proposed by the Chicago Board Options Exchange (''CBOE'') in its proposal to list and trade Commodity Pool ETFs, and approved by the Commission.[6] The proposed definition of ''Partnership Units'' includes a broad universe of securities, including those of entities that invest in physical commodities. However, the current filing proposes to list and trade options only on Commodity Pool ETFs that invest in a combination of commodity derivative products, and not in physical commodities.

Under the applicable continued listing criteria in Commentary .08 to Phlx Rule 1010, the Shares may be subject to delisting as follows: (1) Following the initial twelve-month period beginning upon the commencement of trading of the Shares, there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (2) the value of the index or, pursuant to new language being added to the Commentary by this proposed rule change, the value of the non-U.S. currency, portfolio of commodities including commodity futures contracts, options on commodity futures contracts, swaps, forward contracts and/or options on physical commodities, or portfolio of securities on which the Shares are based is no longer calculated or available; or (3) such other event occurs or condition exists that in the opinion of the Exchange makes further dealing on the Exchange inadvisable. Additionally, the Shares shall not be deemed to meet the requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Shares, if the Shares are halted from trading on their primary market, or if the Shares are delisted in accordance with the terms of Phlx Rule 1010, or the value of the index or portfolio on which

[4] A ''commodity pool'' is defined in CFTC Regulation 4.10(d)(1) as any investment trust, syndicate, or similar form of enterprise operated for the purpose of trading commodity interests. CFTC regulations further provide that a ''commodity interest'' means a commodity futures contract and any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act. *See* CFTC Regulation 4.10(a).

[5] The manager or operator of a ''commodity pool'' is required to register, unless applicable exclusions apply, as a commodity pool operator (''CPO'') and commodity trading advisor (''CTA'') with the CFTC and become a member of the National Futures Association.

[6] *See* SR–CBOE–2007–21, Amendment No. 1. CBOE explained in its proposed rule change that the American Stock Exchange (''Amex'') had filed a proposed rule change seeking to add ''Commodity Pool ETFs'' to the types of securities on which it lists equity options, and that in Section 1(a) of Amex's filing, the term ''Commodity Pool ETFs'' is defined to include, but is not limited to, Trust Issued Receipts, Partnership Units and other entities. *See* Securities Exchange Act Release No. 55187 (January 29, 2007), 72 FR 5467 (February 6, 2007) (Notice of Filing of Proposed Rule Change Relating to Options Based on Commodity Pool ETFs). CBOE noted that it did not have a definition of Partnership Units and was proposing to add one, as Phlx is doing now. The definition Phlx is proposing to add is the same as that proposed by CBOE. CBOE's proposal was approved in Securities Exchange Act Release No. 55630 (April 16, 2007), 72 FR 19993 (April 20, 2007).

the Shares are based is no longer calculated or available.

The Exchange further proposes to amend Phlx Rule 1022 to ensure that the specialist and Registered Options Traders handling the Shares provide the Exchange with all necessary information relating to their trading in the applicable physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity. In addition, the revision to Phlx Rule 1022 will prohibit a specialist or Registered Options Trader from engaging in trading activities in physical commodities, physical commodity options, commodity futures contracts, options on commodity futures contracts, any other derivatives based on such commodity from trading in an account which has not been reported to the Exchange.

The Exchange also proposes to amend Commentary .02 to Rule 1022 to require Specialists and Registered Options Traders in commodity futures contracts, options on commodity futures contracts or any other derivatives based on such commodity, to make available to the Exchange such books, records or other information pertaining to transactions in the applicable physical commodity, physical commodity options, commodity futures contracts, options on commodity futures contracts, or any other derivatives on such commodity, as may be requested by the Exchange.

This proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading. The Exchange notes that The DB Commodity Index Tracking Fund (the ''DBC Fund''), the United States Oil Fund, L.P. (the ''Oil Fund''), and the PowerShares DB G10 Currency Harvest Fund (the ''DBV Fund'') are listed and traded on the American Stock Exchange. The DBC Fund is a Commodity TIR and tracks the performance of the Deutsche Bank Liquid Commodity Index TM—Excess Return, while the Oil Fund is a Partnership Unit and tracks the spot price of West Texas Intermediate light, sweet crude oil delivered to Cushing, Oklahoma.

The DBC Fund is a ''feeder fund'' that invests substantially all of its assets in the DB Commodity Index Tracking Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on aluminum, gold, corn, wheat, heating oil and light, sweet crude oil. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

The DBV Fund is a ''feeder fund'' that invests substantially all of its assets in the PowerShares DB G10 Currency Harvest Master Fund, and the Master Fund in turn maintains a portfolio of exchange-traded futures on foreign currencies that comprise the G–10 countries. The Index is derived from the prices of those futures contracts. The Master Fund's portfolio is managed on an ongoing basis by DB Commodity Services LLC, a registered CPO and CTA, so that the value of the portfolio closely tracks the value of the Index over time.

Unlike the DBC and DBV Funds, the Oil Fund does not invest through a master-feeder structure but rather trades directly in futures on crude and heating oil, natural gas, gasoline and other petroleum-based fuels, options on such futures contracts, forward contracts on oil and other over-the-counter derivatives based on the price of oil, other petroleum-based fuels, the futures contracts described above, and the indexes based on any of the foregoing. The Oil Fund's portfolio is managed by Victoria Bay Asset Management LLC with the aim of tracking the West Texas Intermediate light, sweet crude oil futures contract listed and traded on the New York Mercantile Exchange.

The Exchange believes that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the near future and also believes that the proposed amendment to the Exchange's listing criteria for options on Commodity TIRs and Partnership Units is necessary to ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched as well as any other similar Commodity Pool ETFs that may be listed and traded in the future.

The Exchange represents that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG and expects that it will enter into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represents that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the primary exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded.

The Exchange also added rule text relating to the prevention of misuse of material nonpublic information. Under the proposed rules, members and member organizations must establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the member's business, to prevent the misuse of material nonpublic information relating to, among other things, options on Commodity Pool ETFs.

The addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits [7] or margin.[8]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(5) of the Act [10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2007–35 on the subject line.

[7] *See* Phlx Rules 1001 and 1002.

[8] *See* Phlx Rule 722.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–35. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–07 and should be submitted on or before July 30, 2007.

IV. Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange [11] and, in particular, the requirements of Section 6 of the Act.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

Surveillance

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options based on Commodity Pool ETFs. The Exchange may obtain trading information via the ISG from other exchanges who are members or affiliates of the ISG and expects that it will enter into numerous comprehensive surveillance sharing agreements with various commodity futures exchanges worldwide. Prior to listing and trading options on Commodity Pool ETFs, the Exchange represented that it will either have the ability to obtain specific trading information via ISG or through a comprehensive surveillance sharing agreement with the primary exchange or exchanges where the particular commodity futures and/or options on commodity futures are traded. In addition, the Exchange represented that the addition of Commodity Pool ETF options will not have any effect on the rules pertaining to position and exercise limits [14] or margin.[15]

Listing and Trading of Options on Commodity Pool ETFs

The Commission notes that, pursuant to the proposed rule change, a Commodity Pool ETF will be subject to the provisions of Exchange Rules 1009 and 1010. These provisions include requirements regarding initial and continued listing standards, as well as the creation/redemption process for Commodity Pool ETFs. All Commodity Pool ETFs must be traded through a national securities exchange or through the facilities of a national securities association and reported as a national market system security.

The Commission believes that this proposal is necessary to enable the Exchange to list and trade options on an expanding range of Commodity Pool ETFs currently approved for trading and that it is reasonable to expect other types of Commodity Pool ETFs to be introduced for trading in the future. This proposal would help ensure that the Exchange will be able to list options on Commodity Pool ETFs that have been recently launched, as well as any other similar Commodity Pool ETFs that may be listed and traded in the future thereby offering investors greater option choices.

Acceleration

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission notes that the proposal is consistent with previously approved proposals to enable the listing and trading of options on interests in Commodity Pool ETFs that trade directly or indirectly commodity futures products.[17] Therefore, the Commission does not believe that the proposed rule change, as amended, raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit investors to benefit from the flexibility afforded by trading these products without delay.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Phlx–2007–35), as amended, is hereby approved on an accelerated basis.[18]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13155 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Phlx Rules 1001 and 1002.

[15] *See* Phlx Rule 722.

[16] 15 U.S.C. 78s(b)(2).

[17] *See* Securities Exchange Act Release Nos. 55547 (March 28, 2007), 72 FR 16388 (April 4, 2007) (SR–Amex–2006–110); 55630 (April 13, 2007), 72 FR 19993 (April 20, 2007) (SR–CBOE–2007–21); and 55635 (April 16, 2007), 72 FR 19999 (April 20, 2007) (SR–ISE–2007–16).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55993; File No. SR–Phlx–2007–44]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Permanent a Pilot Program Relating to Split Price Priority in Open Outcry

June 29, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 21, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Phlx. The Exchange filed the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to adopt, on a permanent basis, a rule that is currently subject to a pilot program (''pilot'') as set forth in Rule 1014(g)(i)(B) relating to priority on split-price transactions in open outcry. The pilot currently affords priority to a member with an order for at least 100 contracts [5] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield priority, including to existing customer interest in the limit order book. The pilot also establishes priority for in-crowd participants in split price transactions represented in open outcry over the quotations of participants that are not located in the crowd (*i.e.*, out-of-crowd Streaming Quote Traders (''SQTs'') [6] and Remote Streaming Quote Traders (''RSQTs'') [7]) even where the market has a bid/ask differential of one minimum trading increment.[8] The current pilot is scheduled to expire June 30, 2007.

The text of the proposed rule change is available on the Phlx Web site (*http://www.phlx.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Orders for a size of less than 100 contracts are not affected by the current pilot and would not be affected by this proposed rule change.

[6] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. (AUTOM is Phlx's Automated Options Market.) An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(A).

[7] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Phlx Rule 1014(b)(ii)(B).

[8] Generally, all options on stocks, indexes, and exchange traded funds quoting in decimals at $3.00 or higher have a minimum increment of $.10, and those quoting in decimals under $3.00 have a minimum increment of $.05. *See* Phlx Rule 1034(a).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish, on a permanent basis, Exchange Rule 1014(g)(i)(C), concerning priority in split-price transactions, which by virtue of their size and the need to execute them at multiple prices, may be difficult to execute without a limited exception to current Exchange priority rules, as described below. The pilot is scheduled to expire June 30, 2007.

The pilot was originally adopted in June 2005,[9] and subsequently extended in December 2005.[10] In May 2006, the pilot was expanded to include priority for in-crowd participants in both trades of the split price transaction where there is a minimum trading increment market, but only over RSQTs and out-of-crowd SQTs in that circumstance.[11] Such priority applies only when the bid and/or offer, as applicable, represent the quotation of an out-of-crowd SQT or RSQT.

The current rule is applicable to equity options (including options overlying Exchange Traded Fund Shares (''ETFs'')).[12] The rule operates in two ways. First, it permits a member with an order for at least 100 contracts [13] who buys (sells) at least 50 contracts at a particular price to have priority over all others in purchasing (selling) up to an equivalent number of contracts of the same order at the next lower (higher) price without being required to yield priority, including to existing customer interest in the limit order book. Absent this rule, such orders would be required to yield priority.[14]

For example, where the market is $.25—$.35, a Floor Broker representing an order to purchase 100 contracts that executes a purchase of 50 of those contracts at a price of $.30 has priority over all market participants to purchase the remaining 50 contracts in the order at $.25. Two trades would be reported to the tape, one a purchase of 50 contracts at $.30, and the other a purchase of 50 contracts at $.25. The effect to that Floor Broker's customer would be a net purchase price of $.275 for 100 contracts.

Second, as stated above, the rule contemplates that a member who purchases (sells) 50 or more option contracts of a particular series at a particular price or prices has priority at the next lower (higher) price in purchasing (selling) up to the equivalent number of option contracts of the same series that he purchased (sold) at the higher (lower) price or prices. The pilot, respecting split price transactions, also affords priority to members physically located in the crowd even where the market has a bid/ask differential of one minimum trading increment. The Exchange believes that this provision should enable it to compete for order flow in situations where Floor Brokers seek split price executions in open outcry when the market consists of RSQT quotations and/or SQT quotations where the SQT is located out of that trading crowd with a bid/ask differential of one minimum trading increment, and the bid and/or offer represent quotations of members physically located out of the crowd.

For example, assume a Floor Broker represents an order to purchase 100 contracts in a series where the market is $.25 bid, $.30 offer, and both the bid and offer represent quotations submitted by out-of-crowd SQTs [15] or RSQTs. Under the proposal, the Floor Broker and the contra-side participant in the trading crowd would be afforded priority over the out-of-crowd SQT or RSQT at both $.25 and $.30, because the bid/ask differential is one minimum

[9] *See* Securities Exchange Act Release No. 51820 (June 10, 2005), 70 FR 35759 (June 21, 2005) (SR–Phlx–2005–28).

[10] *See* Securities Exchange Act Release No. 53021 (December 23, 2005), 70 FR 77435 (December 30, 2005) (SR–Phlx–2005–86).

[11] *See* Securities Exchange Act Release No. 53874 (May 25, 2006), 71 FR 32171 (June 2, 2006) (SR–Phlx–2006–18).

[12] In a separate filing, the Exchange has requested approval of an amendment that would standardize the rule such that it would apply equally to options on equities, ETFs and index options. See SR–Phlx–2007–27.

[13] Orders for a size of less than 100 contracts are not affected by the current pilot and would not be affected by this proposed rule change.

[14] *See e.g.* Phlx Rule 119(a).

[15] The specialist and/or SQTs participating in a trading crowd may, in response to a verbal request for a market by a floor broker, state a bid or offer that is different than their electronically submitted bid or offer, provided that such stated bid or offer is not inferior to such electronically submitted bid or offer. *See* Phlx Rule 1014, Commentary .05(c).

trading increment ($.05). This would enable the Floor Broker to execute a split-price order at a net price ($.275) that improves the market. The effect (and ultimate benefit) to that Floor Broker's customer would be a net purchase price of $.275 for 100 contracts. This provision only applies regarding quotations submitted by out-of-crowd SQTs and RSQTs, and thus would not operate to afford priority over, for example, customer or broker-dealer orders or in-crowd SQT quotes.

The Exchange believes that, in situations where the market has a bid/ask differential of one minimum trading increment, it is potentially difficult for the Floor Broker to achieve price improvement for the Floor Broker's customer on the Phlx. Instead, the order might trade at another exchange that has no impediments, *i.e.*, rules that afford priority to in-crowd participants over out-of-crowd participants generally, regardless of split price priority.

The Exchange is seeking permanent approval of the pilot in order to ensure continuity of the rule and to eliminate the need for continued pilot extensions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, enabling Floor Brokers representing split price orders in open outcry to provide split-price executions at improved prices on behalf of customers by establishing a limited priority rule regarding split-price transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,[18] and Rule 19b–4(f)(6) thereunder.[19] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) [20] normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that implementing the pilot program on a permanent basis does not present any new issues, and waiving the 30-day pre-operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange's split-price priority rule in its present form to remain in effect without interruption. For these reasons, the Commission designates the proposed rule change to be effective upon filing with the Commission.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6).

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form: (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to: *rule-comments@sec.gov.* Please include File Number SR–Phlx–2007–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–44 and should be submitted on or before July 30, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13157 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–P

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.875 (4⅞) percent for the July–September quarter of FY 2007.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. E7–13150 Filed 7–6–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5862]

U.S. Advisory Commission for Public Diplomacy

Renewal of Advisory Commission. The Department of State has renewed the Charter of the U.S. Advisory Commission for Public Diplomacy.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 110–21 (2007).

The Commission is a bipartisan panel appointed by the President and created by Congress in 1948 to assess public diplomacy policies and programs of the U.S. government and publicly funded nongovernmental organizations. It submits reports to the Congress, the President, and the Secretary of State to develop a better understanding of and support for public diplomacy programs and activities.

For further information, please call the Commission at 202–203–7883.

Dated: June 28, 2007.

Carl Chan,

Interim Executive Director, ACPD, Department of State.

[FR Doc. E7–13214 Filed 7–6–07; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 5863]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting on July 27, 2007, at the Meridian International Center at 1630 Crescent Place, NW., Washington, DC 20009. The meeting will be held from 9 to 11 a.m. The Commissioners will discuss public diplomacy issues, including those related to Foreign Service personnel recruitment and career development and advancement.

The Advisory Commission was originally established under Section 604 of the United States Information and Exchange Act of 1948, as amended (22 U.S.C. 1469) and Section 8 of Reorganization Plan Numbered 2 of 1977. It was reauthorized pursuant to Public Law 110–21 (2007). The Commission is a bipartisan panel created by Congress in 1948 to assess public diplomacy policies and programs of the U.S. government and publicly funded nongovernmental organizations. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Barbara M. Barrett of Arizona, who is the Chairman; Harold Pachios of Maine; Ambassador Penne Percy Korth of Washington, DC.; Ambassador Elizabeth Bagley of Washington, DC.; Jay T. Snyder of New York; and Maria Sophia Aguirre of Washington, DC.

To attend the meeting and for more information, please contact Carl Chan at (202) 203–7883.

Dated: June 28, 2007.

Carl Chan,

Interim Executive Director, ACPD Department of State.

[FR Doc. E7–13213 Filed 7–6–07; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 5865]

Notice of Receipt of Application for a Presidential Permit to Construct a New Cattle Crossing to the East of an Existing Cattle Crossing Near San Luis, AZ

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has received an application for a Presidential permit authorizing the construction of a new cattle crossing (the ''San Luis Cattle Crossing'') at the United States-Mexican border 2,500 feet (approximately half a mile) east of an existing cattle crossing near San Luis, Arizona. The closing of the existing cattle crossing and its relocation to a new location approximately half a mile to the east is necessitated by construction of the new San Luis II commercial border crossing (scheduled to begin in the summer of 2007) at the location of the existing cattle crossing. This application has been filed by the Greater Yuma Port Authority (GYPA), the original applicant for the San Luis II commercial border crossing project. A Presidential permit for the San Luis II commercial border crossing was issued by the Department of State, effective June 30, 2007, to the General Services Administration (GSA). The Department of State has determined that, under Executive Order 11423, as amended, a separate Presidential permit is required for the San Luis cattle crossing since it would constitute a new piercing of the border.

The Department of State's jurisdiction with respect to this application is based upon Executive Order 11423, dated August 16, 1968, as amended, which authorizes the Secretary of State to receive all applications for permits for the construction, connection, operation or maintenance at the borders of the United States of ''border crossings for land transportation * * * to or from a foreign country'' whether or not in conjunction with ''facilities for the transportation of persons or things, or both, to or from a foreign country.'' According to the application, the relocation of the existing San Luis cattle crossing would primarily involve the dismantling of the existing cattle pens (most of which are on the Mexican side of the border) and their construction or reassembly at the new site. The Department is in possession of an Environmental Assessment (EA) prepared in connection with the Department's evaluation of the Presidential permit application for the San Luis II commercial border crossing and intends to also use that EA in connection with its evaluation of the San Luis cattle crossing. The Department has determined, however, that this EA does not adequately address the issues of the odor and manure that would be generated at the proposed new cattle crossing site, as well as the issue of water and sewage services at the new cattle crossing site. In light of that determination, the GYPA has submitted to the Department of State an EA addendum that specifically addresses these environmental concerns. As provided in E.O. 11423, the Department is circulating the GYPA application, along with the EA and the EA Addendum, to concerned agencies for comment.

DATES: Interested parties are invited to submit written comments relative to this application on or before July 27, 2007 to Daniel D. Darrach, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, HST Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520.

FOR FURTHER INFORMATION CONTACT: Daniel D. Darrach, Coordinator, U.S.-Mexico Border Affairs, WHA/MEX, HST Room 4258, Department of State, 2201 C St., NW., Washington, DC 20520. Telephone: (202) 647–8529, fax: (202) 647–5752.

SUPPLEMENTARY INFORMATION: The application and related documents that are a part of the record to be considered by the Department of State in connection with this application are available for review in the Office of Mexican Affairs, Border Affairs Unit, Department of State, during normal business hours throughout the comment period. Any questions related to this notice may be addressed to Mr. Darrach using the contact information above.

Dated: June 29, 2007.

Richard M. Sanders,

Acting Director, Office of Mexican Affairs, Department of State.

[FR Doc. E7–13212 Filed 7–6–07; 8:45 am]

BILLING CODE 4710–29–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Approval From the Office of Management and Budget of a New Information Collection Activity, Request for Comments; 2008 Newly Certificated Airframe and/or Powerplant Mechanics: Assessment of the Mechanic's Practical Test Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a new information collection. This project involves collecting data from individual applicants who have recently taken, for the first time, and passed an oral and/or practical Airframe and/or Powerplant (A and/or P) Mechanic Certification test.

DATES: Please submit comments by September 7, 2007.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: 2008 Newly Certificated Airframe and/or Powerplant Mechanics: Assessment of the Mechanic's Practical Test Program.

Type of Request: New collection.

OMB Control Number: 2121–XXXX.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 2,200 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 2,200 hours annually.

Abstract: This project involves collecting data from individual applicants who have recently taken, for the first time, and passed an oral and/or practical Airframe and/or Powerplant (A and/or P) Mechanic Certification test. The goal of this effort is ''to reduce the number of fatal accidents in general aviation'' by identifying areas of concern so that the FAA may affect corrections in FAA policy, guidance material, and FAA-sponsored programs in order to improve the overall quality of the designated mechanic examiner oral and/or practical test program.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Avenue, SW., Washington, DC 20591.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 3, 2007.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 07–3314 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Announcement of Solicitation and Application Procedure for State Participation in the Surface Transportation Project Delivery Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; solicitation of applications.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) provided FHWA the authority to allow up to five States to assume the Secretary's responsibilities for the environmental review, consultation, and other actions pertaining to the review or approval of highway projects. In selecting States for the five available slots in the pilot program, Congress gave priority to the selection of the States of Alaska, California, Ohio, Oklahoma, and Texas. However, at this time, two States, Ohio and Texas, have declined to participate in the pilot program. Accordingly, this notice solicits applications from all other States for participation in this pilot program.

DATES: Letters that indicate interest by the State to be considered for participation in the pilot program should be sent to the FHWA Division Office no later than September 7, 2007.

ADDRESSES: The FHWA Division Office locations can be found at the following URL: *http://www.fhwa.dot.gov/field.html#fieldsites.*

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Delivery and Environmental Review, (202)–366–2034, *Ruth.Rentch@dot.gov*, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov.*

Background

Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary. In selecting States for the five available slots in the pilot program, Congress gave priority to the selection of the States of Alaska, California, Ohio, Oklahoma, and Texas.

On February 12, 2007, the FHWA published a final rule at 72 FR 6464 establishing requirements concerning the information required to be contained in an application by the State for the pilot program. These regulations, contained in 23 CFR Part 773, required the States of Alaska, California, Ohio, Oklahoma, and Texas to submit a statement of interest to the FHWA by May 14, 2007, in order to retain their priority status. If any of these States failed to submit a statement of interest to the FHWA by May 14, or decline to participate, another State may be selected. In response to this requirement, the FHWA has received statements of interest from California, Oklahoma, and Alaska indicating that they wish to participate in the pilot program. FHWA received letters from Ohio and Texas declining the opportunity to participate in the pilot program. Accordingly, the FHWA currently has two open slots for other State departments of transportation (State DOT). These slots will be awarded on a competitive basis based on such factors as legislative authority to waive the State's sovereign immunity, financial and personnel capabilities to assume responsibilities, and description of plan and processes for carrying out assumed roles and responsibilities. If any State DOT has an interest in applying for this program, that State DOT should contact the FHWA Division Administrator in that State and should begin working with the FHWA in developing its application in accordance with the regulations found at 23 CFR Part 773.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48

Issued on: June 28, 2007.

J. Richard Capka,

Federal Highway Administrator.

[FR Doc. E7–13149 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28479]

Definition of Commercial Motor Vehicle: The EI Group, Inc., Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The FMCSA announces that it has received an application from The EI Group, Inc. (EI) seeking an exemption from classifying a specific motor vehicle as a commercial motor vehicle (CMV), for purposes of driver licensing requirements. Under the exemption, EI employees would not be required to comply with commercial driver's license requirements when operating a specifically-listed truck and trailer in combination, in interstate commerce. EI is requesting the exemption on behalf of all EI employees, and those contracted by EI, who operate its CMVs. EI states that approximately three EI drivers will be allowed to operate the subject equipment under the requested exemption. FMCSA requests public comment on EI's application for exemption.

DATES: Comments must be received on or before August 8, 2007.

ADDRESSES: You may submit comments identified by DOT DMS Docket No. FMCSA–2007–28479 using any of the following methods:

- *Web Site:* Go to *http://dmses.dot.gov/submit.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery:* Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or Room W12–140, Ground Floor of West Building, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The DMS is available 24 hours each day, 365 days each year. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, FMCSA Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations: Telephone: 202–366–4009. E-mail: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the motor carrier safety regulations. On August 20, 2004, FMCSA published a final rule (69 FR 51589) on section 4007. Under the regulations, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). FMCSA must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and it must provide an opportunity for public comment on the request.

FMCSA reviews the safety analyses and the public comments and determines whether granting the exemption would achieve a level of safety equivalent to or greater than the level that would be achieved absent the exemption (49 CFR 381.305). FMCSA's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If FMCSA denies the request, it must state the reason for doing so. If FMCSA grants the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which exemption is being granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

EI is requesting an exemption from the definition of a commercial motor vehicle (CMV) in 49 CFR 383.5:

Commercial Motor Vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit(s) with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or

(b) Has a gross vehicle weight rating of 11,794 or more kilograms (26,001 pounds or more); or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of *hazardous materials* as defined in this section.

EI currently owns a truck-trailer combination used to provide audiometric (hearing) testing services at industrial and commercial sites. The truck, a 2006 Ford F450, has a gross vehicle weight rating (GVWR) of 16,000 pounds. The trailer, a 2007 Cimarron, has a GVWR of 14,000 pounds. Together these units have a combined GVWR of 30,000 pounds. EI states these units are never operated in a configuration that would exceed a gross vehicle weight (GVW) of 26,000 pounds. According to EI:

a. The truck has a fifth wheel coupling device and no bed or other means of carrying cargo when coupled to the trailer;

b. The trailer is configured with test booths, furniture and electronic test equipment, and operating parameters are never varied in a way that would substantially alter the actual weight of the trailer;

c. Company procedures prohibit the transportation of persons or cargo in the testing trailer when it is in motion; and

d. The combination of units has been weighed in full operating configuration and does not exceed 22,000 pounds.

Under current regulations this combination vehicle must be operated by a driver holding a commercial driver's license (CDL) and must meet all other applicable Federal Motor Carrier Safety Regulations (FMCSR). EI currently employs three drivers who may be required to drive this vehicle. These drivers do not have a CDL and are unable to legally operate this vehicle combination over public highways. EI currently employs a contract driver with a CDL to drive the vehicle. The persons covered by the exemption would include all drivers of the vehicle who are employed or contracted by EI.

EI states that public safety would not be impacted by granting this exemption. EI advises that it operates two other testing vehicles. One is a single unit truck with a GVWR of 24,500 pounds. The second is a truck-trailer combination with a combined GVWR of 24,500 pounds. According to EI, these vehicles are operated by EI drivers under strict supervision. EI states the subject vehicle would also be operated at a GVW less than 26,000 pounds and, therefore, would not pose a hazard that is unique or different from those inherent in operating the other two vehicles currently owned and operated by EI. EI states it would continue to monitor drivers, require them to undergo regular DOT physical examinations, and maintain all other aspects of the EI driver safety program.

EI advises that if FMCSA does not grant the exemption:

A. Current EI drivers not holding or unable to obtain a CDL could not operate the subject vehicle combination, reducing flexibility in scheduling and possibly affecting their continued employment;

B. EI would need to hire or contract new CDL drivers, at a higher rate, to operate this vehicle combination; and

C. EI would be subject to additional overhead and administrative requirements of maintaining a full CDL driver program as required by the FMCSRs.

A copy of EI's application for exemption, along with supporting documentation, is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment on EI's application for exemption from 49 CFR 383.5. FMCSA will consider all comments received by close of business on August 8, 2007. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. FMCSA will file comments received after the comment closing date in the public docket and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 29, 2007.

Larry W. Minor,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. E7–13277 Filed 7–6–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub-No. 53X); STB Docket No. AB–355 (Sub-No. 5X)]

Boston and Maine Corporation—Abandonment Exemption—in Essex County, MA; Springfield Terminal Railway Company—Discontinuance of Service Exemption—in Essex County, MA

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) (collectively, applicants) jointly have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for B&M to abandon, and for ST to discontinue service over, approximately 1.47 miles of railroad known as the Georgetown Branch, extending from milepost 4.66 to milepost 6.13 in Haverhill, Essex County, MA. The line traverses United States Postal Service Zip Code 01830.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead on the line; (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 (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to these exemptions, any employee adversely affected by the abandonment or discontinuance 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, these exemptions will be effective on August 8, 2007, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1]

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent

Continued

formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 19, 2007. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 30, 2007, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.[3]

A copy of any petition filed with the Board should be sent to applicants' representative: Michael Q. Geary, Esq., Boston & Maine Corporation, Iron Horse Park, North Billerica, MA 01862.

If the verified notice contains false or misleading information, the exemptions are void *ab initio.*

B&M and ST have filed an environmental and historic report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. SEA will issue an environmental assessment (EA) by July 13, 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.[4]

Pursuant to the provisions of 49 CFR 1152.29(e)(2), B&M 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 B&M's filing of a notice of consummation by July 9, 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 29, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–13077 Filed 7–6–07; 8:45 am]

BILLING CODE 4915–01–P

investigation) cannot be made before the exemptions' 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 exemptions' effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,300. *See* 49 CFR 1002.2(f)(25).

[3] Without further explanation, applicants state that, prior to the effective date of these exemptions, title to the line will be acquired by third parties. Applicants are advised that they cannot transfer the title until the exemptions become effective or until they obtain appropriate Board authority.

[4] On February 27, 2007, the City of Haverhill, Massachusetts (the City) submitted a request for issuance of a notice of interim trail use and for imposition of a public use condition. However, this request could not be processed until after the June 19, 2007 filing of the involved notice of exemption. As noted the Board will address the City's trail use and public use requests and any others that may be filed in a subsequent decision.

Federal Register

Monday,
July 9, 2007

Part II

Federal Communications Commission

47 CFR Part 73

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–91; FCC 07–70]

Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document begins the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television. It provides a progress report on the DTV transition and considers the procedures and rule changes necessary to ensure that broadcasters timely complete their transitions. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals. This document considers how to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the statutory deadline.

DATES: Comments are due on or before August 8, 2007; reply comments are due on or before August 23, 2007.

ADDRESSES: You may submit comments, identified by MB Docket No. 07–91, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number.
- *E-mail: ecfs@fcc.gov.* To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Mail:* Filings can be sent by commercial overnight courier or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.
- *Hand Delivery/Courier:* Filings can be sent by hand or messenger delivery. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *Accessibility Information:* Contact the FCC to request information in accessible formats (computer diskettes, large print, audio recording, and Braille) by sending an e-mail to *fcc504@fcc.gov* or calling the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

Instructions: All submissions received must include the agency name and docket number for this rulemaking. Comments, reply comments, and ex parte submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat. For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov of the Media Bureau, Policy Division, (202) 418–2120 or Eloise Gore, *Eloise.Gore@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120; Gordon Godfrey, *Gordon.Godfrey@fcc.gov*, of the Media Bureau, Engineering Division, (202) 418–7000; Nazifa Sawez, *Nazifa.Sawez@fcc.gov*, of the Media Bureau, Video Division, (202) 418–1600; or Alan Stillwell, *Alan.Stillwell@fcc.gov*, of the Office of Engineering and Technology, (202) 418–2470.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking*, FCC 07–70, adopted on April 25, 2007, and released on May 18, 2007. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

This document has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations' plans for completing their transitions; (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340); (3) Requests to reduce analog TV service; (4) Requests to terminate analog TV service; (5) Requests to flash cut; (6) Requests for STA to use analog translators to offset

loss of analog service; (7) Requests for extension of time to construct (using FCC Form 337), or to toll the construction deadline for, DTV facilities; (8) Requests to transition early to their post-transition channel; (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel; (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline; (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV); and (12) PSIP requirement to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the proposed information collection requirements contained in this document, as required by the PRA.

Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before September 7, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, SW., Room 1–C823, Washington, DC 20554, or via the Internet to *Cathy.Williams@fcc.gov*; and also to Jasmeet Seehra, OMB, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503, or via Internet to *Jasmeet_K._Seehra@omb.eop.gov*, or via fax at 202–395–5167. If you would like to obtain a coy of this information collection, you may do so by visiting the FCC's PRA webpage at *http://www.fcc.gov/omd/pra.*

Further Information. For additional information concerning the PRA proposed information collection requirements contained in this document, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov* or *PRA@fcc.gov*.

OMB Control Number: 3060–0027.

Title: Application for Construction Permit for Commercial Broadcast Station, FCC Form 301.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,278.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 2 to 4 hours.

Total Annual Burden: 10,513 hours.

Total Annual Costs: $51,350,347.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking (NPRM), In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. The NPRM proposes that commercial television stations must use the proposed revised FCC Form 301 when applying for post-transition facilities, when requesting to reduce analog TV service and when requesting to transition early to their post-transition channel. FCC Form 301 is being revised to accommodate the filing of post-transition applications.

FCC Form 301 is used to apply for authority to construct a new commercial AM, FM, or TV broadcast station, to make changes in existing facilities of such a station, and may be used to request a change of a station's community of license by AM and non-reserved band FM permittees and licensees. In addition, FM licensees or permittees may request, by filing an application on FCC Form 301, upgrades on adjacent and co-channels, modifications to adjacent channels of the same class, and downgrades to adjacent channels.

OMB Control Number: 3060–0029.

Title: Application for TV Broadcast Station License, FCC Form 302 TV; Application for DTV Broadcast Station License, FCC Form 302–DTV, Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station, FCC Form 340; Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, FCC Form 349.

Form Number(s): FCC Form 302 TV; FCC Form 302–DTV; FCC Form 340; FCC Form 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents: 4,325.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Third party disclosure requirement.

Estimated Time per Response: 2 to 4 hours.

Total Annual Burden: 12,150 hours.

Total Annual Costs: $21,091,625.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking (NPRM), In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes that Noncommercial Education (NCE) television stations must use the proposed revised FCC Form 340 when applying for authority to construct or modify post-transition facilities; when requesting to reduce analog TV service and when requesting to transition early to their post-transition channel. Therefore, FCC Form 340 is being revised to accommodate the filing of applications to construct or modify post-transition facilities.

The NPRM also proposes that stations that have applied to construct or modify post-transition facilities must use the Form 302—DTV to obtain a new or modified station license to cover those post-transition facilities.

In addition, the Commission is consolidating information collection OMB Control Number 3060–0837

(Application for DTV Broadcast Station License, FCC 302–DTV) into this collection OMB Control Number 3060–0029.

FCC Forms 302–TV, 302–DTV and 349 remain unchanged.

OMB Control Number: 3060–0407.

Title: Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337; Section 73.3598, Period of Construction.

Form Number: FCC Form 337.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 160.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Estimated Time Per Response: 0.25 to 3 hours.

Total Annual Burden: 263 hours.

Total Annual Costs: $37,000.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking in the matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes that stations requesting an extension of time to construct DTV facilities with construction deadlines occurring prior to February 17, 2009, the station must use the Form 337 in accordance with 47 CFR 73.624(d)(3). The NPRM proposes to revise Form 337 to accommodate these filings. Also, for stations with construction deadlines occurring on February 17, 2009 and later, the station must make a letter filing in accordance with 47 CFR 73.3598.

In addition, the Commission is consolidating information collection OMB Control Number 3060–1001 (Application for Extension of Time to Construct a Digital Television Broadcast Station, FCC Form 337) into this collection OMB Control Number 3060–0407 (Section 73.3598, Period of Construction).

OMB Control Number: 3060–0386.

Title: Section 73.1635, Special Temporary Authorizations (STAs).

Form Number: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 2,350.

Frequency of Response: On occasion reporting requirement.

Estimated Time Per Response: 1 to 4 hours.

Total Annual Burden: 2,800 hours.

Total Annual Costs: $1,403,150.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

For purposes of the DTV transition, the NPRM proposes that stations may file requests for Special Temporary Authorities (STAs) to use analog translators to offset the loss of analog service when seeking to reduce or terminate analog service prior to the transition deadline (i.e., February 17, 2009); to temporarily remain on their in-core pre-transition DTV channel after the DTV transition deadline (i.e., February 17, 2009), and to build less than full, authorized post-transition facilities by the transition deadline (i.e., February 17, 2009).

OMB Control Number: 3060–0216.

Title: Informal Requests to Discontinue Only One Service and Informal Requests to Flash Cut; Section 73.3538, Application To Make Changes in an Existing Station, Section 73.1690(e) Modification of Transmission Systems.

Form Number: Not Applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 700.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Estimated Time Per Response: 0.50—3 hours.

Total Annual Burden: 1,125 hours

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70, to consider the procedures and rule changes necessary to complete the nation's transition to DTV, including how best to ensure that broadcasters complete construction of their facilities on their final, post-transition (digital) channel by the statutory deadline.

The NPRM proposes to allow stations to request Commission approval to discontinue analog TV service prior to the end of the DTV transition. To obtain such approval from the Commission, the NPRM proposes to allow stations to make such requests by sending a letter to the Video Division of the Media Bureau and sending an e-mail to *analog@fcc.gov* in lieu of filing an application for construction permit (e.g., Form 301 or Form 340).

The NPRM also considers whether to allow stations to request Commission approval to return their currently assigned, pre-transition-only DTV channel (i.e., a DTV channel that is not their final, post-transition channel) and flash cut at or before the transition deadline from their current analog channel to their final, post-transition channel.

Section 73.1690(e) of the Commission's rules requires AM, FM and TV station licensees to prepare an informal statement or diagram describing any electrical and mechanical modification to authorized transmitting equipment that can be made without prior Commission approval provided that equipment performance measurements are made to ensure compliance with FCC rules. This informal statement or diagram must be retained at the transmitter site as long as the equipment is in use. This requirement is approved in OMB Control Number 3060–0374, but is being consolidated into this collection (3060–0216).

Section 73.3538 requires broadcast stations to file an informal application to modify or discontinue the obstruction marking or lighting of an antenna supporting structure. The NPRM does

not affect this requirement. It has already been approved by OMB.

OMB Control Number: 3060-XXXX.

Title: Digital TV Transition Status Report.

Form Number: FCC Form 387.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,812.

Frequency of Response: One-time reporting requirement.

Estimated Time per Response: 2 hours.

Total Annual Burden: 3,624 hours.

Total Annual Costs: $1,268,400.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. This is a review of the transition of the nation's broadcast television system from analog to digital television. This NPRM, among other things, proposes to require all full-power television stations to file a form (FCC Form 387) with the Commission detailing their transition status on or before December 1, 2007.

OMB Control Number: 3060–XXXX.

Title: Section 73.682(d), TV Transmission Standards.

Form Number: Not applicable.

Type of Review: New Collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 1,812.

Frequency of Response: Weekly reporting requirement; Third party disclosure requirement.

Estimated Time Per Response: 0.50 hours.

Total Annual Burden: 47,112 hours.

Total Annual Costs: None.

Nature of Response: Required to obtain or retain benefits.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On April 25, 2007, the Commission adopted a Notice of Proposed Rulemaking, In the Matter of the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MB Docket No. 07–91, FCC 07–70. The NPRM proposes to update Section 73.682(d) of the Commission's rules, 47 CFR 73.682(d), to reflect revisions to the Advanced Television Systems Committee Inc's (ATSC) Program System Information Protocol (PSIP) standard. The revised ATSC PSIP standard requires broadcasters to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. In other words, it requires broadcasters to provide detailed programming information when transmitting their broadcast signal. Currently, under version A/65–B, many broadcasters provide only general information in the EIT tables.

Summary of the NPRM of Proposed Rulemaking

I. Introduction

1. Congress has mandated that after February 17, 2009, full-power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. With this *Notice of Proposed Rule Making (''NPRM''),* we begin our third periodic review of the transition of the nation's broadcast television system from analog to digital television (''DTV''). The Commission has conducted two prior periodic reviews: the first in MM Docket No. 00–39 and the second in MB Docket No. 03–15. We conduct these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. Here, we consider how to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the statutory deadline.

II. Executive Summary

2. In this Third DTV Periodic Review, we (1) provide a progress report on the transition; (2) describe the status and readiness of existing stations to complete the transition; (3) analyze and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. Stations that have not completed construction of their post-transition channels must focus their full attention on the construction efforts necessary to move from analog to digital transmission no later than the February 17, 2009 deadline established by Congress. Specifically, we propose the following actions to facilitate the transition for full-power television stations (We note that the statutory transition deadline applies only to full-power stations; see 47 U.S.C. 309(j)(14) and 337(e). We will address the digital transition for low power television (''LPTV'') stations in a separate proceeding. The Commission previously determined that it has discretion under 47 U.S.C. 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. Accordingly, the Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations):

- We tentatively conclude that February 17, 2009 will be the construction deadline for stations that are building digital facilities based on their new channel allotments in the new DTV Table of Allotments (''DTV Table'') and accompanying Appendix B (''new DTV Table Appendix B''), which will be established by an order in the Commission's DTV proceeding, MB Docket No. 87–268 (*i.e.*, stations whose DTV channel for pre-transition operation is not their channel for post-transition use). The Commission proposed channel assignments and reference facilities for stations' post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87–268. *See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service,* MB Docket No. 87–268, Seventh Further Notice of Proposed Rule Making, 71 FR 66592–01 (Nov. 15, 2006) (*''Seventh FNPRM''*). The *Seventh FNPRM* sets forth a channel for each eligible broadcast TV station in the proposed new DTV Table. The details of each station's channel assignment, including technical facilities and predicted service and interference information, are set forth in the proposed new DTV Table. [Section V.C.1. and proposed rule 47 CFR 73.624(d)(1)(v)]
- We propose that stations whose post-transition channel is the same as their pre-transition DTV channel, who are not facing unique technical challenges, and who are granted either an extension in the *Construction Deadline Extension Order* or a waiver in the Use-or-Lose Order must complete construction of their DTV facilities by the deadline established in those orders (*i.e.*, six months from the release date of the orders). These stations have had their post-transition channel assignments for several years. [Section V.C.2.]
- We propose that February 17, 2009 will be the construction deadline for stations facing unique technical

challenges, such as those with side-mounted digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities. [Section V.C.3.]

• We tentatively conclude that stations that have not completed construction of full, authorized facilities on their pre-transition channel may be excused from completion of construction if this is not their post-transition channel. Our proposal applies to stations that have pending construction permits (''CPs''), that have requested CP extensions, that have been granted CP extensions, that have been granted waivers of the use-or-lose deadlines, and that have waivers for their checklist facility deadline. These stations will be permitted to carry-over protection to their full, authorized facilities. [Section V.C.1.]

• We propose to restrict the situations in which grants of an extension of time to construct digital facilities will be considered for construction deadlines prior to the end of the transition. In addition, beginning February 17, 2009, we propose to apply the existing ''tolling'' standard applied to analog stations to requests for additional time to construct digital facilities and will toll the construction deadline only in limited and unavoidable circumstances. [Section V.C.4. and proposed rule 47 CFR 73.624(d)(3)]

• We propose to require all full-power television stations to file a form with the Commission detailing their current transition status, additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps. [Section V., paragraph 35]

• We consider whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel. [Section V.B.]

• We examine the circumstances in which a station may be allowed to reduce or terminate its analog service to facilitate construction of its final, DTV facility on its post-transition channel. [Section V.A.]

• We propose to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service. [Section V.C.5.]

• We request comment on additional proposals to provide stations with regulatory flexibility to facilitate stations' construction of their post-transition facilities by the statutory deadline. [Section V.C.6.]

• We propose to offer expedited processing to a station applying for a CP to build its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction beyond that established by the new DTV Table Appendix B; (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those new DTV Table Appendix B facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. We propose to revise FCC Forms 301 and 340 accordingly. [Section V.D.]

• We tentatively conclude that we will not accept applications to expand post-transition facilities until we have completed processing the applications to build authorized facilities, but we seek comment on ways to consider expansion applications sooner without delaying the transition. [Section V.E.]

• We tentatively conclude to adopt a new 0.5 percent interference standard to apply to maximizations and to new channel allotments after the transition. [Section V.F. and proposed rule 47 CFR 73.616]

• We propose to update the Commission's rules to reflect any revisions to the ATSC standards concerning DTV transmission and PSIP since the adoption of the *Second DTV Periodic Report and Order.* [Sections V.G.1. and V.G.2. and proposed rule 47 CFR 73.882(d)]

• We seek comment on whether the Commission can and should revise Section 73.624(g) to require DTV stations that are permittees operating pursuant to a DTV STA or other FCC authorization for DTV transmission to file FCC Form 317 and pay fees on any revenue derived from feeable ancillary or supplementary services in the same way required of DTV licensees. [Section V.G.3.]

• We invite comment on whether further amendments are needed to the station identification rules and, in particular, whether the current rules provide for appropriate identification of multicast channels. [Section V.G.4.]

• We invite comment on whether coordination is needed between broadcasters and MVPDs to ensure a smooth transition, whether this coordination is underway, and what actions the Commission should take to assist broadcasters with their coordination efforts. [Section V.G.6.]

III. Background

3. Congress specifically requires the Commission to evaluate the progress of the nation's transition to digital television. The first DTV periodic review began in March 2000 and the second in January 2003. In addition to these periodic reviews, the Commission has continued to conduct its DTV proceeding, through which it has developed new channel allotments and assignments. The Commission established the initial DTV Table of Allotments in 1997. *See Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service,* MM Docket No. 87–268, Sixth Report and Order, 62 FR 26684–01 (May 14, 1997) (*''Sixth Report and Order''*). The details of each station's channel assignment under the initial DTV Table, including technical facilities and predicted service and interference information, were set forth in the initial Appendix B of the *Sixth Report and Order.* The initial Appendix B was amended in 1998. Simultaneous with the adoption of the *Sixth Report and Order,* the Commission announced DTV channel assignments for eligible licensees in the Fifth Report and Order, 62 FR 26966–02 (May 16, 1997), in the same docket. The Commission recently issued a *Seventh FNPRM* in connection with the DTV proceeding.

4. The *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television,* MB Docket No. 03–15, Report and Order, 69 FR 59500 (October 4, 2004) (*''Second DTV Periodic Report and Order''*) established a three-round channel-election process through which eligible broadcast licensees and permittees (collectively, ''licensees'') selected their post-transition channels inside the core TV spectrum (*i.e.*, channels 2–51). The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order,* raising a number of issues, most of which have been rendered moot by the completion of the channel election process . At the start of this process, licensees proposed their post-transition facilities. (In November 2004, licensees filed certifications via FCC Form 381 in order to define their proposed post-transition facilities. In these certifications, licensees chose whether to (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a

currently authorized smaller facility. Stations that did not submit certification forms by the deadline were evaluated based on replication facilities.) After each channel election round, the Commission announced proposed post-transition channels—called tentative channel designations (''TCDs'').

5. The channel election process culminated in the adoption of the *Seventh FNPRM,* which proposed a new DTV Table. (Comments on the proposed new DTV Table were due January 25th and replies were due February 26th.) The proposed new DTV Table provides eligible stations with channels for post-transition operations inside the core TV spectrum. The DTV Table is based on the TCDs announced for stations, as well as the Commission's efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities. The proposed DTV Table will ultimately replace the current DTV Table. (The *Seventh FNPRM* proposes to codify the new DTV Table in 47 CFR 73.622(i). The current DTV Table, which is contained in 47 CFR 73.622(b), will become obsolete at the end of all authorized interim DTV operations. The current NTSC Table, which is contained in 47 CFR 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease.)

6. In early 2006, Congress enacted significant statutory changes to the DTV transition in the Digital Television and Public Safety Act of 2005 (''DTV Act''). (The DTV Act is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109–171, 120 Stat. 4 (2006) (''DRA''), and is codified at 47 U.S.C. 309(j)(14) and 337(e).) Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions. (The DTV Act amends 47 U.S.C. 309(j)(14)(A) to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations and directs the Commission to ''take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, * * * all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).'') The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts. (Previously, 47 U.S.C. 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85 percent of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (*i.e.*, via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order.*) The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless uses. Full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital upon the end of the transition on February 17, 2009. (The DTV Act also created a coupon program to subsidize the purchase of digital-to-analog (''D-to-A'') converter boxes.)

IV. Progress Report

7. The transition to DTV is a complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been facilitating the migration to DTV by adopting a standard for digital broadcasting, creating an initial DTV Table, awarding DTV licenses, establishing operating rules for the new service, monitoring the physical build-out of DTV broadcast stations, and helping to educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum, enabling the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52–69). (The core TV spectrum is comprised of low-VHF channels 2 to 4 (54–72 MHz) and 5 to 6 (76–88 MHz), VHF channels 7 to 13 (174–216 MHz) and UHF channels 14–51 (470–698 MHz), but does not include TV channel 37 (608–614 MHz), which is used for radio astronomy research.) Twenty-four megahertz of spectrum currently used for TV broadcast channels 63, 64, 68, and 69 have been reallocated for critically important public safety needs. The remaining 84 MHz (currently TV broadcast channels 52–62 and 65–67) have been or will be auctioned for new wireless services. (Channels 60–69 (746–806 MHz) were reallocated for public safety and wireless communications services in 1998. Channels 52–59 were reallocated for new wireless services in 2001.)

A. Status of DTV Operations

8. In 1997, the Commission granted eligible licensees a paired channel for digital operations during the transition and set dates for construction and operation of broadcasters' facilities on their allotted DTV channels. Pursuant to the construction schedule set forth in Section 73.624(d) of the Commission's rules, affiliates of the top four networks in the top ten television markets were required to complete construction of their DTV facilities by May 1, 1999; top four network affiliates in markets 11–30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all noncommercial educational (''NCE'') television stations by May 1, 2003.

9. As of April 2, 2007, 1,702 television stations in all markets (representing approximately 98.8 percent of all stations) have been granted a DTV construction permit (''CP'') or license. A total of 1,603 stations are now broadcasting a digital signal. Of these, 1,215 stations are authorized with licensed facilities or program test authority and 388 stations are operating pursuant to special temporary authority (''STA'') or experimental DTV authority.

10. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and nine with STAs. In markets 1–10, all 40 top-four network affiliated stations are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11–30, all top-four 79 network affiliated stations are providing DTV service, 74 with licensed DTV facilities and five with STAs.

11. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of April 2, 2007, 1,136 of these stations (92.4 percent) are broadcasting a digital signal. In addition, approximately 373 NCE television stations were required to commence digital operations by May 1, 2003. As of April 2, 2007, 348 (93.3 percent) of these stations are broadcasting a digital signal. (The commercial and NCE TV stations that have not commenced digital broadcasts were required to file a request for extension of additional

time to complete construction of their DTV facilities by the deadline established for them in 47 CFR 73.624(d)(1).)

B. Status of Consumer Capability to Receive DTV Signals

12. In connection with the 2006 Competition Report, the Commission requested information about the number of households relying solely on over-the-air broadcast television for programming. (The Commission also sought information about the number of cable and satellite households that rely on over-the-air service on one or more of their television sets not connected to a multichannel video programming distributor (''MVPD'').) In comments filed to that proceeding, the National Association of Broadcasters (''NAB'') indicated that there are approximately 69 million television sets are not connected to any MVPD service. Specifically, NAB reported that nearly 19.6 million households rely solely on over-the-air broadcast television, and there are approximately 45.5 million sets in those homes. NAB states that ''in these 19.6 million over-the-air households, there are approximately 1.3 million over-the-air digital sets.'' Thus, according to NAB, ''[t]here are roughly 18.7 million over-the-air households with only analog sets, and these households have about 44.2 million analog sets.'' NAB reports that an additional 23.5 million television sets in 14.7 million MVPD households remain unconnected to the MVPD service. NAB states that this 2006 data showing large numbers of over-the-air television sets is consistent with two surveys conducted in 2005.

13. The demand for DTV sets has grown with increased availability of DTV programming and receiving equipment and a steady drop in the price of such equipment. The Consumer Electronics Association (''CEA'') reports that the consumer electronics industry has invested $66.7 billion in DTV products since 1998. Moreover, CEA reports more than $75 billion in consumer investment in DTV products. According to CEA, 23.9 million DTV sets and monitors were sold in 2006. CEA predicts that 29.2 million DTV products will be sold in 2007, 33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010. CEA estimates that DTV sales will represent 69 percent of all TV sales in 2006. (CEA projects that DTV sales will represent 92 percent of all TV sales in 2007.)

14. In order to promote the availability of reception equipment and protect consumers by ensuring that their television sets continue to work in the digital world just as they do today, the Commission established a DTV tuner mandate, which requires, as of March 1, 2007, that all television receiver equipment (*e.g.*, TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) manufactured or shipped in interstate commerce or imported into the United States, for sale or resale to the public, must be capable of receiving the signals of DTV broadcast stations over-the-air. (In 2002, the Commission initiated the DTV tuner mandate, with a phase-in period based on screen size to minimize the cost impact on consumers. In 2005, the Commission accelerated the implementation of the DTV tuner mandate to become effective on March 1, 2007 and expanded the mandate to include television sets less than 13 inches.)

15. In addition, subsidized digital-to-analog (''D-to-A'') converter boxes will be available to eligible consumers starting January 2008, further promoting access to digital reception equipment. (*See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes,* NTIA Docket No. 0612242667–7051–01, Final Rule, 72 FR 12097 at paragraph 8 (*''NTIA Coupon Program Final Rule''*); 47 CFR 301. Starting January 1, 2008, all U.S. households will be eligible to request up to two $40 coupons to be used toward the purchase of up to two, D-to-A converter boxes, while the initial $990 million allocated for the program is available; 47 CFR 301.3–4. If the initial funds are used up and the additional funds (up to $510 million) are authorized, eligibility for the coupons will be limited to over-the-air-only television households. Eligible consumers will have until March 31, 2009 to make a request for these coupons.) This subsidy program, which was created by the DTV Act, will allow consumers with analog-only TV sets to receive over-the-air broadcast programming after the February 17, 2009 transition date, when analog broadcasting ends. Without a D-to-A converter box, consumers will not be able to view full-power TV broadcasts after the transition date unless they purchase DTV sets (television sets with a built-in digital tuner) or subscribe to a pay television service. Congress directed the National Telecommunications and Information Administration (''NTIA'') of the U.S. Department of Commerce to administer this subsidy program. (The DTV Act directs the Assistant Secretary for Communications and Information to ''implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.'' The purpose of the program is to enable consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service.) In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes.

C. Status of Broadcasters' Transition

16. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date. Full-power broadcast stations not ready to commence digital operations upon expiration of the deadline for the transition on February 17, 2009 must go dark and risk losing their authorizations to operate after the transition date. (A station failing to meet its construction deadline may be subject to license revocation procedures (47 U.S.C. 312), the issuance of forfeitures (47 U.S.C. 503), or other remedial measures, such as admonishment. For example, we remind licensees that ''if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary;'' 47 U.S.C. 312(g). If discontinuing operations, stations must also be mindful of the Commission's rules.)

17. We have proposed post-transition channel assignments for all eligible stations. (These post-transition channel assignments largely were based on the choices made by licensees during the channel-election process. Eligibility for a proposed post-transition channel assignment was limited to existing Commission licensees and permittees.) In the proposed new DTV Table, 1,812 stations received proposed post-transition DTV channels. (This total includes 1,806 stations announced in Appendix A to the *Seventh FNPRM* and six additional stations announced in a subsequent Public Notice. Additional new permittees may also be announced before the transition deadline.) Of these, 1,178 stations received the DTV channel on which they are currently authorized, 517 stations received the NTSC channel on which they are currently authorized, and 117 stations received a different channel from which they are currently authorized.

18. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, stations already should be planning their transition to digital-only service on their post-transition channel. Some stations may now be ready, or very close to ready, to make their transition. We have provided a list of 752 stations that we believe fall into this category and seek input from those stations regarding our assessment.

19. Most stations, however, will need to take significant steps to accomplish their transition. Stations' situations will vary based on their final channel assignments in the new DTV Table and whether, and if so to what extent, they must change their transmission facilities to operate on their post-transition channels. As described below, stations may seek to change their antenna or tower locations. (A station that must change its DTV tower location may face a considerable challenge, especially if the station must construct a new tower. Such a station must consider whether there are any existing towers that can be used or if a new tower must be constructed. Because of the lead times involved in purchasing or leasing land with appropriate FAA clearances, local and state zoning requirements, and varying timelines for designing the new tower, ordering equipment, delivery of equipment, and construction-related issues, such a station must begin planning as soon as possible in order to transition by the deadline. In some cases, building a new tower at this stage in the process may no longer be a viable option.) Stations may also need to change their effective radiated power (ERP), antenna height above average terrain (HAAT) or antenna pattern as set forth in the new DTV Table Appendix B, as adopted.

20. Before discussing the issues that must be addressed to complete the transition, we first categorize the circumstances that stations are in to describe what stations in each group must accomplish. First, there are stations that will remain on their current DTV in-core channel. Second, there are stations that will return to their analog in-core channel. Third, there are stations that will move to a completely new in-core channel. In addition to these three general categories, stations without a paired channel (*i.e.*, ''singleton stations'') that will ''flash cut'' from broadcasting on their analog channel to broadcasting on a digital channel raise unique issues that we will consider separately. (''Singletons'' or ''single-channel licensees'' refers to those licensees that do not have a second or ''paired'' channel to convert to DTV. ''Flash-cut'' refers to the situation where a station gives up its pre-transition digital channel and transitions to digital service using its analog channel or a newly allotted channel.) We seek comment on these categories and circumstances in general and on the particular tentative conclusions, proposals and queries in the Issue Analysis (section V), below.

1. Category One: Stations Remaining on Their Current DTV In-Core Channel

21. There are 1,178 stations remaining on their current DTV in-core channel for post-transition operations, based on the proposed new DTV Table. Most of these stations will have a relatively simple transition because they already have the authorizations necessary to operate at their proposed post-transition facilities as specified in the proposed new DTV Table Appendix B. In fact, many of these stations have already constructed and received licenses for their post-transition facilities, and so will simply turn off their analog service to complete their transition.

22. Some stations in this category, however, may not have completed their authorized construction. This would include a station that has not built anything and has a CP or extension of its ''checklist'' deadline and a station that has constructed a reduced facility and is operating pursuant to Special Temporary Authority (''STA''). In addition to turning off their analog service, these stations may need to make changes to match their post-transition facilities as specified in the new DTV Table Appendix B. The difficulty faced by these stations will depend on the type of change and degree of change required to complete their authorized construction. (For example, stations in this category may need to adjust their transmitter power, their antenna design, their antenna location, or some combination thereof. We expect that relatively minor adjustments to operating power can be done easily, perhaps through the use of in-house engineers. Changes involving more significant power changes and/or changes to transmitting antennas may require more time and effort. For example, a number of stations currently have a top-mounted analog antenna and a side-mounted digital antenna, and to provide full digital service will need to re-mount the digital antenna to the top of the tower. Also, if an entirely new transmission line and/or antenna must be installed, additional time will be needed to order the transmission line and antenna and have it delivered to the site.)

23. Furthermore, some of these stations may have pending applications with unresolved international coordination issues. Licensees in this category with pending applications should consult with the Commission staff about the timing for action on their applications. In addition, they should coordinate with Commission staff regarding necessary modifications to their applications that will result in international approval. They may need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico if the issues delaying action on their applications cannot be resolved in time to allow construction to be completed before the end of the transition. (These stations may be required to adjust their transmitter power, their antenna location, their antenna design, or some combination thereof.)

2. Category Two: Stations Returning to Their Analog In-Core Channel

24. There are 517 stations that will return to their current analog in-core channel for post-transition operations, based on the proposed new DTV Table. (This group of stations includes some analog singletons and flash-cutters.) Stations in category two may face each of the category one challenges involving tower construction, antenna replacement or relocation, and transmitter replacement or power adjustments.

25. In addition, these stations may need to determine whether they can use any of their analog or digital transmission equipment (*e.g.*, transmitter, transmission line or waveguide, and antenna). If a station finds it has a transmitter that it could use, it will also need to determine whether that transmitter can provide the appropriate power level. It is our understanding that a station that is going to stay within a spectrum band (low-VHF, high-VHF or UHF) and change its frequency within 5 or 6 channels (36 MHz or less) will most likely require fewer technical changes than if the change of broadcast frequency is more than 6 channels. We expect that channel moves of fewer than 5 or 6 channels may require only minor modifications to the station's digital transmitter, whereas more significant changes may require major modifications or an entirely new transmitter. We seek comment on these assumptions.

26. Stations that will return to their current analog channel also may need to determine whether their current analog

or DTV antenna can be used. Generally, the design, condition and channel of operation of their current antennas, as well as the stations' directional antenna characteristics established in the new DTV Table Appendix B, as adopted, must be considered when these stations evaluate the suitability of their antennas for post-transition DTV operation. The ability of these stations to use an existing digital antenna may depend upon how significant the change in channel numbers will be for these stations as they move from their current DTV channel back to their current analog in-core channel. It is our understanding that channel moves of more than 5 or 6 channels will likely require a new antenna and transmission line or new waveguide. We seek comment on these assumptions.

27. These stations also must consider the impact on their analog TV service, which might be disrupted entirely or limited in reach to a smaller area during periods of work on the tower. For example, a temporary reduction in coverage might be due to reduced power analog TV operation at a backup site in order to facilitate construction on the main tower facility.

3. Category Three: Stations Moving to a Completely New In-Core Channel

28. There are 117 stations that will move to a completely new in-core channel for post-transition operations, based on the proposed new DTV Table. These stations face similar challenges to those returning to their analog (in-core) channel. In addition, these stations will need to coordinate with other stations to complete their move. For example, another station may occupy the relocating station's post-transition channel or it may occupy an adjacent channel (located in the same or a nearby area) to the relocating station's post-transition channel. Also, these stations may find that their tower site cannot support three antennas at once, as may be necessary to accommodate their current analog and DTV operations while preparing for broadcasting on their post-transition channel.

4. Singleton Stations

29. There are 137 stations that do not have a paired channel (*i.e.*, stations that do not have both an analog and a digital channel), based on the proposed new DTV Table. These stations are commonly referred to as ''singletons.'' These stations fit in one of the preceding three categories, but they may encounter different challenges and circumstances that deserve special consideration in this review. Specifically, for this discussion, ''singletons'' include (1) those stations described in footnote 101 of the *Second DTV Periodic Report and Order* as licensees that did not receive a second or ''paired'' channel to use during the transition to DTV; (2) those stations that had a paired DTV channel and that we authorized to discontinue providing analog TV service; (3) those paired-channel stations that gave up their interim DTV channel pursuant to ''flash cut'' approval; and (4) those paired-channel stations that we propose to allow to ''flash cut.'' Singletons include DTV and analog TV stations, and can be unbuilt, operating at reduced facilities, or fully constructed and licensed. Analog TV singletons will be flash cutting from broadcasting on their analog channel to broadcasting on a digital channel. Flash-cutting often will involve singletons ending their analog TV operation and beginning their DTV operation on their current analog channel, but in some cases will require that a station change to a new channel for post-transition operation. Singleton stations, like those with paired channels, are responsible to ensure that they have completed the construction of their digital facilities by the February 17, 2009 deadline, except for stations whose initial CPs expire later. (Single-channel stations receive a CP with a three-year construction period. Thus, new stations whose CPs were granted after February 2006 will have construction deadlines later than February 17, 2009.) After February 17, 2009, stations that have not constructed analog facilities may only construct digital facilities on their post-transition channel.

30. Singleton licensees and permittees should have a post-transition channel in the proposed new DTV Table and proposed facilities specified in the proposed new DTV Table Appendix B, provided such permittee status is announced by Public Notice before the order establishing the new DTV Table is adopted. DTV singletons remaining on their current DTV channel for post-transition operations face the same challenges identified in category one above. These stations must complete authorized construction consistent with the new DTV Table Appendix B, as adopted. Stations that have done so and are operating and licensed need not take any further steps at this time. DTV singletons that have not completed construction must do so as discussed below. A few DTV singletons are moving to different channels in the new DTV Table, including some currently authorized for out-of-core operations. In addition to the potential challenges described for paired stations going to a new channel for post-transition operation (category three in the preceding section), unbuilt DTV singletons must complete their required construction by their CP expiration date, whether that date is before or after the transition deadline.

31. Analog singletons that will remain on their currently authorized channel for post-transition operations face the same challenges identified in category two above. Unbuilt analog singletons must also meet their CP expiration date requirements. Depending on the time left for them to complete construction, most of these stations should consider requesting that the Commission modify their authorization to specify DTV operation, particularly stations that have recently received CP grants. (Stations that receive a new CP and that will remain on this channel for post-transition operations may either construct their analog facilities (for use until the end of the transition) or apply to the Commission for permission to construct a digital facility on their analog channel for post-transition operations.) Stations in this situation that choose to construct their authorized analog broadcast facility for operation until February 17, 2009 should plan for its conversion to DTV when they purchase their transmitter and antenna system.

32. Analog singletons moving to a new channel for post-transition operations face the same issues identified in category three above. Some also have a CP for their analog channel that expires either before or after the transition deadline. Stations that have an analog CP expiring before the transition deadline should consider applying for a modification of their analog CP to make it easier to complete the required analog channel construction while also building their post-transition facility. They also should take steps to efficiently complete this simultaneous dual-channel construction of both their pre-transition analog and post-transition facilities (for example, having a tower crew install both antennas at the same time or ordering an antenna or transmitter that can be readily converted from analog operation to DTV operation). They may also want to explore the possibility of requesting that their single-channel analog authorization be modified to specify pre-transition DTV operation on their post-transition channel. Such a modification would require interference protection to be provided to all potentially affected stations and construction to be completed before the station's CP expires. Stations whose

analog CP will expire after the transition deadline should consider applying for a modification of their analog CP to specify the post-transition facilities that they will need to complete before their CP expires. As noted above, February 17, 2009 is the deadline for all full-power television broadcast stations to end analog transmissions.

V. Issue Analysis

33. In this Third DTV Periodic Review, we consider how to ensure that full-power TV broadcast stations complete their transition to digital-only operations by the statutory deadline. Specifically, we consider when stations may and must cease operating on their analog channel, when stations may and must begin operating on their post-transition channel, and what regulatory flexibility we can provide to facilitate these efforts. By statute, stations must cease analog operations by 11:59 p.m. on February 17, 2009. Stations, thus, should have their digital facilities in place and ready to commence operations no later than 12 a.m. on February 18, 2009.

34. We seek comment on what actions the Commission should take to facilitate broadcasters' completion of the transition by the statutory deadline. We seek comment on how to ensure that broadcasters (1) complete construction of their post-transition facilities in a timely and efficient manner; and (2) have in place (in-core) facilities that can reach their viewers. In view of the statutory change from a soft to a hard transition deadline, the Commission's focus has moved beyond simply ensuring that stations are operating in digital. Our focus is now on overseeing broadcasters' construction of their final, post-transition channel with facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog.

35. We begin by proposing that every full-power television broadcast station file a form with the Commission that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the switch-over deadline; and (3) a plan for how it intends to meet that deadline. These filings will be posted on the Commission's website. We believe that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover date.

36. We also consider when stations may reduce their current (pre-transition) television service in order to complete their transition. Next, we consider the deadlines by which stations must construct and operate their current DTV channels or lose interference protection—or even authority to operate—on those channels. Third, we propose deadlines for the construction and operation of post-transition facilities and consider the ability of stations to transition early. We also consider the steps necessary for broadcasters to construct and operate their post-transition channels. Issues raised in this section include the rules, procedures and interference standards for stations to file applications for CPs to build their post-transition DTV facilities and to request authorization to maximize their facilities. Finally, we address other issues related to the DTV transition. (While we recognize the Commission's rules for full-power television will need to be updated to eliminate outdated references to analog and out-of-core television service and clarify engineering issues that differ for digital transmission and analog transmission, these housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding. We, nonetheless, seek comment on whether resolution of any housekeeping issues requires more immediate attention.)

A. Reduction and Termination of Analog Service

37. In this section, we consider the reduction and termination of stations' analog TV service. Until February 17, 2009, the Commission's rules require stations to continue operating their existing licensed analog facilities. (Moreover, the public has a legitimate expectation that existing broadcast services will be maintained.) To best achieve their respective transitions, however, some stations may find it desirable to reduce or terminate their analog operations before the February 17, 2009 transition date. In some cases, stations may need to reduce or end their analog service because such operations may impede construction and operation of post-transition (digital) facilities. Such circumstances may include, but are not limited to: (1) Stations that would like to switch their side-mounted digital antenna with their top-mounted analog antenna before the end of the transition; (2) stations that need to add a third antenna to their tower but cannot do so without reducing or ending analog service because the tower cannot support the additional weight; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement. We seek comment on these and other circumstances where stations can facilitate their transitions by reducing or terminating their analog service in advance of the transition deadline.

38. *Background.* The Commission generally has not favored reductions in television service. Proposals that would result in a loss in TV service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits. Consistent with this precedent, the Commission allows stations to reduce their service from that required by their licenses only upon an appropriate public interest showing. Losses in service may be justified, for example, to facilitate the station's transition to DTV. (The Commission has placed a very high priority on accelerating the television industry's transition to DTV.) The Commission is generally most concerned where there is a loss of an area's only network or NCE TV service, or where the loss results in an area becoming less than well served, *i.e.*, served by fewer than five full-power over-the-air signals. In cases in which a station seeks to reduce analog TV service, it can also use an engineering analysis performed in accordance with the Office of Engineering and Technology's OET Bulletin No. 69 (''OET 69'') methodology to show that the area where service would be reduced is area that is already terrain shielded such that viewers located in that area do not actually receive the station's signal over-the-air now.

39. Notwithstanding the strong public interest in maintaining TV service, the Commission does permit the early return of out-of-core (TV channels 52–69) analog channels under certain circumstances in order to facilitate the DTV transition. The Commission established policies to facilitate voluntary ''band-clearing'' of the 700 MHz bands to allow for the introduction of new public safety and other wireless services and to promote the transition of out-of-core analog TV licensees to DTV service inside the core TV spectrum. Generally speaking, these policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz band early if consistent with the public interest. The Commission has approved several such requests to return out-of-core channels in accordance with this band-clearing policy.

40. The Commission's 700 MHz band-clearing policies differ somewhat depending on whether a station is located on TV channels 59–69, which might affect use of the upper portion of the band, or on TV channels 52–58, which would only affect use of the

lower portion of the band. Envisioning the early recovery of TV channels 60–69, the Commission established a ''rebuttable presumption'' favoring requests for voluntary band-clearing involving channels 59–69. (The Commission established its policies on voluntary band-clearing for TV Channels 59–69 in a series of orders. The Commission initially stated that it would ''consider specific regulatory requests needed to implement voluntary agreements'' between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. These policies were further extended to ''three-way'' band clearing arrangements, in which non-Channel 59–69 broadcasters were also potential parties. Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements.) In contrast, the Commission did not anticipate recovery of TV channels 52–59 until after the DTV transition was complete and, as a result, decided to consider requests for voluntary band-clearing involving those channels on a case-by-case basis. In this case-by-case review, the Commission considers whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers, especially in rural or other underserved communities. The Commission weighs these benefits against any likely public interest harms, such as the loss of any of the four stations with the largest audience share in the designated market area, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for NCE TV broadcast service, or a negative effect on the pace of the DTV transition in the market.

41. *Discussion.* In light of the hard deadline for the cessation of analog TV service, we believe the most significant public interest objective should be to ensure that stations meet the transition deadline. The original statutory provision requiring the termination of analog broadcasts established December 31, 2006 as the last day for analog operations, but allowed that deadline to be postponed if an 85 percent DTV reception benchmark was not reached in a given market. The Commission's goal under this former approach was to increase DTV operations as quickly as possible without causing significant analog service loss. We believe, however, that Congress' adoption of the hard deadline of February 17, 2009, now weighs in favor of an increasing tolerance for the loss of analog service as we near the switch-over date and where it will facilitate the transition.

42. *Stations with Out-of-Core Analog Channels.* As noted above, stations that might affect the upper 700 MHz band (*i.e.*, TV channels 59–69) can receive a ''rebuttable presumption'' favoring their requests to terminate analog service. We believe the disparate band-clearing treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52–58) is no longer appropriate. The hard deadline applies equally to both portions of the 700 MHz band. In addition, Congress has mandated that the Commission begin the auction of recovered analog broadcast spectrum in the 700 MHz band no later than January 28, 2008. (The DTV Act unified the timing of auctions for the assignment of remaining spectrum from TV Channels 52–69. The Communications Act now requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.) Accordingly, we propose to apply the same ''rebuttable presumption'' standard to voluntary agreements for clearing TV channels 52–58 as now applies to such agreements for clearing TV channels 59–69. (In other words, we propose to apply the relaxed ''rebuttable presumption'' standard to all out-of-core stations seeking to return their analog TV channels.) Moreover, we propose to apply the relaxed ''rebuttable presumption'' to out-of-core stations seeking to reduce rather than terminate their analog service. Requests to reduce or terminate analog service would be made in accordance with the Commission's rules. (Stations making requests to reduce analog TV service should do so in accordance with the rules to modify an existing license or authorization by using FCC Form 301 (commercial stations) or FCC Form 340 (NCE stations). Stations making requests to terminate TV service should do so in accordance with the rules to modify an existing license or authorization and to discontinue operations. Stations discontinuing only one service of their paired license, however, should not return their license or authorization, as would otherwise be required by 47 CFR 73.1750. In addition, stations making requests to reduce service may, if more applicable, instead apply for an STA pursuant to 47 CFR 73.1635. Consistent with the rules for license modification and discontinuance of operation, stations terminating their service may send a letter to the Video Division of the Media Bureau and send an e-mail to *analog@fcc.gov* in lieu of filing an application.) We seek comment on our proposed treatment of out-of-core stations seeking to reduce or terminate their analog service.

43. *Stations with In-Core Analog Channels.* In contrast to out-of-core stations' return of their analog channels, in-core stations' requests to reduce and terminate analog service have been less favored to this point. We believe it may now be appropriate to examine the circumstances under which we will allow in-core stations to reduce or discontinue analog TV broadcasting. We seek comment on the factors and circumstances we should consider when evaluating in-core stations' requests to reduce or terminate their analog TV service before the February 17, 2009 transition date. We invite comment on ways to ensure that stations meet the statutory transition deadline, while still minimizing the loss of TV service to consumers. If we permit early reduction or termination of analog service, how do we ensure that the public continues to have access to news and information, including emergency and other public safety information during the transition?

44. First, with respect to a station requesting to reduce its analog service—short of terminating its analog broadcasting, we seek comment on whether we should establish a presumption that any reduction in a station's analog TV service is in the public interest if:

(1) The proposed reduction is directly related to the construction and operation of post-transition facilities and would ensure that the station or another station can meet the deadline;

(2) The proposed reduction in analog service is less than five percent of either the station's service area or its population served;

(3) The proposed reduction does not cause the loss of an area's only top-four network or NCE TV service;

(4) The proposed reduction does not result in an unreasonable reduction in the number of services available in that area; (We seek comment on what that number of services would be. For example, the Commission has previously been concerned where the loss results in an area becoming less than well served, *i.e.*, with fewer than five full-power over-the-air signals. In

other contexts, such as the satellite context, we note that the Commission has considered whether an area would become ''underserved,'' *i.e.*, an area with two or fewer full-service stations. We propose to allow stations to minimize the loss of service to their service area or population and satisfy this condition through the use of analog translators. As previously noted, the statutory deadline applies only to full-power stations. Stations interested in the temporary use of analog translators should file requests for STA in accordance with 47 CFR 73.1635.);

(5) The broadcast station proposing the reduction is able to deliver its signal to cable and satellite providers so that the reduced analog signal does not prevent cable and satellite carriage; and

(6) The broadcast station proposing the reduction commits to on-air consumer education about the station's transition and how to continue viewing the station.

We seek comment on the usefulness and timing of this proposal, including whether there are other factors or situations where we should presume that a reduction in service would be, or would not be, in the public interest. For example, should we consider the level of cable and satellite penetration in the areas that will lose over-the-air service? We also seek comment on whether and, if so, how these factors should be relaxed as we approach the DTV transition date. As noted above, requests to reduce analog service would be made in accordance with the Commission's rules.

45. If a station is unable to qualify for the above proposed presumption, we propose to consider the station's request to reduce analog TV service (on an in-core channel) on a case-by-case basis. We invite comment on the appropriate showing and balancing of factors to consider in such a case-by-case analysis. As above, we seek comment on whether we should permit an increasing amount of analog TV service loss the closer we get to the end of the transition. What information must stations provide to demonstrate that reduced analog service would be in the public interest? We would expect that our case-by-case analysis would involve consideration of the factors discussed above. For example, we believe that broadcasters must be able to deliver their signals to cable and satellite providers so that reduced analog signals do not prevent cable and satellite carriage. In addition, we believe that broadcasters must also commit to on-air consumer education about the station's transition and how to continue viewing the station. We seek comment on these proposals.

46. Some broadcasters have side-mounted antennas and similar problems that prevent them from completing the build-out of their digital facilities while they are still operating their full analog facilities. Such stations, if they are providing DTV service to 100 percent of their replication area, may want to wait until February 17, 2009 to move their digital antenna into its final position. This approach may be acceptable provided there is a minimal disruption of service after the deadline due to post-deadline construction activities. We seek comment on this approach and urge each station operating under these circumstances to consider how much of their replicated area is served by their side-mounted digital antenna. It is critically important that analog over-the-air viewers who obtain the necessary digital receivers (whether TV sets or D-to-A converters) are able to receive DTV service over-the-air upon expiration of the deadline for the transition on February 17, 2009. If it is necessary for stations to reduce analog service before the transition to be sure all viewers have digital service on and after the transition date, we will consider such requests.

47. With respect to a station requesting to terminate its analog TV service on an in-core channel, we seek comment on whether and, if so, under what conditions we would permit such an action. We would expect to apply a stricter standard to the early termination of analog in-core service than to a reduction in service. We believe our analysis of requests to terminate analog service would at least involve consideration of the relevant factors discussed above for a reduction of service. We seek comment on this proposal, and also on whether we should require a station requesting termination of analog in-core service to demonstrate that a reduction in service is an unacceptable alternative. As noted above, requests to terminate in-core analog service would be made in accordance with the Commission's rules.

B. Return of Pre-Transition DTV Channel; Flash Cut Requests

48. In this section, we consider whether and, if so, when to allow additional stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) and flash cut at or before the transition deadline from their current analog channel to their post-transition channel. The *Second DTV Periodic Report and Order* permitted stations in certain situations to surrender their pre-transition DTV channel, operate in analog on their analog channel, and then flash cut to digital by the end of the transition on their post-transition channel. As the Commission noted, the potential public interest benefits of flash cuts include freeing the station to focus its efforts on completion of its post-transition channel and the creation of opportunities for the provision of public safety and other wireless services on the pre-transition DTV channel. Based on the criteria established in the *Second DTV Periodic Report and Order,* the Media Bureau has approved the flash cut requests of numerous stations. In this Third DTV Periodic Review, we consider expanding the range of circumstances in which we will allow stations to flash cut.

49. *Background.* In the *Second DTV Periodic Report and Order,* the Commission permitted satellite stations to flash cut because of their unique status and circumstances and provided for these stations to notify the Commission of their decision to flash cut by their initial channel election deadline. (TV satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. Unlike full-service stations, satellite stations have chosen to forego or relinquish full-service status and instead retransmit the programming of a parent station because full-service operation of the satellite facility is not economically viable. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations.) The Commission stated that satellite stations opting to flash cut would retain their interference protection (defined in the proposed new DTV Table Appendix B) as if they had met the applicable replication/maximization build-out requirements.

50. The Commission also permitted stations with out-of-core DTV channels to flash-cut under certain conditions and required notification of their decision to flash cut by their initial channel election deadline. The Commission presumed that granting such requests would be in the public interest if the station demonstrated that (1) it was assigned an out-of-core DTV channel, and (2) grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox). (The

Commission has ''relied on affiliates of the four largest national television networks to achieve the necessary milestones throughout the DTV transition.'' The Commission also noted that the presumption is neither conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption.) In the case of requests that did not meet these criteria, the Commission stated that it would consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Like satellite stations, full-service out-of-core stations that are permitted to flash cut would retain their interference protection (defined in the new DTV Table Appendix B, as adopted) as if they had met the applicable replication/maximization build-out requirements. The Commission also stated in the *Second DTV Periodic Report and Order* that stations would not be eligible to flash cut if they ''have been denied an extension of the construction requirements and admonished because they failed to demonstrate that they are meeting the necessary criteria for an extension and have not come into compliance.''

51. The Media Bureau recently approved by Public Notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order.* These stations were approved to turn off or discontinue construction of their pre-transition DTV channel. In addition, the Public Notice invited any other station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order.*

52. *Discussion.* We seek comment on whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition DTV channel before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel (which must be different from their pre-transition DTV channel). (Stations may continue to obtain flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN.*) For instance, we seek comment on the following factors: (1) Whether the DTV station is operating on TV channels 52–69; (2) whether the station is affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox); (3) whether the station's pre-transition DTV channel is allotted to another station for post-transition use and the station's return of the channel will facilitate the other station's construction of its post-transition digital facility; and (4) the station's financial hardship. We invite comment on these criteria and on other criteria that may be relevant. We encourage commenters to address the public's desire to continue to receive DTV signals that are currently available and the impact that allowing stations to turn off pre-transition DTV signals would have on the successful and timely completion of the transition. We also seek comment on the impact of this proposal on cable and satellite subscribers. Consistent with the decision in the *Second DTV Periodic Report and Order,* stations that have been admonished by the Commission for failure to meet their construction deadline would not qualify to flash cut.

C. Construction Deadline for Full, Authorized DTV Facilities

53. In light of the short amount of time remaining before the transition deadline, it is critical that stations finalize construction of their post-transition facilities expeditiously to ensure the provision of TV broadcast service to the public when analog transmissions cease. In this section, we consider whether to require stations to continue construction of pre-transition channels that are not going to be used by the station after the transition. We also consider the deadline by which we will require TV broadcast stations to complete construction of their post-transition facilities.

54. As discussed below, we are proposing to adopt a different approach for the remainder of the transition with respect to deadlines for construction of DTV facilities and interference protection. Until now, a primary focus of the Commission has been to facilitate the initiation of DTV service to the public during the transition. This approach was designed, in part, to accomplish the goal of completing the transition by the December 31, 2006 ''flexible'' deadline originally established by Congress, which allowed for exceptions to the deadline. (Guided by this statutory directive, the Commission established construction deadlines and ''use or lose'' policies that provided incentives to stations to provide DTV service during the transition, which in turn gave viewers an incentive to purchase equipment that would enable them to view these signals.) Now that Congress has established a ''hard'' deadline for completion of the transition, with no exceptions, we believe our emphasis should shift toward ensuring that DTV stations will be providing service on their final, post-transition channels by that date. In general, we now must focus on striking the appropriate balance between the public interest in assuring that post-transition channels are fully constructed by February 17, 2009, and the public interest in pre-transition digital and analog service. These, like other issues raised in this NPRM, require careful self-assessment by licensees to determine how best to serve the public while at the same time making efficient use of the resources available (manufacturing capacity, tower crews, etc.) available to them.

55. *Previous Construction Deadlines and Use or Lose Policies.* As discussed above, the DTV construction schedule adopted by the Commission in 1997, provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003. (Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003.) In 2004, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel. By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations will move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they will remain on their current DTV channel after the transition. If they will move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006. The Commission stated that stations that met the applicable ''use-or-lose'' deadline and that are going to move to a different channel after the transition would be permitted

to carry over their authorized maximized areas to their new channels. In addition, these ''use-or-lose'' replication/maximization deadlines became the new deadlines for stations operating temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities. (In 2001, the Commission temporarily deferred (until the Second DTV Periodic Review) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license.) Approximately 80 percent of the stations in each of these categories met their respective deadlines.

56. In the *Second DTV Periodic Report and Order,* the Commission noted that certain stations had not yet been granted an initial DTV construction permit. The Commission required that, by August 4, 2005, all such stations construct and operate ''checklist'' facilities that conform to the parameters of the DTV Table and other key processing requirements. The Commission stated that it would consider requests for waiver of the August 4, 2005 deadline on a case-by-case basis, using the criteria for extension of DTV construction deadlines. (''Checklist'' facilities have power and antenna height equal to or less than those specified in the DTV Table and are located within a specified minimum distance from the reference coordinates specified in the DTV Table. Because these facilities comply with the interference requirements specified in the rules, no further consideration of interference is required. In addition, because the DTV Table has been coordinated with Canada and Mexico, ''checklist'' facilities generally do not require further international coordination.)

57. In two separate orders adopted subsequent to the adoption of this NPRM, the Commission addressed applications filed by stations for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called ''use or lose'' waivers). In the *Construction Deadline Extension Order,* the Commission considered 145 requests for an extension of time to construct a DTV facility. For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations an additional six months from the release date of the *Construction Deadline Extension Order* in which to complete construction. For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. In the *Use or Lose Order,* the Commission considered 192 requests for waiver of the ''use or lose'' deadlines. For 102 stations whose pre-transition DTV channel is the same as the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction. For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction. In both of these orders, the Commission reminded stations that the hard deadline for termination of analog TV service prevents consideration of any request for extension of full-power analog TV service beyond that date. The Commission advised stations given an extension or waiver to utilize this time to take all steps possible to complete construction as further extension or waiver requests may be evaluated under a more stringent standard. We intend to treat similarly any stations that have a construction permit for which the original time to complete construction has not yet expired. These stations still have time remaining on their original construction permit to complete the build-out of their pre-transition DTV facilities or they may have had their original construction permit extended and the extended deadline has not yet expired. Thus, these stations are not addressed in the *Construction Deadline Extension Order or Use-or-Lose Order.* These stations should continue to follow existing rules and procedures (*i.e.*, continue to build their current DTV CP and, if that CP expires before they have completed construction, file a request for extension of the CP). Once final rules are adopted in this proceeding and become effective, stations will be subject to the new rules, including changes to Section 73.624(d).

58. *Revised Construction Deadlines and Use or Lose Policy.* Going forward, we propose to establish construction deadlines for DTV facilities that vary based on a station's channel assignments for pre- and post-transition operation and other circumstances affecting the station's ability to complete final, post-transition facilities. We believe this revised approach will best permit stations to focus their efforts on completing construction of final, post-transition facilities in the time remaining before the end of the transition. In conjunction with this approach, we propose to tighten the standard by which we evaluate future requests for extension of time to construct a DTV facility. In addition, with respect to construction deadlines of February 17, 2009 or later, we propose to evaluate all requests for additional time to construct under the ''tolling'' standard currently applied to analog broadcast TV stations and DTV singleton stations.

59. In this section, we consider construction deadlines for differently situated stations. First, we consider stations whose post-transition channel is different from their pre-transition DTV channel. These are stations that will be starting over with a new channel for DTV service. Second, we consider stations whose post-transition channel is the same as their pre-transition DTV channel. Unlike the first group, these are stations that have long been assigned the channel that they will use for post-transition operations. Third, we consider stations in other situations, including those facing unique technical challenges. Finally, we consider alternatives that might afford stations with regulatory flexibility. We seek comment on the proposed deadlines and tentative conclusions below, and also seek comment on alternative deadlines for these stations.

1. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel

60. For stations whose pre-transition DTV channel is different from their post-transition channel, we propose not to require further construction of their pre-transition DTV channel and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. These stations face a greater challenge than stations that will remain on the same DTV channel for post-transition operations. Stations moving to a new channel must apply for a construction permit on that channel and build new facilities based on the channel allotments in the new DTV

Table Appendix B, as adopted. Our proposal is designed to give stations facing the challenges associated with moving to a new DTV channel the maximum possible time to complete their post-transition facilities before analog transmissions must cease. We seek comment on this approach, and on whether an earlier construction date would still be appropriate in some circumstances.

61. With the establishment of the hard deadline, we believe the focus must turn to facilitating stations' efforts to construct their permanent DTV facilities that will be used to provide service after the transition. Therefore, at this stage in the DTV transition, we propose to allow a station to terminate further construction of its pre-transition DTV channel if this channel is not the station's post-transition channel. We request comment on this proposal. We believe that requiring stations to build or expand facilities that would only be operated until the end of the transition—*i.e.*, for less than two years—potentially could undermine the larger public interest objective of ensuring a timely transition to digital broadcasting by diverting limited resources from what is a far more important goal: The construction of final, post-transition facilities.

62. At the same time, however, we recognize that many stations whose pre-transition DTV channels are not the channels they will operate on post-transition have been diligent in meeting the deadlines established by the Commission for completing construction of their pre-transition facilities in order to provide DTV service to the public and to be permitted to carry over interference protection to their permanent DTV channel. It is not our intent to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. However, as noted above, it is critical at this juncture to focus on the completion of final DTV facilities. In order to accomplish this goal, we believe we must permit stations to cease investing time and resources in completing facilities that will be used for the remainder of the transition simply in order to retain interference protection on their final, post-transition channels. Instead, we need to ensure that stations are focused on finalizing their post-transition facilities now to ensure service to the public when analog transmissions cease.

63. Accordingly, we propose to change our ''use or lose'' policy for stations whose pre-transition DTV channel is not their post-transition channel as follows. For such stations that received either an extension of their construction deadline in the *Construction Deadline Extension Order* or a waiver of their use-or-lose deadline in the *Use or Lose Order* (*i.e.*, until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding), we propose that these stations will not lose protection to their post-transition channels. We note that many stations that have not built their transitional facilities have faced recognizable impediments to doing so. In addition, most of these stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that they were found to have a valid reason not to have met the applicable deadline. Thus, we do not believe that allowing stations that faced such impediments to retain interference protection on their final, post-transition facility unfairly rewards these stations. We seek comment on this approach. We specifically invite comment on the effect of this proposal on stations moving to a different DTV channel for post-transition operations that have fully complied with their use-or-lose deadlines and construction permit build-out requirements.

64. Under our proposal here, stations with a pre-transition DTV channel that is not the same as their final, post-transition channel have the following options. We request comment on our proposal, discussed below.

65. *Pre-Transition DTV Channel Unbuilt or Not in Operation.* We propose to permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its CP for that facility to the Commission and focus its efforts on construction of its post-transition facility. Thus, a station that has either not begun construction of its pre-transition DTV facility or has not begun operating that facility, and will be moving to a different channel at the end of the transition, may return the CP for that facility to the Commission. As stations in this situation are not currently providing digital service to the public, we believe it is appropriate at this stage in the transition to allow these channels to be returned. We request comment on this approach. Stations electing this option would be required to obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra.* Stations electing this approach would be able to carry over interference protection to their post-transition channel, as noted above.

66. *Pre-Transition DTV Channel in Operation.* Stations with operational DTV facilities on a pre-transition channel may have several options. Under each of these options, we propose to permit a station to carry over interference protection to its post-transition channel, as noted above.

- First, stations may discontinue further construction on their pre-transition DTV facility and to operate the facility they have constructed at this point during the remainder of the transition while they focus on construction of their permanent DTV facility. We propose to permit these stations to file an application to modify their existing CP to match their pre-transition DTV facility in accordance with the Commission's rules. The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility.

67. Second, stations may be permitted to cease operating their pre-transition DTV facility in certain circumstances. We propose that these stations must obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra.*

- Third, stations may decide they would like to continue construction of their full, authorized DTV facility on their pre-transition channel. While we do not want to deny stations in this third category the opportunity to continue to build pre-transition DTV facilities and to provide service on these facilities for the remainder of the transition, we believe it is appropriate to require that these facilities be completed expeditiously. Accordingly, for stations in this third category, we propose to permit the station to continue to build its pre-transition DTV facility, but will require that construction be completed by the deadline established for them in the *Construction Deadline Extension Order or in the Use or Lose Order* (*i.e.*, 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding).

2. Stations Whose Post-Transition Channel Is the Same as Their Pre-Transition DTV Channel

68. Many stations whose pre-transition DTV channel is the same as their post-transition channel have already made substantial progress toward construction of facilities that will be used to provide service after the transition. Specifically, they have already constructed their full,

authorized DTV facilities in accordance with their existing CP or license and the Commission's previous build-out requirements established in the *Second DTV Periodic Report and Order.* Some of these stations have built DTV facilities that match those defined in the proposed new DTV Table Appendix B and are, therefore, now ready for post-transition operations. (We remind stations of their continuing obligation to notify the Commission concerning changes in their facilities. Stations are expected to comply with the rules and may refer to adjustments in their facilities as described in the new DTV Table in their comments in this docket. To the extent that stations still need to modify their authorization, we propose to require them to file an application, as discussed below in section V.D. In addition, as we propose below, applications that match or closely approximate but do not exceed their new DTV Table facilities will be eligible for expedited processing.) Other stations whose pre-transition DTV channel is the same as their post-transition channel have built their full, authorized DTV facilities in accordance with their existing CP or license but for some reason these facilities do not match those facilities defined in the proposed new DTV Table Appendix B. (Stations may have certified facilities that were authorized by CPs they have not yet constructed, or that they requested in pending applications that have been held up by international coordination issues, or that are based on replication that their current CP or license does not exactly achieve. Stations may also have modified their CP or license since they filed their certification so that their currently authorized coverage no longer provides an exact match to their certified coverage.) These stations will need to file an application for a new CP or an application for modification of CP to change their facilities to match those facilities defined in the new DTV Table Appendix B, as adopted. We discuss below, in section V.D., the process by which stations must file such applications.

69. Other stations with the same pre- and post-transition DTV channel have not yet constructed their full, authorized DTV facilities. Some of these stations currently have a CP for their full, authorized DTV facility, some are operating reduced facilities pursuant to an STA, and some may not have constructed at all. These stations must complete construction and, in some cases, may have to apply for a new CP or for modification of their CP to receive authorization for facilities that match the facilities defined in the new DTV Table Appendix B, as adopted.

70. It is possible that a station with the same pre- and post-transition channel does not want to complete construction of its full, authorized facilities as described in the new DTV Table Appendix B. These stations must apply to modify their existing CP or license to reflect the facility they intend to construct or have constructed.

71. For stations whose post-transition channel is the same as their pre-transition DTV channel, we propose that the deadline to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order* or *Use or Lose Order* (*i.e.*, six months from the release date of those orders). For these stations, we believe it is appropriate to require that they complete construction of their final DTV facility by this deadline because they have already had a significant period of time in which to build their post-transition facilities and, indeed, should already have these facilities constructed. Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only recently been assigned their new channel and thus are only now able to apply for a construction permit for this channel and commence construction of their post-transition facilities.

72. We invite comment on this approach. In particular, we invite comment on whether there are stations in this group that must apply for a new or modified CP because their current CP does not match the facilities specified in the proposed new DTV Table Appendix B. Are the changes in the CP such that little, if any, of the equipment necessary for the facility for which they currently have a CP could be used in the facility specified in the new DTV Table Appendix B, as adopted? If we were to give these stations more time to construct, should we do so only where the difference between the facilities specified on the current CP and those defined in the proposed new DTV Table Appendix B is significant? If so, how should we define a ''significant'' difference in this context?

3. Other Situations

73. In this section, we separately discuss the proposed treatment of stations with side-mounted digital antennas or facing other circumstances whereby the operation of the station's analog service prevents the completion of the station's full, authorized post-transition facility as defined in the proposed new DTV Table Appendix B. We also discuss the treatment of stations granted a waiver of the August 4, 2005 ''checklist'' deadline and stations denied an extension of time to construct a pre-transition DTV facility or a ''use or lose'' waiver request.

74. *Stations Facing Unique Technical Challenges.* In the *Construction Deadline Extension Order,* the Commission granted the extension applications of four stations because these stations faced unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from completing construction of their DTV facilities. Most of these stations proposed to install their DTV antenna on the top of the tower where their existing analog antenna currently is housed. In order to top-mount the DTV antenna, these stations would have to relocate the analog antenna to another position on the existing tower or to another location altogether. These stations were granted an extension until February 17, 2009 to complete construction of their DTV facilities. Similarly, in the *Use or Lose Order,* the Commission identified 45 stations that have come close to meeting the applicable replication or maximization requirements but cannot fully satisfy those requirements because of unique technical challenges associated with operation of their analog, as well as construction of their digital, facilities. Some of the stations in this latter group are stations with top-mounted antenna issues; others include stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. These stations were granted a similar waiver of the ''use or lose'' deadline.

75. For the 49 stations referenced above that were granted an extension request or ''use-or-lose'' waiver because they faced unique technical challenges, we propose that the deadline for these stations to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order or Use or Lose Order* (*i.e.*, February 17, 2009). In general, we established pre-transition DTV construction deadlines, and have proposed post-transition construction deadlines herein, based on whether a particular station was going to use its pre-transition DTV channel for post-

transition operations. However, in the *Construction Deadline Extension Order or Use or Lose Order,* we did not rely on this distinction because stations with a top-mounted antenna issue face a unique and insurmountable impediment to construction (*i.e.*, they cannot put both an analog and a DTV antenna on top of the same tower). Accordingly, we propose to give all such stations until February 17, 2009 to complete their final, post-transition facilities. We also anticipate that these stations will take advantage of approaches proposed herein in the section concerning reduction in analog service prior to the end of the transition to facilitate construction of final, DTV facilities. We seek comment on this approach.

76. *Stations Granted Waivers of the ''Checklist'' Deadline.* In the *Use or Lose Order*, the Commission granted 10 requests for waiver of the August 4, 2005 deadline established for all television stations to construct and operate a ''checklist'' DTV facility. For four of these stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these stations a ''checklist'' waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction and begin operation of their ''checklist'' facilities. For six of these stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these stations a ''checklist'' waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction and begin operation of their ''checklist'' facilities.

77. We propose for these stations an approach dependent upon whether their pre-transition DTV channel is the same as, or different than, their post-transition channel. For the six stations granted ''checklist'' waivers whose pre-transition DTV channel is different than their post-transition channel, we propose to apply the procedures outlined at section V.C.1., *supra*, for stations that are moving to a different channel post-transition. Thus, for these stations we propose not to require further construction of their pre-transition DTV facility and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. (In the *Use or Lose Order*, these stations were granted a waiver of the ''checklist'' deadline until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding.) These stations may cease further construction of their pre-transition facility. They may decide to operate the facilities they have constructed on their pre-transition channel for the remainder of the transition and, if so, they should apply to license those facilities and, if they do so, they would not be required to request further extensions of time to construct in order to retain full interference protection to their post-transition DTV channel. Alternatively, these stations could elect to pursue the options outlined in section V.A., *supra*, concerning reduction in analog service prior to the end of the transition. For the four stations granted ''checklist'' waivers whose pre-transition DTV channel is the same as their post-transition channel, we propose to apply the procedures outlined above at section V.C.2., *supra*, for stations with the same pre- and post-transition channels. Thus, these stations must complete their full, final post-transition facility by the deadline established in the *Use or Lose Order* (*i.e.*, six months from the release date of the *Use or Lose Order*). Any request for extension of time to construct beyond that date will be considered under the stricter extension criteria proposed herein. We invite comment on these proposals.

78. *Stations Denied An Extension of Time to Construct.* In the *Construction Deadline Extension Order*, the Commission denied the extension applications of five stations, admonishing three of these stations for their continuing failure to timely construct and affording these stations additional time to comply with the DTV construction rule. The one admonished station whose pre-transition DTV channel is the same as its post-transition channel was afforded six months from the release date of the Order to comply with the DTV construction rule, while the two admonished stations whose pre-transition DTV channel is different from their post-transition channel were afforded until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding. All three admonished stations were also made subject to the remedial measures for DTV construction adopted by the Commission. For these admonished stations, we propose that we will not consider any future requests for extension of time to construct pre-transition facilities. We note that the *Construction Deadline Extension Order* admonished these stations and subjected them to remedial measures and noted that the stations could be subject to additional sanctions if they do not comply with the measures and requirements set forth in that Order. In that regard, we propose that for the station who was admonished and whose pre-transition DTV channel is the same as its final, post-transition channel, if such station does not complete construction of its DTV facility by the deadline established in the *Construction Deadline Extension Order*, the station would be subject to additional remedial measures, such as but not limited to the loss of its pre-transition channel, the loss of its ability to carry over to its post-transition channel interference protection for the area unserved by its pre-transition facility, and the issuance of forfeitures. For the other two admonished stations, whose pre-transition DTV channel is not the same as their post-transition channel, because these stations have been denied an extension of their construction deadline and have been required to follow remedial procedures, we believe it is appropriate to treat these stations more strictly than stations that have met the current standard and been granted an extension of the construction deadline. However, we believe requiring these two stations to build their pre-transition channel would be inconsistent with the policy advanced throughout this document to shift our focus to construction of post-transition facilities. Therefore, we propose that these stations will not be required to construct their pre-transition facilities but will remain admonished and on a remedial program with respect to construction of their post-transition facilities. If these stations fail to meet the construction deadline established for their post-transition facilities, we propose that these previously admonished stations would also be subject to additional remedial measures similar to those applicable to stations whose pre-transition channel is the same as their post-transition channel (*e.g.*, the issuance of forfeitures). We request comment on these proposals. Our proposals here are not intended to conflict with the *Construction Deadline Extension Order* or the remedial measures or possible sanctions mentioned therein, but instead propose additional or alternative consequences for failure to construct by the applicable deadline.

79. *Stations Denied a Waiver of the Use or Lose Deadline.* In the *Use or Lose Order*, the Commission determined that

seven stations were unable to show that good cause existed to allow them additional time to meet their applicable ''use or lose'' deadline and, thus, were denied their ''use or lose'' waiver requests. Because these stations failed to meet the applicable replication/maximization requirements, they lost interference protection to the unused portion of the associated coverage area. In addition, these stations lost the ability to ''carry over'' their interference protection to their unserved DTV service area on their post-transition channel. We remind these stations that, with respect to their pre-transition channel, they must submit an application to modify their DTV construction permit to specify their reduced facilities, as directed in the *Use or Lose Waiver Order*. Nevertheless, we recognize that the proposals in this NPRM deemphasize the requirement that stations construct DTV facilities that will not be used for post-transition operations. Therefore, we seek comment on whether we should reevaluate the loss of interference protection for these stations with respect to their post transition channel.

4. Extension/Waiver of DTV Construction Deadlines

80. In light of the deadline for completion of the digital transition and in view of the changes proposed above to our construction deadline and use or lose policies, we believe it is appropriate at this time to consider the standard that should apply generally for grant of an extension of time to construct DTV facilities pre-transition. (This new standard will not apply to digital LPTV facilities.)

81. Under the current rules, the Media Bureau may grant a six-month extension of time to construct a DTV station if the licensee or permittee can show that the ''failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.'' The rules state: ''[s]uch circumstances shall include, but are not limited to (A) [i]nability to construct and place in operation a facility * * * because of delays in obtaining zoning or FAA approvals, or similar constraints; (B) the lack of equipment necessary to obtain a digital television signal; or (C) where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.'' (To qualify under the financial resources standard, the applicant must provide (1) an itemized estimate of the cost of meeting the minimum build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant's good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction.) These rules apply to stations granted a paired license for analog and digital operation during the transition. The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.

82. We propose to revise and tighten this standard for extension of DTV construction deadlines to ensure that stations complete their DTV facilities and commence operation. The current standard was adopted early in the DTV transition process when stations were first trying to build digital facilities and applies only to stations with a paired license. The standard was revised to include consideration of financial resources at a time when broadcasters were still trying to meet the initial construction deadlines. At this point in time, however, the initial construction deadlines for DTV facilities passed several years ago and the deadline for completion of the transition is less than two years away. We believe that stations at this stage in the transition must finalize their construction plans and implement them. We tentatively conclude that we should revise Section 73.624(d)(3) of the rules, which sets forth the standard for extension of DTV construction deadlines, to make that provision substantially stricter. Specifically, we propose to eliminate Section 73.624(d)(3)(ii)(B), which permits consideration of circumstances related to the lack of equipment necessary to obtain a digital television signal in the evaluation of whether to grant a request for extension of time to construct. At this point in the transition, we believe stations have had ample time to order the equipment required to provide digital service and do not believe it is necessary or appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also propose to revise Section 73.624(d)(3)(ii)(C), which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources. Specifically, in seeking a DTV extension, we propose that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. (Our proposed showing of three years of negative cash flow is similar to the showing considered in determining whether a station is a ''failed station'' for purposes of a waiver of our local TV ownership rules. However, we do not intend to use the failed station standard in its entirety as applied in the context of local TV ownership in determining whether a station should be granted an extension of time to construct under our revised extension standard.) Thus, we propose to eliminate the existing four-part test for financial hardship and replace it with a new test. Stations seeking an extension based upon financial considerations would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations also would be required to submit a schedule of when they expect to complete construction. We seek comment on this proposal. In particular, we seek comment on how this proposal should be applied to noncommercial educational stations, whose financial circumstances often differ from those of commercial stations.

83. Again, at this stage in the transition we believe all stations have had considerable time to address financial issues related to completion of their digital facilities and further consideration of such issues in connection with a request for additional time to construct should be limited to a situations like bankruptcy or receivership where a court generally controls the station's finances, or where the station can demonstrate severe financial hardship as discussed above. Thus, going forward, requests for extension of time to construct related to lack of equipment or the cost of meeting the build-out requirements other than where the station is in bankruptcy or receivership or is facing severe financial hardship as discussed above will not generally be granted.

84. However, we will continue to consider going forward requests for extension of time where the station is awaiting action by the Commission or a court on a pending application or appeal or where action on an application is being delayed for other reasons beyond the station's control, such as reasons related to international coordination. We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the

control of the station, such as where the failure to obtain coordination will not permit the station to construct facilities sufficient to replicate its analog coverage area. A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area. In addition, we will continue to consider circumstances related to an act of God or terrorism. We will revise 47 CFR 73.624(d) and FCC Form 337, accordingly, and will continue to require that any request for extension of time be filed electronically using the revised form. We propose to apply the revised rule concerning requests for extension of time to build DTV facilities to all requests for extension of construction deadlines occurring prior to February 17, 2009. This revised rule would apply, inter alia, to those stations whose pre-transition DTV channel is the same as their post-transition channel and that were granted extensions or waivers in the *Construction Deadline Extension Order* or the *Use or Lose Order*. We recognize that some stations may request further extensions of time to build and that other stations, whose deadlines have not yet expired, may request extensions of deadlines once their deadlines expire. We tentatively conclude that we will apply the revised rule to any requests that are pending at the time the revised rule becomes effective. We seek comment on these proposals and on this tentative conclusion. (We note that DTV singleton stations that were not eligible for a paired license for analog TV and DTV operation during the transition are not currently governed by 47 CFR 73.624(d)(3). These DTV singleton stations are currently subject to the tolling provisions of 47 CFR 73.3598(b) and we propose that these stations continue to be subject to the provisions of that section.)

85. We note that while we propose to establish a stricter standard for requests for extension of time to construct DTV facilities, we are also proposing, as discussed above, to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. Taken as a whole, we believe these proposed changes will help many stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to end analog transmission by February 17, 2009.

86. Post-transition we intend to take a different approach with respect to requests for additional time to construct DTV facilities. While the transition to digital broadcasting was underway, analog broadcasting remained the primary method by which the vast majority of American consumers received over-the-air television. As a result, while it was important to the transition that stations begin transmitting a digital signal, it was not critical to the ability of over-the-air viewers to view broadcast television that they do so. Accordingly, our extension criteria permitted grant of extensions of time to construct DTV facilities based on a number of different criteria. Once the nation moves to an all-digital broadcast service, however, we believe that application of a stricter ''tolling'' standard for additional time to construct is appropriate. Once DTV is the sole broadcast service, we believe requests for additional time to construct should be treated as we now treat such requests for all analog stations and DTV singletons.

87. Specifically, for all requests for additional time to construct DTV facilities for construction deadlines occurring February 17, 2009 or later, we tentatively conclude that we will consider such requests under the tolling standard set forth in Section 73.3598(b) of our rules, which currently applies to DTV singletons and analog TV stations, as well as AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, and LPFM stations. Section 73.3598 provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.*, floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review (*i.e.*, petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal), or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.*, zoning or environmental requirements). The rule further provides that a permittee must notify the Commission of any event covered under the provision and provide supporting documentation in order to toll the construction deadline. Permittees are also required to notify the Commission when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God automatically ceases six months from the date of the notification to the Commission unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction and describing any construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments. Section 73.3598 further provides that any construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission. (The Commission has noted that there may be rare and exceptional circumstances, other than those delineated in its rules or decisions adopting the rules, that would warrant the tolling of construction time, *i.e.*, other circumstances in which a permittee is prevented from completing construction within the time specified on its original construction permit for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under 47 U.S.C. 319(b). In these very limited circumstances, the Commission noted that it would entertain requests for waiver of its strict tolling provisions.) We seek comment on this approach. (We will consider further amendments after the transition is completed to eliminate rules that were adopted only for the construction of DTV stations during the transition. As part of that effort, we may eliminate 47 CFR 73.634(d)(3) and instead rely, as proposed herein, on 47 CFR 73.3598(b) for all construction, as we do today for the broadcast services. We also note that these proposals are for the full-power stations subject to the February 17, 2009 deadline. The rules pertaining to low power, translator and Class A stations will be the subject of another proceeding.) We also invite comment on whether it is necessary to amend Section 73.3598(a) to specify ''DTV'' or if the existing reference to ''new TV'' in this section will be adequate in conjunction with the clarification provided by the Order to be adopted in this proceeding. We also seek comment on whether we should afford small television broadcasters additional time to construct DTV facilities. (The Small Business Administration defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts; 13 CFR 121.201, NAICS Code 515120. We note that small TV stations, as well as larger stations, must terminate analog broadcasting by February 17, 2009, and, therefore, should have their digital facility completed by that date.)

88. We note that, under the current rules applicable to DTV stations, the Commission has permitted a station to justify an extension request if the Commission has not acted on the station's modification application. Under the tolling standard we propose to apply to all construction deadlines February 17, 2009 and later, the filing of an application for modification of a construction permit would not be grounds for tolling of the construction deadline. We believe that transitioning DTV stations to the rule applicable to construction of analog TV and all other broadcast stations in this regard is appropriate post-transition. However, we propose that delays due to international coordination would not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission would toll a construction permit for a DTV station where the station could demonstrate that a request for international coordination had been sent to Canada or Mexico on behalf of the station and no response from the country affected had been received. Second, the Commission would toll a DTV construction permit where the station could demonstrate that the DTV facility approved by Canada or Mexico would not permit the station to serve the viewers currently served by the station's analog facility that would also be served by the station's digital facility approved by the Commission. We seek comment on these proposals and other changes to Section 73.3598.

5. Early Transition

89. Some stations that are moving to new post-transition channels (*i.e.*, not operating on either of their pre-transition channels) may want to begin operating on those new channels before the transition date. We seek comment from stations in this category on whether they believe they permissibly could operate on their post-transition channel before the February 17, 2009 deadline for terminating analog transmissions. We also invite comment on the potential benefits of early transition and the impediments that may exist. We believe that early transition could advance the transition if it provided improved DTV service and freed transition resources for those stations building later. Under what circumstances will stations be able to transition early without causing impermissible interference to another station (analog or digital)? We seek comment on whether there are any incentives we can or should provide to stations to operate on their post-transition channel early. We propose to allow early transition, provided such operations would not cause impermissible interference to another station. Consistent with our transitional interference protection policies, we propose that early transitioning stations must not cause more than 2.0 percent interference to any authorized analog-only TV station. Stations interested in transitioning early should indicate their intent to do so in their CP or modification applications for post-transition facilities. (We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities.) Because we tentatively conclude that stations cannot expand beyond their facilities defined in the new DTV Table Appendix B, as adopted, we believe early transitioning stations cannot cause additional interference to post-transition operations. We also propose to permit such stations to commence early post-transition operations that may be less than their full, authorized facilities, provided impermissible interference is not caused to another station (analog or digital). Broadcasters seeking to commence early post-transition operations would need to indicate whether doing so will result in a loss of their own analog or digital service and, if so, how they plan to address that loss in service. As discussed above in the analog service loss context, we seek comment on whether (and if so to what extent) a loss of service should be acceptable if it would help facilitate the transition. We seek comment on these proposals.

6. Additional Proposals to Provide Regulatory Relief

90. *Alternative Buildout.* We seek comment on whether to permit stations to request an STA to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Could such a proposal facilitate the transition without undermining viewers' over-the-air reception expectations after the transition date? We would apply the new construction deadlines and standard adopted in this proceeding for additional time to construct to the construction of such intermediate facilities that would meet the service requirement. If we adopt such a proposal, when must these stations construct their full, authorized post-transition facilities? If we do not afford such relief generally, should we afford such relief to small television broadcasters because of unique challenges they may face in completing their transition?

91. *Temporary Use of In-core Pre-Transition DTV Channels.* We believe that some stations that are returning to their analog channel or moving to a new channel for post-transition operations may be able to temporarily remain on their in-core pre-transition DTV channel and provide adequate service after the transition date without causing impermissible interference to other stations or preventing other stations from making their transition. We propose to afford these stations with this opportunity if doing so would facilitate their transition. We propose to allow these stations to choose to temporarily remain on their pre-transition DTV channel if:

(1) They serve at least the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. (Stations must ensure that consumers served pre-transition that obtain a D-to-A converter box through the NTIA program or who otherwise purchase DTV receiver equipment will be capable of receiving off-the-air DTV signals post-transition.); and

(2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. We tentatively conclude that the 0.5 percent interference standard proposed for post-transition operations in section V.F.1., below, would apply because such operations would occur after the transition deadline.

We seek comment on this proposal. We propose for stations to make such requests in accordance with the rules for STA. We believe affording such regulatory flexibility to these stations will facilitate the transition. We seek comment on this proposal, including its usefulness to stations and on whether it is consistent with the statutory transition deadline. (We note that out-of-core DTV stations are prohibited by statute from remaining on their original allotted DTV channel after the transition deadline. Therefore, this flexibility would not apply to DTV stations operating out-of-core.) Can a station readily determine whether its continued operation after February 17, 2009 on its pre-transition DTV channel would interfere with another station's transition or operation? If we adopt this proposal, how long should we allow stations to remain on their in-core pre-transition channel and when must these stations construct their full, authorized post-transition facilities? (Whatever post-transition construction deadline is

established for these stations, we propose to apply the new tolling standard adopted in this proceeding.) What effect would this proposal have on the operation of DTV receiver equipment, including D-to-A converter boxes? (It is our understanding that whenever a station changes channels, an over-the-air viewer using a D-to-A converter box (or DTV tuner-equipped set) will have to manually rescan for available channels in order to receive that channel.) Finally, we seek comment on the implications of our proposal with respect to the adoption of the new DTV Table.

92. *Channel Priority.* We recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition channel 11 in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to ensure that all stations will be able to provide digital service on their post-transition channels at the transition date. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009, unless they have applied for and been granted authority to remain on a pre-transition channel. We seek comment on whether and, if so, what steps the Commission should take to ensure a smooth transition in these circumstances.

D. Applications to Construct or Modify DTV Facilities

93. Stations that need to request authority to construct or modify their post-transition facilities must file CP or modification applications (*i.e.*, FCC Form 301 or 340). (The 634 stations that need to construct their post-transition facilities because they will not be using their currently authorized DTV channel for post-transition operations are expected to file after the DTV Table is adopted. Any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations but need to change their facilities because they do not have an authorization for their intended operations should also file an application. For example, a station that intends to operate its post-transition facility pursuant an existing STA operation must file an application to modify its CP. Also, some of these stations may need to apply to increase power or otherwise adjust their facilities because they are now operating under STA at reduced power and they are unable to construct their authorized CP facilities, but intend to operate with more than their current STA facilities (for example, they intend to raise their transmitting antenna to a higher height on their tower, but are unable to mount it at the authorized height). Other stations may need to apply to modify their licensed or CP facilities in order to better reach their new DTV Table coverage if such was based on a certification that differs from their current license or CP (for example, more than 200 stations staying on their pre-transition DTV channel certified to replication facilities and their currently authorized licenses or CPs are unlikely to exactly match the new DTV Table facilities that are derived from the replication coverage). Stations that already have a license to operate or a CP to construct their post-transition channel that matches their new DTV Table facilities do not need to file any additional CP applications. This group includes those stations discussed in paragraph 17 that will use their currently authorized DTV channel for post-transition operations and that will use facilities that exactly match those defined in the new DTV Table. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once they have completed construction, they should file for a license to cover (FCC Form 302) as required by 47 CFR 73.3536. Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze. (On August 3, 2004, the Media Bureau imposed a freeze on requests for changing DTV channels within the DTV Table and on new DTV channels, as well as on the filing of modification applications by television and Class A television stations, in order to provide a stable database for conducting the channel election process and developing a new DTV Table. The freeze does not prevent the processing of pending applications.) Stations that have a license to operate or a CP to construct the facilities they want to retain for post-transition use should file applications if their licensed facilities or CP do not match the proposed new DTV Table Appendix B unless they have previously filed comments to amend the Table or Appendix B in the *Seventh FNPRM*, MB Docket No. 87–268. (The facilities defined in the proposed new DTV Table were intended to allow stations to serve geographic areas based on licensees' certification forms (FCC Form 381) and, in some cases, on conflict resolution forms (FCC Form 383 and 385). If the DTV facility that a station intends to license for post-transition operation did not match the facilities described in the proposed new DTV Table, but does match the facility in the revised new DTV Table when adopted, the station need not file an application.) Appendix D to the NPRM lists the stations that are ready for post-transition operations and do not need to apply for a CP or modification based on current records. We invite comment on this list and whether there are stations that should be added or deleted.

94. *Filing Requirements.* Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification and submit the appropriate fee. (Applications to construct or modify post-transition facilities specified in the new DTV Table involve a minor change in facilities and we will process them accordingly. 47 CFR 73.3572(a)(1) defines a major change in a television station's facilities as any change in frequency or community of license. Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that will be established in the Report and Order in MB Docket No. 87–268, so we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998. NCE stations must file FCC Form 340. We propose that stations must limit their applications to those facilities specified in the new DTV Table Appendix B, as adopted. Pursuant to this proposal, applications requesting facilities that would serve a larger area than stations' new DTV Table Appendix B facilities would not be accepted at this time. Because the new DTV Table will have resolved the interference conflicts raised during the channel election process, we believe we would be able to process these applications without having to conduct interference analyses and without having to consider whether any applications are mutually exclusive. We seek comment on this proposal. Specifically, we seek input from any stations that may be unable to build precisely the facilities specified in the new DTV Table Appendix B (for

example, if an antenna producing the exact antenna pattern is not available). If such stations are prohibited from expanding beyond their DTV Table Appendix B facilities (as proposed *infra* in section V.E.), will they instead be required to reduce their facilities so significantly that they will be unable to provide adequate service? If so, should we allow stations that fall into this situation to expand beyond their DTV Table Appendix B facilities to the extent necessary to address the difference between the theoretical facilities specified in the new DTV Table Appendix B and the actual facilities which they are able to build?

95. *Expedited processing.* It is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009. (We note that some stations may need to complete their facilities significantly before February 17, 2009, because, for example, they will not be able to build during the winter months.) Thus, stations have a great incentive to promptly file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we propose to process expeditiously certain applications, provided they are filed no later than 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. Stations whose channel assignments or facilities are not finalized at that time will receive expedited processing if they file their applications no later than the deadline specified in their individual channel resolutions. We believe this application filing deadline of 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding will give stations ample time to prepare for these filings and to complete construction prior to the deadline. (The 45-day application deadline will not become effective until OMB approval is obtained for the filing of these applications.) Specifically, we propose to offer expedited processing to stations that timely apply for a CP to build their post-transition channel, provided that their application (i) does not seek to expand the station's facilities beyond its new DTV Table Appendix B facilities; and (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those Appendix B facilities with respect to predicted population). We believe we can quickly determine which stations are applying for facilities that do not extend in any direction beyond their DTV Table Appendix B facilities and then expeditiously review those stations' applications without conducting a significant interference analysis because those applications will either match or closely approximate their DTV Table Appendix B facilities. Further, we believe the creation of this process will allow us to grant qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not mean they will receive an expeditious grant. (Stations that receive expedited processing are not guaranteed that their application will be granted; the application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Similarly, stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.) Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station. (In addition to the proposed requirements discussed, an application cannot be granted unless certain other criteria are met. These include certifying that the proposed facility: (1) Will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary.) We seek comment on this proposal. We also seek comment on alternative methods to streamline the application process.

96. *Revisions to FCC Form 301 and 340.* To accommodate filings related to stations' post-transition facilities, we propose to modify the FCC Forms 301 and 340, as attached. The form changes will allow stations to indicate that they are applying for post-transition facilities. They also will facilitate the expedited processing discussed above. We seek comment on our proposed forms and if additional changes to the forms are needed.

97. *Program tests/License to Cover CP.* Stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission's rules and coordinate with any affected stations when they do the testing. Each station is responsible for determining which other stations may be affected and coordinating accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP, a station may commence program tests upon notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee. (Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees.) We do not believe any rule changes are necessary here.

E. Expanding Facilities

98. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that authorized by a license, CP or STA. This was precluded by the Commission's freeze on the filing of maximization applications in order to provide a stable database for developing the new DTV Table.

99. We recognize that stations may want to apply to expand their facilities to serve a larger area than defined in the new DTV Table Appendix B, as adopted. Stations' new channel assignments may present them with new opportunities to offer expanded DTV coverage, either because the

stations may be moving to a new channel that does not have the same interference restrictions or because other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. It may save some stations time and money if they are able to file only one application for expanded facilities.

100. We believe, however, that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. We thus tentatively decide not to allow stations to apply for expanded facilities at this time. We propose to consider the issue of expanded facilities after all stations have had an opportunity to apply for their facilities as specified in the new DTV Table Appendix B. We seek comment on this approach and on our tentative conclusions. We also invite comment on ways in which stations could seek expanded facilities at this time without delaying the transition or overburdening the scarce resources needed by other stations to transition.

F. Interference Standards

101. Although we have proposed, above, not to allow stations to apply to maximize their facilities at the same time that we will be accepting applications for construction permits for the new DTV Table Appendix B facilities, we do intend to allow stations to apply for maximization once it is appropriate to do so. At that point, we will need to have our post-transition interference standards in place. In addition, it is our understanding that knowing what those post-transition interference standards will be in advance may enable stations to anticipate future equipment needs and allow them to minimize their capital expenditures by buying equipment that can be used both now and in the future. (We cannot provide any guarantees regarding whether and/or to what extent any particular broadcaster may be able to expand their facilities in the future.) Accordingly, we believe it is appropriate at this time to propose what those post-transition interference standards will be. In this section, we consider interference protection methodologies and requirements for application processing, as well as for rulemaking petitions to add a new DTV allotment or change the channel of an existing allotment.

102. In adopting the initial DTV Table in the *1997 Sixth Report and Order,* the Commission concluded that it would apply geographic spacing standards in determining whether to permit the addition of DTV allotments in the Table. (47 CFR 73.623(d) specifies the minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table. 47 CFR 73.623(c) sets forth the criteria for applications to modify assignments in the initial DTV Table, including the thresholds of desired-to-undesired (D/U) ratios at which interference is considered to occur. 47 CFR 73.622(e) defines a DTV station's service area as the geographic area within the stations' noise-limited F(50,90) contour where its signal is predicted to exceed the noise-limited service level. The F(50,90) designator indicates that a specified field strength necessary for the provision of DTV service is expected to be available at 50 percent of the locations 90 percent of the time. A station's noise-limited contour is computed using its actual transmitter location, ERP, antenna HAAT, and antenna radiation pattern.) The Commission noted that geographic spacing provides a clear and simple measure of acceptability of an allotment proposal without the need to engage in extensive analysis of interference and has been used successfully in the television service for many years. (The Commission considered but ultimately rejected an alternative approach whereby a party requesting an addition to, or modification of, the DTV Table would be required to show that a station operating at the maximum permissible ERP and antenna height on the proposed allotment would not exceed the engineering interference criteria with regard to any other existing allotment.) The Commission recognized, however, that engineering criteria may allow more efficient use of the spectrum and stated it would revisit the allotment criteria at an appropriate point later in the DTV transition process. The Commission also determined in the *Sixth Report and Order* that a party applying for a modification of the DTV Table would need to show that its proposed modification would not result in any new predicted interference to other DTV allotments or existing NTSC stations, based on the engineering technical criteria used to develop the initial DTV Table. On reconsideration, the Commission replaced this no new interference standard with a *de minimis* standard pursuant to which stations may make changes in their operation where the requested change would not result in more than a 2.0 percent increase in interference to the population served by another TV or DTV broadcast station, and provided that the protected station is not, or will not be, receiving interference in excess of 10 percent of its population from all combined interfering stations. This *de minimis* standard for permissible new interference was adopted to provide flexibility for broadcasters in the implementation of DTV by allowing additional opportunities for stations to maximize their DTV coverage and/or service by increasing power and/or making other changes in their facilities.

103. The Commission has also relied on other interference standards in the DTV context. For example, applicants seeking facilities modifications of full-service NTSC stations are allowed to cause a 0.5 percent margin above a prediction of no reduction in the population served by a DTV station to account for rounding and calculation tolerances. Applicants for analog TV translator and low power TV (''LPTV'') stations must propose facilities that do not exceed specified threshold D/U ratios at a DTV station's noise-limited contour or at all points within the noise-limited area in the case of adjacent channel stations proposing to locate inside the DTV noise-limited contour. (Similarly, a licensee requesting DTV facilities modifications that would expand its station's service area in any direction must meet D/U protection requirements at the protected contour of Class A TV stations authorized on the same or first adjacent channel. In all cases in which the interference standard is based on signal contour protection, applicants are permitted to base requests to waive the standard on the DTV protection standards and methodology in 47 CFR 73.623(c).) In addition, in the channel election process that led to the proposed new DTV Table for post-transition operation, an interference conflict was determined to exist when it was predicted that more than 0.1 percent new interference would be caused to another station. (New interference was considered to constitute a conflict when the new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of that new interference. In the *Second DTV Periodic Report and Order,* the Commission permitted the 0.1 percent additional interference limit to be exceeded on a limited basis in order to afford stations with an out-of-core DTV channel to elect to operate its post-transition station on its in-core analog channel.)

1. Proposed Interference Criteria

104. When evaluating applications to construct post-transition facilities, we propose to use an interference protection requirement based on

engineering criteria (e.g., permissible interference) rather than a geographic spacing requirement. We believe this will allow for a more flexible design of proposed stations while offering a high level of protection to existing authorized service. By their nature, geographic spacing requirements do not take into account intervening terrain features (or the lack of such features). Stations separated by the same distance may create significant mutual interference in areas of flat terrain while no interference is predicted in circumstances where intervening terrain limits the signals from either or both stations. Where authorized DTV stations wish to change their assigned DTV channel through a rulemaking petition, we also believe applying the proposed engineering criteria is appropriate. On the other hand, we continue to believe that geographic spacing requirements represent a preferred approach for evaluating a petition for rulemaking requesting a new DTV allotment. In such new allotment cases, information about actual transmitter site locations and facilities are generally not available. We propose to apply an engineering criteria approach in all cases involving applications and to use geographic spacing requirements only for rulemaking petitions seeking new DTV channel allotments. We seek comment on these proposals and tentative conclusions, as well as on alternative methods of providing interference protection.

105. Our proposed engineering criteria to evaluate all post-transition applications would limit the predicted interference that a station may cause to 0.5 percent of the protected station's service population. This proposed 0.5 percent interference standard is stricter than the 2 percent/10 percent criteria that has applied since early in the DTV transition. The 2 percent/10 percent rules were established in order to accomplish the difficult task of accommodating every existing TV station with a second channel for DTV operation within the spectrum already allocated for TV broadcasting and heavily used in some areas. As indicated above, the Commission initially adopted a stricter ''no interference'' standard, but on reconsideration recognized that stations would need flexibility as they attempted to implement their second channels in this congested spectrum environment. The flexibility provided under the 2 percent/10 percent standard allowed many stations to propose increased coverage, helping to provide DTV signals to more viewers early in the transition.

106. In addition, we note that our 0.5 percent proposal is not as strict as the 0.1 percent new interference criterion that was employed for determining interference conflicts in the channel election process.

107. Our proposed requirement that interference from a DTV application for post-transition use not exceed 0.5 percent is the same requirement as we have used during the transition for analog TV stations protecting DTV stations. It can be viewed as a ''no new interference'' criteria when the amount of predicted interference is rounded to the nearest whole percent (*i.e.*, any determination of less than 0.5 percent interference would be considered to be 0 percent, while an interference determination greater than 0.5 percent would round up to 1.0 percent.) This level of rounding is more reflective of the accuracy of the interference prediction model than the 0.1 percent criterion. (The 0.5 percent allowable predicted interference level is also used for Class A TV stations protecting DTV stations pursuant to 47 CFR 73.6013 and for determination of LPTV and TV translator protection of full service DTV.)

108. Because our proposed 0.5 percent interference limit is significantly less than the 2 percent limit that we now use, we do not believe it is necessary to continue to impose the 10 percent cap on total interference from all sources. (In the initial DTV Table, the Commission necessarily exceeded the 10 percent limit with respect to a significant number of stations. In contrast to the initial Table, the new Table will not be as congested because stations will be returning one of their paired channels.) The new DTV Table has fewer stations than the initial Table that exceed the 10 percent limit and many of those stations elected their proposed channel knowing that the amount of interference would exceed that amount. In lieu of the 10 percent component of the current standard, we propose to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5 percent interference to another station will not be allowed to increase the interference they are authorized to cause. (For example, an application would not be granted for a station that is authorized to cause 1.8 percent predicted interference if the facilities proposed in the application are predicted to raise the amount of interference caused to 1.9 percent.)

109. We seek comment on our proposals to limit permissible interference to 0.5 percent and to not allow any increase in situations where the amount of interference currently caused exceeds 0.5 percent, as well as on any other methods to limit total interference. Does 0.5 percent reflect the right balance between protecting established DTV service and affording adequate flexibility to stations seeking to establish post-transition operations? Would another amount be more appropriate?

110. We propose to evaluate compliance with the 0.5 percent standard using the Office of Engineering and Technology's OET Bulletin No. 69 (''OET 69'') methodology, but using 2000 census data as was done during the channel election process. (The more up-to-date population data from the year 2000 census was used to provide a more accurate indication of the station service and impacts of interference on that service than the older year 1990 population data used in computing the service data for the initial DTV Table.) We seek comment on whether other changes to the OET 69 methodology are necessary here. For example, the standard OET 69 analysis evaluates ''cells'' within a station's coverage area which are squares 2 kilometers on a side. We have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. As a result, we understand that some applications have been based on evaluating many possible smaller cell sizes until the desired result is obtained. (For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.) Such ''shopping'' for advantageous cell sizes does not improve the accuracy of the evaluation. Should standards for allowable smaller cell sizes be established (for example only allowing 1.0 km or 0.5 km cell sizes to be requested)?

111. We also note that, in other proceedings, we have received comments that it may be useful to adopt variable D/U ratios for adjacent channel interference depending upon the received signal levels predicted for the desired signals because the D/U interference ratios employed for upper and lower first-adjacent channels are based on test results for weak desired signal strengths and may produce inaccurate predictions where the interfering station is located in an area that receives a strong desired signal strength. Thus, we seek comment on whether a change should be adopted to

reflect this concern in situations where adjacent-channel transmitters are proposed to be located inside a desired station's noise-limited service contour. (Such situations may become more prevalent if rules are adopted allowing distributed transmission systems (''DTS'').)

112. For new DTV allotments, we propose to continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules. We note that these distances were developed to be analogous to the long-standing analog TV geographic spacing rules. We intend that our consideration of petitions for rule making requesting new DTV allotments will be consistent with the process we have used for analog TV allotments in that short-spacing waivers will not be allowed. However, as with analog spacing distances, the DTV spacing distances allow regular occasions of predicted interference to occur. After a new DTV allotment has been approved, we propose to regulate the extent of this interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications. This method of allowing flexibility for applicants seeking a new DTV allotment while protecting existing DTV stations' service is consistent with our analog TV application practice of considering applications that require a waiver of the geographic spacing requirements. We seek comment on this proposal, as well as on alternative methods for evaluating requests for new DTV allotments.

113. Going forward, we propose to protect each station's new DTV Table Appendix B facilities' coverage only until it has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area. We recognize, however, that we are proposing to require that stations initially apply for facilities that do not expand their certified coverage and some stations would need to specify facilities that create a predicted service contour that is smaller in some directions than their certified coverage contour in order to comply with that proposal. When the filing freeze is lifted, we expect many such stations will file maximization applications. To avoid penalizing stations in such a situation, we propose to temporarily continue to require that other stations' maximization applications protect the new DTV Table Appendix B facilities of stations, even though most stations should have a CP or license at that time. At an appropriate time, the Media Bureau would announce the change to limit the required protection to CPs and licenses for stations that have such authorizations. We seek comment on this proposal.

2. Pre-Transitional Operations

114. We continue to process applications for analog and DTV new stations, and changes to existing or authorized stations that comply with the freeze. With respect to these applications for pre-transition operation, we intend to continue using the current interference protection rules. We seek comment on this conclusion. In particular, the current requirements provide that an application for a new or modified analog TV station must not cause more than 0.5 percent interference to any authorized DTV station or allotment. Such an analog TV application must protect other analog TV stations by meeting the distance spacing requirements. An application for a new or modified DTV station must not cause more than 2.0 percent interference to any authorized analog TV station, DTV station or DTV allotment. Such DTV applications also must not cause the total cumulative interference received by any protected station to exceed 10.0 percent. (DTV applications also must protect Class A TV stations as provided in 47 CFR 73.623(c)(5) and stations in the land mobile radio service pursuant to 47 CFR 73.623(e).) Calculations of predicted interference percentages will continue to be based on the standard OET 69 methodology, including use of 1990 Census data. (Although new population data is available, we believe it is appropriate to continue to use the 1990 census data for the predicting the populations to be served by the remaining analog and new digital television stations to be processed during the transition and the interference those stations would cause to other stations. The predictions of population served and interference received used in developing initial DTV transition assignments in 1998 were based on the 1990 census and that population base has been relied on subsequently in processing of applications for analog and DTV modifications and new stations. Our continued use of the 1990 census data for processing the few remaining transition applications will provide for treatment of these applications on the same basis as other stations during the transition. We also do not believe that the differences in population patterns between the 1990 and 2000 census are of sufficient significance for TV service purposes in the short remaining time of the transition as to warrant recomputation of the service and interference predictions for all analog and DTV stations operating during the transition.) The current database of authorized or applied for stations would also continue to be used.

G. Other Issues

1. DTV Transmission Standard (ATSC A/53)

115. In the *Second DTV Periodic Report and Order,* the Commission revised its DTV transmission standard, contained in Section 73.682(d) of the rules, to specify the use of the August 7, 2001 Advanced Television Systems Committee (''ATSC'') DTV transmission standard A/53 Revision B with Amendment 1 and Amendment 2 (''A/53–B''). The Commission also stated that it would continue to encourage further improvements to the DTV standards and conduct additional rulemakings as appropriate to incorporate future updates of the ATSC DTV transmission standard into the Commission's rules. We propose to update Section 73.682(d) to reflect revisions to the ATSC DTV transmission standard A/53–B since the *Second DTV Periodic Report and Order.* We seek comment on this proposal.

116. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order,* ATSC has continued to update the ATSC DTV transmission standard; the current version is A/53 Revision E, with Amendments No. 1 and 2 (''A/53–E''). A/53–E differs from A/53–B in several respects. First, A/53–E offers several improvements over A/53–B, including the specifications for Enhanced 8–VSB (''E8–VSB'') for terrestrial broadcast. E8–VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data. Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options. A/53–E further describes the coding constraints that apply to the use of the MPEG–2 systems specification in the DTV system, including mandatory main and optional enhanced services. It also improves the Active Format Description (''AFD'') specifications by revising and clarifying the relevant standards. In light of these advantages, we believe that updating the Commission's rules to specify A/53–E will benefit both broadcasters and

consumers by allowing broadcasters the flexibility to offer new technological services. We seek comment on this tentative conclusion.

117. In the *Second DTV Periodic Report and Order,* the Commission declined to mandate that broadcasters use the AFD when the active video portion picture does not completely fill the coded picture. The Commission stated that the revisions in the new standard were developed through careful consideration and deliberation within the technical committees of ATSC and thus reflected a consensus agreement based on the input of parties from various segments of the industry. As a result, broadcasters were given the option to use AFD, but if a station included AFD data it had to follow the ATSC standard. The Commission noted, however, that as more consumers acquired widescreen aspect ratio sets, the problem of ''postage stamp video'' would become more prevalent if not addressed by broadcasters. At the time, the Commission believed that broadcasters would want to make their programming attractive to viewers as they begin to adopt DTV. A coordinated effort on clarifying AFD and bar data standards between ATSC, CEA and the Society of Motion Picture and Television Engineers (''SMPTE'') resulted in a CEA recommended practice (CEA–CEB16) titled ''Active Format Description (AFD) & Bar Data Recommended Practice,'' and a proposed SMPTE 2016–1 standard for television—Format for Active Format Description and Bar Data. These efforts were designed to encourage the use of AFD by broadcasters. We thus seek comment on whether these voluntary, industry driven efforts are sufficient, or if, instead, we should require broadcasters to provide AFD and bar data. If we do impose such a requirement, should broadcasters be required to provide AFD data for all programming broadcast, regardless of its source? Should such a requirement extend to live programming (*e.g.*, sports and other events where a combination of SD and HD equipment may be used)? Assuming that we did require the inclusion of AFD, what effect would the imposition of such a requirement have on small broadcasters? We seek comment on these issues.

2. Program System and Information Protocol (''PSIP'') Standard

118. In the *Second DTV Periodic Report and Order,* the Commission revised Section 73.682(d) to require the use of the ATSC Program System and Information Protocol (''PSIP'') standard A/65–B. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.

119. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order,* ATSC has updated the ATSC PSIP standard; the current version is A/65–C. This new revision further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, under version A/65–B, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide ''network programming'' as the descriptor for the majority of its program offerings. We propose to update Section 73.682(d) to reflect these revisions to the ATSC PSIP standard since the *Second DTV Periodic Report and Order.* We seek comment on this proposal. In particular, we request input regarding the burden that compliance with A/65–C would place on broadcasters—especially small broadcasters.

120. We also seek comment from broadcasters and others as to the need to include more accurate, detailed, and up-to-date information about each event under this new PSIP standard. We also seek comment about whether PSIP information is being passed through to cable and satellite subscribers. If satellite carriers are not passing through PSIP information, is the information otherwise being reflected adequately in the electronic program guide and signal they provide to subscribers?

3. Fees for Ancillary and Supplementary Services

121. In this section, we seek comment on Section 73.624(g) of the Commission's rules, which requires DTV licensees to report whether they have provided ancillary and supplementary services and to pay a fee of five percent of gross revenues derived from certain of those services. As currently written, this rule refers to the payment of such fees by ''DTV licensees.'' We seek comment on whether the Commission can and should revise its rules to require that all DTV broadcasters, including permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions, that earn revenue from feeable ancillary and supplementary services, are subject to the provisions of Section 73.624(g).

4. Station Identification

122. In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations. Specifically, digital stations are required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. The identification must consist of the station's call letters followed by the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion.

123. A station choosing to include its channel number in its station identification must use the major (analog) channel number. (Thus, a broadcaster who operates an NTSC service on channel ''26'' and a DTV service on channel ''27'' would use the major channel ''26'' in station identification announcements.) The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allocated digital broadcast channel. (This allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers.) The Commission permitted stations choosing to multicast to include additional information in their station

announcements identifying each program stream. (Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (e.g., ''WXXX–DT, channel 26.1, YYY (community of license), your CW network channel''). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call signs (e.g., ''WXXX–TV and WXXX–DT'') if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (e.g., ''WXXX–TV/DT''). The Commission's rules require that the station that is transmitting the multicast stream is the station whose identification must appear on the program stream. (Thus, if station WXXX–DT is transmitting programming provided by WYYY–TV or WYYY–LP on one of WXXX–DT's multicast streams, the identification on that stream must be the frequency and location of WXXX–DT.)

124. Now that stations have some experience in applying these station identification rules to digital stations, we invite comment on whether these rules provide sufficient clarity to broadcasters and viewers. We specifically invite comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station. As the Commission has previously noted, as stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves. We invite comment on any and all aspects of the Commission's station identification rules, whether any changes to or clarifications of the rules are appropriate, and, if particular problems implementing the rules have arisen, specific proposals for how the rules should be changed.

5. Coordination With Cable Operators, Satellite Systems and Other MVPD Providers

125. We recognize that the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors (''MVPDs''). (MVPDs include cable operators and Direct Broadcast Satellite carriers. As of June 2005, approximately 94.2 million TV households, or almost 86 percent of TV households, subscribe to an MVPD service.) Because a majority of television viewers receive their broadcast signals via an MVPD, if these providers have problems receiving and retransmitting digital signals when analog signals are turned off, that could have a significant adverse impact on the digital transition. We seek comment here on the issues specifically related to MVPD readiness to receive and retransmit digital signals to their subscribers when analog service ends on February 17, 2009. (General issues regarding mandatory carriage of digital broadcast signals are being addressed in other dockets.) We also invite comment on what steps, if any, are necessary to allow consumers to continue to receive over-the-air television signals in a variety of settings outside their homes, such as hotels, restaurants, universities and offices.

126. In this regard, we solicit comment from cable operators, satellite carriers, and private cable operators (also known as Satellite Master Antenna Television or ''SMATV'' providers) regarding steps they are taking to ensure that their subscribers will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations. Moreover, we request comment on whether and what type of coordination is needed between broadcast television stations and MVPDs to facilitate a timely and smooth transition, whether this coordination is underway, and what actions the Commission could take to facilitate that coordination. For example, will cable and satellite operators have technical difficulties receiving digital signals from local television stations on new channels (and in some cases from different transmission facilities)? Are changes needed at cable and SMATV headends and satellite local receive facilities to receive these signals? Have MVPDs experienced difficulties receiving and retransmitting local digital broadcast signals thus far? Will MVPDs be able to handle all the various channel changes and other modifications that will be necessary, many of which will occur at midnight on February 17, 2009? Do MVPDs need to test reception and retransmission capabilities in advance of the transition, and, if so, when, and how, in light of construction deadlines?

VI. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

127. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA'') the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (''NPRM'')*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for and Objectives of the Proposed Rules

128. This *NPRM* begins the Commission's third periodic review of the transition of the nation's broadcast television system from analog to digital television (''DTV''). The Commission conducts these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In 2005, Congress mandated that after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.

129. The purpose of this *NPRM*, generally, is to (1) provide a progress report on the DTV transition; (2) describe the status and readiness of existing stations to complete the transition; (3) consider and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. In particular, the *NPRM* proposes (1) rules for applying to construct final, DTV facilities and (2) construction deadlines for the completion of final, DTV facilities.

130. The primary objectives of this *NPRM* is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) have

completed construction and begun operating their final, DTV facilities. In addition, the *NPRM* considers proposals to provide broadcasters with the regulatory flexibility necessary to meet these goals.

B. Legal Basis

131. The authority for the action proposed in this rulemaking is contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

132. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' small organization,'' and ''small government jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

133. We believe that full-power television broadcast stations will be directly and primarily affected by the proposed rules, if adopted. Although the proposed rules will not apply to Class A TV stations, low power television (LPTV) stations, and TV translator stations, it is still possible that these entities may be affected by the proposed rules. For example, the proposed rules, if adopted, would permit applications for analog translators to be filed under specific circumstances and in that way may affect TV translator stations. Otherwise, we do not believe any other types of entities will be directly affected by the proposed rules; however, request comment on this tentative conclusion. A description of the small entities that may be directly affected, as well as an estimate of the number of such small entities, is provided below.

Entities Directly Affected by Proposed Rules

134. *Television Broadcasting.* The proposed rules and policies apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' The Commission has estimated the number of licensed commercial television stations to be 1,376. According to Commission staff review of the BIA Financial Network, MAPro Television Database (''BIA'') on March 30, 2007, about 986 of an estimated 1,374 commercial television stations (or about 72 percent) have revenues of $13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

135. In addition, an element of the definition of ''small business'' is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of ''small business'' is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

136. *Class A TV, LPTV, and TV translator stations.* The proposed rules and policies may also apply to licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $13.5 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than $13.5 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

Entities That May Be Indirectly Affected by Proposed Rules

137. Because the rules proposed in this *NPRM* pertain to the transition from analog to digital broadcasting of full-power television broadcast stations, we do not believe the rules proposed will directly affect any other entities. We seek comment on this tentative conclusion. Certain entities may believe they would be affected by the proposed rules. For example, the proposed rules may, in the opinion of cable operators, satellite carriers other multichannel video programming distributors (''MVPDs''), indirectly affect these entities. In addition, the proposed rules may indirectly affect electronics equipment manufacturers. Although such comment is not required by the RFA, we invite comment from any small cable operators, small satellite carriers or other small MVPDs, as well as from small equipment manufacturers, who believe they might be directly affected by our proposed rules contained in the *NPRM.*

138. *Cable and Other Program Distribution.* Cable system operators fall within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. According to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or

more, but less than $25 million. In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002. The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

139. *Cable System Operators (Rate Regulation Standard).* The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. We last estimated that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

140. *Cable System Operators (Telecom Act Standard).* The Communications Act also contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that there are 67.7 million subscribers in the United States. Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act.

141. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution. This definition provides that a small entity is one with $13.5 million or less in annual receipts. Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation. All three currently offer subscription services. Two of these three DBS operators, DirecTV and EchoStar Communications Corporation (''EchoStar''), report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. (''Dominion''), offers religious (Christian) programming and does not report its annual receipts. The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated $13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

142. *Private Cable Operators (''PCOs''), also known as, Satellite Master Antenna Television (''SMATV'') Systems.* PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating $13.5 million or less in annual receipts. Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs. Individual PCOs often serve approximately 3,000–4,000 subscribers, but the larger operations serve as many as 15,000–55,000 subscribers. In total, PCOs currently serve approximately one million subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO qualify as small entities.

143. *Home Satellite Dish (''HSD'') Service.* Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating $13.5 million or less in revenue annually. HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, as of June 2005, there were 206,358 households authorized to receive HSD service. The Commission has no information regarding the annual revenue of the four C-Band distributors.

144. *Wireless Cable Systems.* Wireless cable systems use the Broadband Radio Service (''BRS''), formerly Multipoint Distribution Service (''MDS''), and Educational Broadband Service (''EBS''), formerly Instructional Television Fixed Service (''ITFS''), frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers. These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past several years licensees have focused their operations instead on providing two-way high-speed Internet access services.

We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. Id. Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating $13.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS.

145. *Wireless Cable Systems (Commission Auction Standard).* The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. This definition of a small entity in the context of MDS auctions has been approved by the SBA. In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than $40 million and are thus considered small entities. MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of $13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission's auction rules.

146. Educational institutions are included in this analysis as small entities; however, the Commission has not defined a small business size standard for ITFS (now EBS). We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

147. In the 1998 and 1999 LMDS auctions, the Commission defined a small business as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. Moreover, the Commission added an additional classification for a ''very small business,'' which was defined as an entity that had annual average gross revenues of less than $15 million in the previous three calendar years. These definitions of ''small business'' and ''very small business'' in the context of the LMDS auctions have been approved by the SBA. In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

148. *Open Video Systems (''OVS'').* In 1996, Congress established the open video system (''OVS'') framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (''LECs''). The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with $13.5 million or less in annual receipts. The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households. Affiliates of Residential Communications Network, Inc. (''RCN''), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD. RCN received approval to operate OVS systems in New York City, Boston, Washington, DC and other areas. The Commission does not have financial information regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

149. *Electronics Equipment Manufacturers.* The rules adopted in this proceeding may indirectly affect manufacturers of digital receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for manufacturers of radio and television broadcasting and wireless communications equipment. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment. Under this standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments in this category. Of those, 1,023 had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

150. The proposals set forth in this *NPRM*, if adopted, would impose mandatory compliance and reporting requirements on full-power television broadcast stations, including requiring that such stations: (1) Must cease analog broadcasting on or before the February 17, 2009 transition date; (2) if they do not have an existing construction permit for their final, DTV facility, or if they need to modify their existing construction permit, must file an application for a new or modified construction permit for their final, DTV facility; (3) must construct their DTV facility by the construction deadline proposed for them; (4) must file a form with the Commission detailing their current transition status, the additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps; and (5) must populate, and update as necessary, the Event Information Tables (''EITs'') in PSIP data with accurate information about each event, in accordance with the current version of the ATSC PSIP standard, A/65–C.

151. In addition, certain proposals set forth in this NPRM, if adopted, would provide for voluntary compliance and reporting requirements. Because these voluntary requirements may afford small television broadcast stations the opportunity for regulatory flexibility and reduced burdens, they are discussed in Section E. of this IRFA.

152. *Mandatory Termination of Analog Television Broadcasting.* By statute, after the February 17, 2009 transition date, all full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals. This statutory mandate affords the Commission no discretion to offer any regulatory

flexibility to small television broadcasters concerning the mandatory analog turn-off. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations cease analog broadcasting as of the February 17, 2009 transition date.

153. *Applications for New or Modified Construction Permits.* Under the current rules, stations that need to construct or modify DTV facilities must file construction permit or modification applications. Commercial stations must file FCC Form 301 and NCE stations must file FCC Form 340. Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze.

154. According to the *NPRM*, 634 stations will not be using their currently authorized DTV channel for post-transition operations and will, therefore, need to file an application to construct their final, DTV facility. In addition, if any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations need to change their DTV facilities, *e.g.*, because if they do not have an authorization for their intended operations, then such stations will need to file a modification application. Thus, both these groups of stations will need to file applications for their final, post-transition facilities.

155. Given the number of stations that will need to file CP or modification applications and the fast-approaching transition date, the *NPRM* proposes to offer expedited processing to a station applying for a CP to build or modify its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction beyond that established by the new DTV Table; (ii) specifies facilities that match or closely approximate those new DTV Table facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table, then it must apply for facilities that deviate no more than five percent from those new DTV Table facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. The NPRM tentatively concludes that it will not accept applications to expand post-transition facilities until it has completed processing the applications to build authorized facilities. The NPRM also tentatively concludes to adopt a new 0.5 percent interference standard to apply to maximization applications and to new channel allotments after the transition.

156. *Construction deadlines for DTV facilities.* The *NPRM* proposes deadlines for all full-power television broadcast stations to complete construction of their final, DTV facilities in order to ensure that DTV stations will be providing service on their final, post-transition channels by the February 17, 2009 transition date. The NPRM proposes construction deadlines based on a station's channel assignment for pre- and post-transition operation, and other circumstances affecting the station's ability to complete final, post-transition facilities. First, the NPRM proposes that February 17, 2009 will be the construction deadline for stations whose DTV channel for pre-transition operation is not the same as their channel for post-transition use. These are stations that will be starting over with a new channel for DTV service. Second, for stations whose post-transition channel is the same as their pre-transition channel, the NPRM proposes to require completion of stations' post-transition facilities by the deadlines established for them in the Construction Deadline Extension Order and Use-or-Lose Order. Most stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided six months from the release date of the Construction Deadline Extension Order or Use-or-Lose Order, whichever is applicable, to complete construction of their final, DTV (post-transition) facilities. The other stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided until February 17, 2009 to complete construction of their final, DTV (post-transition) facilities, because they faced unique technical challenges, such as needing to switch their top-mounted analog transmitter with their side-mounted digital transmitter. Unlike the first group, stations whose post-transition channel is the same as their pre-transition channel have long been assigned the channel that they will use for post-transition operations. Third, notwithstanding the first two groups, the NPRM proposes that February 17, 2009 will be the construction deadline for stations with side-mounted digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities.

157. The *NPRM* also proposes to limit the situations in which stations may obtain more time to satisfy the proposed new construction deadlines for completion of final, DTV facilities. For requests for additional time to construct DTV facilities filed before February 17, 2009 (but after the effective date of the proposed new rule), the NPRM proposes to revise and apply Section 73.624(d) of the rules. Specifically, the proposed Section 73.624(d), if adopted, would no longer grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. The proposed rule would also require a stronger demonstration of financial hardship than is now required. The proposed financial hardship standard would require the licensee or permittee of a station to show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations under this new test would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations also would be required to submit a schedule of when they expect to complete construction. As is currently required by the rule, stations making such requests must electronically file FCC Form 337. With respect to a deadline of February 17, 2009 or later, the NPRM proposes to apply Section 73.3598 of the rules, which now applies to DTV singletons, analog TV, and other broadcast services. Stations must file a notification to inform the Commission of the circumstances that it believes should toll its construction period.

158. *Transition Status Form.* The *NPRM* proposes that every full-power television broadcast station must file a form with the Commission that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the switch-over deadline; and (3) a plan for how it intends to meet that deadline. These filings will be posted on the Commission's website. These forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover date. The form will provide information on the status of each station's construction of final, DTV facilities, allowing the Commission, industry, and the public to track the progress of the DTV transition.

159. *Program System and Information Protocol (''PSIP'') standard.* The *NPRM* proposes to update Section 73.682(d) to reflect the revisions to the ATSC

Program System and Information Protocol (''PSIP'') standard since the Second DTV Periodic Report and Order. The current version of the ATSC PSIP standard is A/65–C. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the ''major'' channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.

160. This new revision to the ATSC standard further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide ''network programming'' as the descriptor for the majority of its program offerings.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

161. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

162. As previously noted, the Commission has no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off on the February 17, 2009 transition date. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations, including small stations, cease analog broadcasting as of the February 17, 2009 transition date.

163. The *NPRM*, however, does propose opportunities for regulatory flexibility with respect to the other mandatory compliance requirements.

164. With respect to applications for post-transition facilities, the *NPRM* proposes to offer expedited processing (as discussed above). It is each station's responsibility to ensure that it can begin operations on its post-transition channel no later than the deadline for the transition on February 17, 2009. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. This option may well benefit smaller entities.

165. With respect to the proposed construction deadlines to build final, post-transition facilities, the *NPRM* proposes to offer a variety of opportunities for regulatory flexibility if it would facilitate the transition and ensure that all full-power stations meet the February 17, 2009 transition date.

166. While proposing to establish a stricter standard for requests for extension of time to construct DTV facilities, the *NPRM* also proposes to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. This will help many small stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to transition away from analog transmission by the transition date. The *NPRM* also asks whether it should afford small television broadcasters additional time to construct DTV facilities. The *NPRM* also proposes to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service.

167. The *NPRM* also requests comment on whether to permit stations to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receive their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In particular, if such relief is not afforded to all stations, the *NPRM* asks whether to afford such relief to small television broadcasters because of the unique challenges they may face in completing their transition.

168. The *NPRM* requests comment on whether to allow stations to temporarily remain on their pre-transition DTV channel (even though it is not their post-transition channel) if: (i) They serve at least the same area and population that receives their current analog TV service so that over-the-air viewers will not lose TV service; (ii) they do not cause impermissible interference to other stations or prevent other stations from making their transition; and (iii) doing so would facilitate the transition. Stations making such requests would do so in accordance with the rules for STA. This opportunity may afford additional regulatory relief to small television broadcasters.

169. To facilitate the construction of, and commencement of operations on, post-transition facilities, the *NPRM* also examines the circumstances in which a station may reduce or terminate its analog service to facilitate construction of post-transition facilities. This opportunity may afford additional regulatory relief to small television broadcasters. The *NPRM* also considers whether and, if so, under what circumstances it should accept new requests by stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and ''flash cut'' from their analog channel to their post-transition channel. This flash-cut option may provide financial relief to small stations, such as satellite stations, by freeing stations to focus their efforts on completion of their final, post-transition facilities.

170. With respect to the proposed updating of Section 73.682(d) to reflect the new revisions to the ATSC PSIP standard, the *NPRM* seeks comment on the burden that compliance with the new standard, A/65–C, would place on small broadcasters, in particular.

171. Consistent with the statutory mandate for full-power TV broadcast stations to cease analog broadcasting by February 17, 2009, as well as with broadcasters' obligation to provide and maintain the best possible TV service to the public, broadcasters are encouraged to suggest alternative proposals that would avoid the imposition of significant and unreasonable burdens on small TV broadcasters.

F. Federal Rules Which Duplicate, Overlap, or Conflict With the Commission's Proposals

172. None.

Initial Paperwork Reduction Act of 1995 Analysis

173. This *NPRM* has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations' plans for completing their transitions; (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340); (3) Requests to reduce analog TV service; (4) Requests to terminate analog TV service; (5) Requests to flash cut; (6) Requests for STA to use analog translators to offset loss of analog service; (7) Requests for extension of time to construct (using FCC Form 337), or to toll the construction deadline for, DTV facilities; (8) Requests to transition early to their post-transition channel; (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel; (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline; (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV); and (12) PSIP requirement to populate the Event Information Tables (''EITs'') with accurate information about each event and to update the EIT if more accurate information becomes available. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (''OMB'') to comment on the proposed information collection requirements contained in this NPRM, as required by the PRA.

174. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before September 7, 2007. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, we seek specific comment on how we might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

175. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this NPRM, contact Cathy Williams at 202–418–2918, or via the Internet to *Cathy.Williams@fcc.gov.*

B. Ex Parte Rules

176. *Permit-But-Disclose.* This proceeding will be treated as a ''permit-but-disclose'' proceeding subject to the ''permit-but-disclose'' requirements under section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

C. Filing Requirements

177. *Comments and Replies.* Pursuant to Sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (''ECFS''), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.

178. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

179. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554.

180. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY-A257, Washington, DC, 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

181. *Accessibility Information.* To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: *http://www.fcc.gov.*

VII. Ordering Clauses

182. Accordingly, *It is ordered* that pursuant to Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 that notice is hereby given of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*, including the proposed amendments to Part 73 of the Commission's rules.

183. *It is further ordered* that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 73

Digital television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

2. Add a new § 73.616 to read as follows:

§ 73.616 Post-transition DTV station interference protection.

(a) A petition to add a new channel to the post-transition DTV Table of Allotments contained in § 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of § 73.623(d)(2) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of § 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (d) of this section; the land mobile protection requirements of § 73.623(e); and the FM radio protection requirement of § 73.623(f). The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(b) An application for a new post-transition DTV broadcast station or for changes in an authorized post-transition DTV station will not be accepted for filing unless it protects all land mobile operation on channels 14–20 in accordance with § 73.623(e) and all other post-transition DTV stations from interference in excess of the limits established in this section. An application must not cause interference to more than: the greater of either 0.5 percent the population served by the other station or the amount of interference already predicted to be caused by the applicant's authorized facilities.

(1) The protected facilities of a post-transition DTV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(2) For evaluating compliance with this requirement, interference to populations served is to be predicted based on the 2000 census population data and otherwise according to the procedure set forth in OET Bulletin No. 69, including population served within service areas determined in accordance with § 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. These documents are also available through the Internet on the FCC Home Page at *http://www.fcc.gov.* The threshold levels at which interference is considered to occur are:

(i) For co-channel stations, the D/U ratio is +15 dB. This value is only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, this value is +23 dB. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values are computed from the following formula:

$$D/U = 15+10\log10[1.0/(1.0–10\text{-}x/10)]$$

Where x = S/N–15.19 (minimum signal to noise ratio)

(ii) For interference from a lower first-adjacent channel, the D/U ratio is -28 dB.

(iii) For interference from a upper first-adjacent channel, the D/U ratio is -26 dB.

(c) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see § 73.603(a)).

(d) A petition to add a new channel to the post-transition DTV Table or a post-transition DTV station application that proposes to expand its allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to subpart J of this part, within the protected contour defined in § 73.6010 of this part.

(1) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for ''DTV-into-analog TV'' specified in § 73.623(c)(2).

(2) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios specified in paragraph (b)(2) of this section.

(3) In support of a request for waiver of the interference protection requirements of this section, an applicant for a post-transition DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69, which is available through the Internet at *http://www.fcc.gov/oet/info/documents/bulletins/#69.*

Note to § 73.616: When this rule was adopted, the filing freeze announced in an August 2004 public notice (19 FCC Rcd 14810 (MB 2004)) remained in effect. For a short period of time after the filing freeze is lifted, until a date to be announced by a Media Bureau Public Notice, applicants must protect Appendix B facilities in addition to any authorized facilities required to be protected pursuant to this rule section.

2. Amend § 73.623 by adding a note to paragraph (a) to read as follows:

§ 73.623 DTV applications and changes to DTV allotments.

(a) * * *

* * * * *

Note to paragraph (a): Petitions for rule making and applications seeking facilities that will operate after the end of the DTV transition must also comply with § 73.616.

3. Amend § 73.624 by adding paragraph (d)(1)(v) and revising paragraph (d)(3) to read as follows:

§ 73.624 Digital television broadcast stations.

* * * * *

(d) * * *

(v) February 17, 2009 is the deadline for the completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel. For purposes of this construction deadline, the post-transition facilities to be constructed are those defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87–268 and codified at 47 CFR 73.622(i).

* * * * *

(3) *Authority delegated.* (i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) Such circumstances may include, but shall not be limited to:

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or

(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.

(iii) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(iv) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

* * * * *

4. Revise § 73.682(d) to read as follows:

§ 73.682 TV transmission standards.

* * * * *

(d) Digital broadcast television transmission standard. Effective November 6, 2007, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: ''ATSC Standard Digital Audio Compression (AC–3)'' (incorporated by reference, see § 73.8000), ATSC Doc. A/53, Revision E with Amendment 1 and Amendment 2: ''ATSC Digital Television Standard,'' (September 13, 2006) except for Section 5.1.2 (''Compression format constraints'') of Annex A (''Video Systems Characteristics'') and the phrase ''see Table A3'' in Section 5.1.1. Table A2 and Section 5.1.3 Table A4 (incorporated by reference, see § 73.8000), and ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,'' (Revision C with Amendment 1) May 9, 2006 (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Recommended Practice, Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1 (December 4, 2003, Corrigendum No. 1 December 20, 2006), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

5. Revise § 73.8000(b)(2) and (3) to read as follows:

§ 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(2) ATSC A/53: ''ATSC Digital Television Standard,'' dated August 7, 2001, Revision E, with Amendment 1 dated April 18, 2006 and Amendment 2 dated September 13, 2006, IBR approved for § 73.682, except for section 5.1.2 of Annex A, and the phrase ''see Table A–3'' in section 5.1.1. Table A2 and section 5.1.3 Table A4.

(3) ATSC A/65C: ''ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,'' (Revision C) January 2, 2006, with Amendment 1 dated May 9, 2006, and IBR approved for § 73.682, IBR approved for §§ 73.9000–73.9001.

* * * * *

[FR Doc. E7–12905 Filed 7–6–07; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Monday,
July 9, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife; Final Rule; Endangered and Threatened Wildlife and Plants; Draft Post–Delisting and Monitoring Plan for the Bald Eagle (Haliaeetus leucocephalus) and Proposed Information Collection; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF21

Endangered and Threatened Wildlife and Plants; Removing the Bald Eagle in the Lower 48 States From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The best available scientific and commercial data indicate that the bald eagle has recovered. Therefore, under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service, remove (delist) the bald eagle (*Haliaeetus leucocephalus*) in the lower 48 States of the United States from the Federal List of Endangered and Threatened Wildlife. This determination is based on a thorough review of all available information, which indicates that the threats to this species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of threatened or endangered under the Act.

Fueled by a reduction in the threats to the bald eagle, the population in the lower 48 States has increased from approximately 487 breeding pairs in 1963, to an estimated 9,789 breeding pairs today. The recovery of the bald eagle is due in part to the reduction in levels of persistent organochlorine pesticides (such as DDT) occurring in the environment and habitat protection and management actions. The protections provided to the bald eagle under the Bald and Golden Eagle Protection Act (BGEPA) and the Migratory Bird Treaty Act (MBTA) will continue to remain in place after the species is delisted. To help provide more clarity on the management of bald eagles after delisting, we recently published a regulatory definition of ''disturb'', the final National Bald Eagle Management Guidelines and a proposed rule for a new permit that would authorize limited take under BGEPA and grandfather existing Act authorizations.

DATES: This rule is effective August 8, 2007.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Recovery and Delisting, telephone (703) 358–2061 or facsimile (703) 358–1735.

Additional information is also available on our Web site at *http://www.fws.gov/migratorybirds/BaldEagle.htm.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

Information about the bald eagle's life history can be found in our February 16, 2006, reopening of the public comment period on the proposed delisting rule (71 FR 8238) (U.S. FWS 2006a) and our five recovery plans for the bald eagle (U.S. FWS 1982, 1983, 1986, 1989, 1990), Gerrard and Bortolotti (1988), and Buehler (2000).

Previous Federal Actions

Bald eagles gained protection under the Bald Eagle Protection Act (16 U.S.C. 668–668d) in 1940 and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712) in 1972. A 1962 amendment to the Bald Eagle Protection Act added protection for the golden eagle and the amended statute became known as the Bald and Golden Eagle Protection Act (BGEPA).

On March 11, 1967 (32 FR 4001), the Secretary of the Interior listed bald eagles south of 40 north latitude as endangered under the Endangered Species Preservation Act of 1966 (Pub. L. 89–699, 80 Stat. 926) due to a population decline caused by DDT and other factors. On February 14, 1978, the Service listed the bald eagle as endangered under the Act (16 U.S.C. 1531 *et seq.*) in 43 of the contiguous States, and threatened in the States of Michigan, Minnesota, Wisconsin, Oregon, and Washington (43 FR 6230, February 14, 1978). Sub-specific designations for northern and southern eagles were removed.

On February 7, 1990, we published an advance notice of proposed rulemaking (55 FR 4209) to reclassify the bald eagle from endangered to threatened in the 43 States where it had been listed as endangered and retain the threatened status for the other 5 States. On July 12, 1994, we published a proposed rule to accomplish this reclassification (59 FR 35584), and the final rule was published on July 12, 1995 (60 FR 36000).

On July 6, 1999, we published a proposed rule to delist the bald eagle throughout the lower 48 States due to recovery (64 FR 36454). Due to the availability of new information, on February 16, 2006 (71 FR 8238), we reopened the public comment period on our July 6, 1999 (64 FR 36454), proposed rule to delist the bald eagle in the lower 48 States. The reopening notice contained updated information on several State survey efforts and population numbers. Simultaneously with the reopening of the public comment period on the proposed delisting, we also published two **Federal Register** documents soliciting public comments on two new items intended to clarify the BGEPA protections for the bald eagle after delisting: (1) A proposed rule for a regulatory definition of ''disturb'' (71 FR 8265, February 16, 2006), and (2) a notice of availability for draft National Bald Eagle Management Guidelines (71 FR 8309, February 16, 2006). On May 16, 2006, we published three separate notices in the **Federal Register** that extended the public comment period on the proposed delisting (71 FR 28293), the proposed regulatory definition of ''disturb'' (71 FR 28294), and the draft Guidelines (71 FR 28369). The comment period for all three documents was extended to June 19, 2006.

On December 12, 2006, we published in the **Federal Register** a notice requesting public comment on two BGEPA items. First, we re-opened the public comment period on our February 16, 2006, proposed regulatory definition of ''disturb.'' Second, we also announced the availability the draft environmental assessment on the definition of ''disturb'' (71 FR 74483).

On October 6, 2004, we received a petition, dated October 6, 2004, from the Center for Biological Diversity, the Maricopa Audubon Society, and the Arizona Audubon Council requesting that the bald eagle population found in the Sonoran Desert (as defined by Brown 1994) or, alternately, in the upper and lower Sonoran Desert (as defined by Merriam (Northern Arizona University 2006, p. 2)) be classified as a distinct population segment (DPS), that this DPS be reclassified from a threatened species to an endangered species, and that we concurrently designate critical habitat for the DPS. On August 30, 2006, we made a 90-day finding (71 FR 51549) that the petition did not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

On January 5, 2007, the Center for Biological Diversity and the Maricopa Audubon Society brought suit against the Service, *Center for Biological Diversity* v. *Kempthorne*, CV 07–0038–PHX–MHM (D. Ariz.), challenging the Service's 90-day finding that the Sonoran Desert population did not qualify as a DPS, and further challenging the Service's 90-day finding that the Sonoran Desert population should not be up-listed to endangered

status. That suit is still pending. However, the Service's finding in this final delisting rule supersedes the Service's 90-day petition finding because it constitutes a final decision on whether the Southwestern bald eagles, including those in the Sonoran Desert, qualify for listing as a DPS. This decision was made after notice and comment, as described above, and was based on all of the relevant information that the Service has obtained. Even if the court in the 90-day finding suit were to find that the plaintiffs' petition warranted further review, this finding addresses the same issues that the Service would have considered as part of a 12-month finding had the Service made a positive 90-day finding on the petition. This document constitutes the Service's final determination on these issues, and is judicially reviewable with respect to them; therefore, any controversy regarding the August 30, 2006, 90-day finding is now moot.

On June 5, 2007, we published four documents in the **Federal Register** announcing one proposed action and three final actions under the BGEPA: (1) A final rule on the regulatory definition of ''disturb'' (72 FR 31132); (2) a notice of availability for the final National Bald Eagle Management Guidelines (72 FR 31156); (3) a notice of availability for the final environmental assessment on the definition of ''disturb'' (72 FR 31156); and (4) a proposed rule for a new permit that would authorize limited take under BGEPA, and to grandfather existing Act authorizations after delisting occurs under the Act (72 FR 31141).

Bald Eagle Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for listed species. In establishing the recovery program for the species in the mid-1970s, the Service divided the bald eagle population in the lower 48 States into five recovery regions. These recovery regions were administrative boundaries to help the Service plan for recovery, given the information we had at the time. During this timeframe the bald eagle population was continuing to decline and little was known about where the important areas might be. Given the lack of information on this issue, the Service generally decided that recovery planning should be conducted in all parts of the range. However, as discussed below in the Conclusion of the 5-Factors analysis section, based on the information present today, the southwest region is a not a significant portion of the range.

In some cases, we appoint experts to recovery teams to assist in the preparation of recovery plans. For the bald eagle, separate recovery teams composed of experts in each geographic area prepared recovery plans for their region. The teams established recovery objectives and criteria and identified tasks to achieve those objectives. Coordination meetings were held regularly among the five teams to exchange data and discuss progress towards recovery.

We used these five recovery plans to provide guidance to the Service, States, and other partners on methods to minimize and reduce the threats to the bald eagle and to provide measurable criteria that would be used to help determine when the threats to the bald eagle had been reduced so that the bald eagle could be removed from the Federal List of Endangered and Threatened Wildlife.

Recovery plans in general are not regulatory documents and are instead intended to provide a guide on how to achieve recovery. There are many paths to accomplishing recovery of a species in all or a significant portion of its range. The main goal is to remove the threats to a species, which may occur without meeting all recovery criteria contained in a recovery plan. For example, one or more criteria may have been exceeded while other criteria may not have been accomplished. In that instance, the Service may judge that, overall, the threats have been reduced sufficiently, and the species is robust enough, to reclassify the species from endangered to threatened or perhaps to delist the species. In other cases, recovery opportunities may be recognized that were not known at the time the recovery plan was finalized. Achievement of these opportunities may be counted as progress toward recovery in lieu of methods identified in the recovery plan. Likewise, we may learn information about the species that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Overall, recovery of species is a dynamic process requiring adaptive management, and judging the degree of recovery of a species is also an adaptive management process that may, or may not, fully follow the guidance provided in a recovery plan.

Recovery of the bald eagle has been a dynamic process. As new information became available, it was used during the recovery implementation process to help the Service determine whether recovery was on track. For instance, after the bald eagle was downlisted in 1995, the Southeastern Recovery Plan did not have specific delisting goals, and the Service used the recovery team to help determine the appropriate goal. This new delisting goal is considered the best available data in helping the Service determine whether the threats have been removed and to move forward with the delisting.

All of the bald eagle recovery plans established goals for the number of occupied breeding areas and the productivity of the populations in the individual recovery regions. By setting a goal to monitor population numbers and productivity, the Service could determine whether the threats that led to the bald eagle's endangerment were being removed. With the reduction in levels of persistent organochlorine pesticides (such as DDT) occurring in the environment and the habitat protection and management actions that have been put in place, the bald eagle population has shown a remarkable increase in numbers. Between 1990 and 2000, the bald eagle population had a national average productivity of at least one fledgling per nesting pair per year. As a result, the bald eagle's nesting population increased at a rate of about 8 percent per year during this time period. Since 1963, when the Audubon Society estimated that there were 487 nesting pairs, bald eagle breeding in the lower 48 States has expanded to more than 9,789 nesting pairs today (U.S. FWS 1995, p. 36001; U.S. FWS 1999, p. 36457.)

Some States have shown increases in their bald eagle pairs over the past several years. For example, Illinois had an estimated 36 pairs in 1999, but the State had an estimated 100 pairs in 2006 (Conlin 2006, p. 1). Iowa had an estimated 100 pairs in 1999, and their bald eagle population has doubled to an estimated 200 pairs in 2006 (Vonk 2006, p. 1). Minnesota had an estimated 681 pairs in 2001, and an estimated 1,312 pairs in 2005 (Moore 2006, p. 1). In recent decades, Vermont was the only State in the conterminous United States that did not have nesting bald eagles. In 2006, a pair of bald eagles nested in Vermont for the first time since the 1940s, and now Vermont has one nesting pair (Amaral 2006, p. 3). To date, the bald eagle's population growth has exceeded all the numeric goals established in the five recovery plans. In most of the recovery regions, the numeric goals for breeding pairs have been significantly exceeded. For example, the delisting goal in the Northern States Recovery Plan calls for 1,200 breeding pairs distributed over a minimum of 16 States. Today, there are an estimated 4,215 breeding pairs covering every State in that recovery region.

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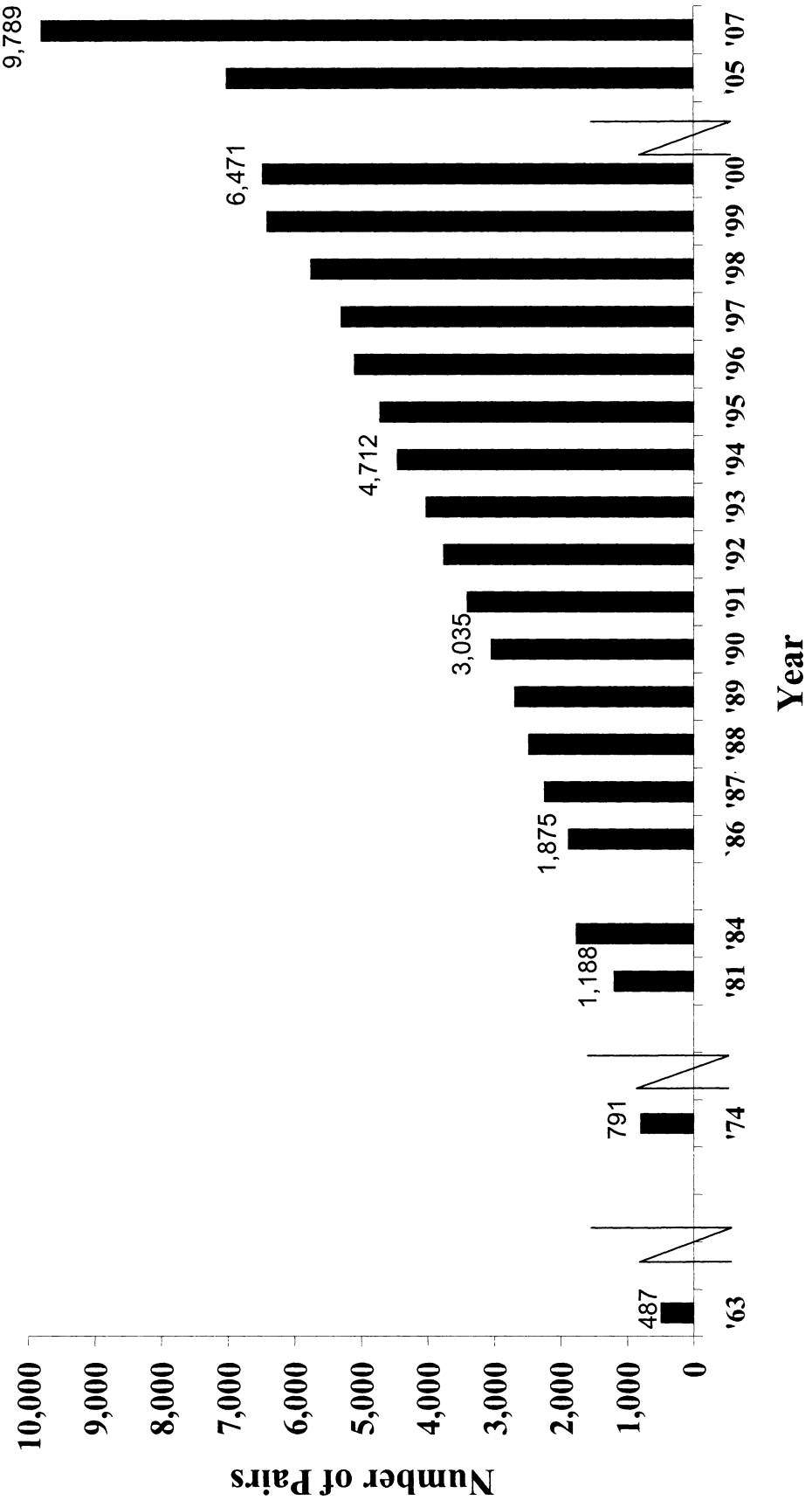
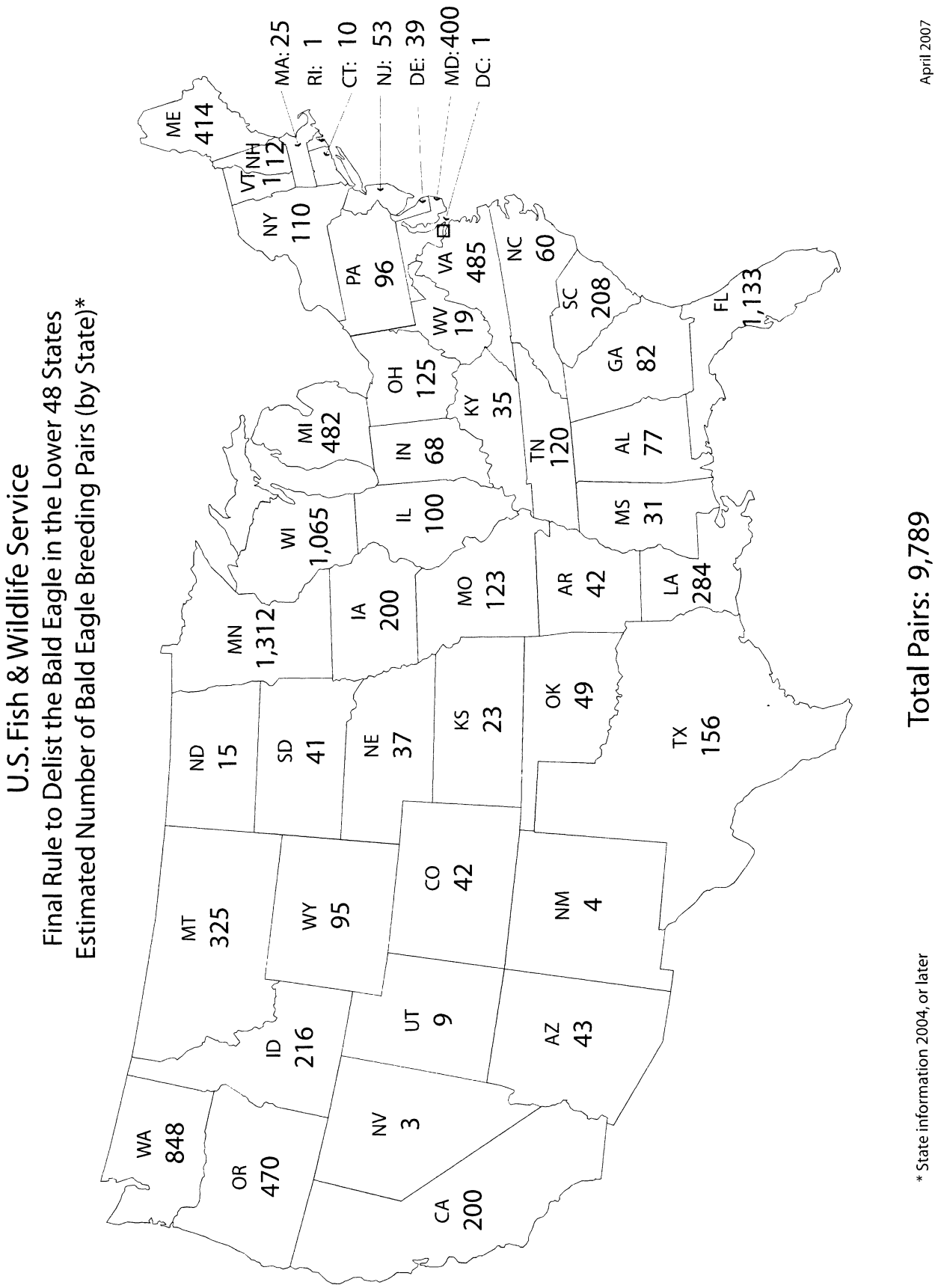


Estimated number of bald eagle pairs in lower 48 states from 1963 - 2007



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For more information on recovery of the bald eagle in general and specific recovery of the individual recovery areas, see the discussion on pages 8240–8243 of the February 16, 2006, reopening of the public comment period on the proposed rule to delist the species (71 FR 8238).

Summary of Comments and Recommendations

We requested written comments from the public on February 16, 2006 (71 FR 8238), when we reopened the public comment period on our July 6, 1999 (64 FR 36454), proposed rule to delist the bald eagle in the lower 48 States. In that reopening notice, we responded to comments previously received on the July 6, 1999 (64 FR 36454) proposed delisting rule. Therefore, the preamble to this final rule addresses only the comments we received on the February 16, 2006, notice. The comment period was reopened from February 16, 2006, to May 17, 2006. During that time, we received two requests to extend the public comment period. In response to those requests, on May 16, 2006 (71 FR 28293), we extended the public comment period to June 19, 2006. As part of the reopening of the public comment period, we also contacted the States and Tribes to solicit their comments.

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited opinions from three scientific experts who are familiar with this species to peer review the proposed rule. We received comments from two of the three peer reviewers, and those two peer reviewers convened panels of scientific experts to review the information provided. Their comments are included in the summary below. One peer reviewer generally supported the proposed delisting, and the other peer reviewer did not.

We reviewed all comments received from the peer reviewers, State and Tribal agencies, and the public for substantive issues and new information regarding the proposed delisting. We received a total of 387 new comments.

Section 4(b)(1)(A) of the Act requires that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available,'' including all information received during the public comment period. Comments merely stating support or opposition to the proposed delisting without providing supporting data, although noted, were not considered substantial and therefore were not considered in our determination. Substantial comments received during the comment period have either been addressed below or incorporated directly into this final rule.

Peer Review Comments

Issue: Several commenters, including one of the peer reviewers, stated that threat of habitat loss, including foraging, breeding, and wintering/roosting habitat (including communal roosting areas), due to development will continue because there are no adequate habitat protections (existing regulatory mechanisms) for bald eagles after delisting. One peer reviewer acknowledged that BGEPA and MBTA provide protection to birds, their nests, and eggs, but opined that those statutes offer no protection to habitat. In addition, the commenters believed that the proposed regulatory definition of ''disturb'' and the draft National Bald Eagle Management Guidelines will not be adequate to provide habitat protection. One peer reviewer expressed an opposite opinion stating that the proposed BGEPA definition and guidelines provide an adequate framework for protecting eagles and their habitat using BGEPA and MBTA.

Response: As discussed in detail under Factor A, the bald eagle population is continuing to increase in the lower 48 States, showing that reduced availability of habitat is not a current threat to the species. Nesting habitat is secure on many public and private locations throughout the lower 48 States. We acknowledge that some habitat threats continue to exist. However, this localized habitat loss will be limited by the operation of various Federal laws that will remain in effect after delisting (e.g., BGEPA, MBTA, and the Clean Water Act (CWA)).

The commenters are correct in that the BGEPA contains no provisions that directly protect habitat, except for nests. However, as further discussed under Factor A below, individual bald eagles are protected from certain effects that are likely to occur as the result of various human activities, including some habitat manipulation. Activities that disrupt eagles at nests, foraging areas, and important roosts can wound, kill, or disturb eagles, all of which are prohibited by the BGEPA. Through promulgation of the regulatory definition of disturb (72 FR 31132; June 5, 2007) and issuance of the National Bald Eagle Management Guidelines (72 FR 31156; June 5, 2007), we have clarified that eagle nests, important foraging areas, and communal roost sites are afforded protection under the BGEPA to the degree that adjacent habitat modification would disturb, injure, or kill eagles.

Issue: One of the peer reviewers stated that the final delisting rule should include a list of updated population data by State with references to the survey from which the data were obtained.

Response: We have included an updated national population estimate in this final rule along with a map with the estimated number of breeding pairs per State. To ensure that our determination on the status of the bald eagle was based ''solely on the basis of the best scientific and commercial data available'' as required by the Act, we used State population data provided to us directly by a State agency, the Pacific Flyway Council, or from a State Web site. Based on this information, there are an estimated 9,789 bald eagle pairs in the lower 48 States. We believe this is a conservative estimate based on the results of our pilot studies for the post-delisting monitoring plan (USFWS 2007). For example, in the pilot study conducted by Minnesota, 872 known nest sites were observed as occupied in 2005. Incorporating the use of area random plots for our pilot study, Minnesota's estimate of nesting bald eagle pairs increased to 1,312. Minnesota estimates that their known nest survey, which is similar to those conducted by each of the States and used to produce data for the delisting, may only count two-thirds of the breeding pairs in the State (Moore 2006, pp. 1–2).

Issue: Both peer reviewers expressed concern about using out-dated recovery plans and delisting criteria. One peer reviewer recommended that the delisting criteria in the recovery plan for Southeastern United States bald eagles should be peer reviewed before finalizing the delisting. One commenter thought the Service should seek more advice from the recovery team members.

Response: Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods of minimizing threats to listed species and on criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without fully meeting all criteria in a recovery plan. Overall, recovery of species is a dynamic process requiring adaptive management, and judging the degree of recovery of a species is also an adaptive management process that may, or may not, fully follow the guidance provided in a recovery plan.

Over the years, the Service sought advice from several recovery teams. In the Southeast, we used the advice of the recovery team to give us a population target that would indicate that the threats had been reduced. We believe

this is the best available information at this time.

Issue: One peer reviewer and several commenters noted concern over the viability of the Southwest population of bald eagles based on low numbers of breeding pairs, relatively low productivity, relatively high adult mortality, and threats of habitat alteration and human disturbance. Based on this information, the peer reviewer recommended designating the population as a DPS and deferring the delisting.

Response: As further discussed in the Summary of Factors Affecting the Species section, the Service does not believe the bald eagle population in the Southwest meets the criteria stated in our DPS policy (61 FR 4722; February 7, 1996), nor is this population a significant portion of the range of the lower 48 States population of bald eagles. Therefore, consideration of the viability of, or threats to, the Southwestern population, standing alone, is not relevant to the delisting determination for the lower 48 States bald eagle population.

Issue: Several commenters, including peer reviewers, commented that a post-delisting monitoring (PDM) plan should be in place when delisting occurs and should remain in effect longer than 5 years. In addition, the plan should be comprehensive and scientifically based to monitor changes in population, productivity, wintering populations, habitat, and contaminants.

Response: Based on comments from the 1999 proposed delisting rule, we have been working steadily on the development of a revised national post-delisting monitoring plan, including conducting several pilot studies in cooperation with the States, to produce a monitoring plan that will be more scientifically robust than previously proposed in the 1999 proposed delisting rule. We have modified the draft post-delisting monitoring plan to take into account the life cycle of the bald eagle.

We are making the revised draft of the monitoring plan is available for public comment simultaneously with this rule elsewhere in today's **Federal Register**. We agree that a plan should ideally be in place at the time of delisting; however, given the proposed 20-year monitoring effort, we believe the plan will be finalized in a sufficient amount of time to adequately monitor the status of the species after delisting. Given the continued increase in the population, we do not expect a precipitous decline over the short term, prior to our completion of the final monitoring plan.

Other Comments

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Issue: One commenter stated that the delisting criteria have not been met for habitat protection in the Chesapeake Bay region. Another commenter stated that while lands have been protected in the Chesapeake Bay Recovery Region to sustain the targeted levels of breeding pairs, the proposed delisting does not address protection of summer and winter concentration areas. The commenter noted that neither the Service's National Wildlife Refuges nor State management areas provide enough land to provide the necessary concentration areas. Another commenter stated that habitat loss and development are not limiting factors in Maryland, and are not likely to cause endangerment in the future. The commenter believes that the Chesapeake Bay Critical Area Program will continue to conserve forested shoreline habitat, and that it is not necessary for us to fully meet the habitat preservation goals in the Chesapeake Bay Recovery Plan.

Response: The Chesapeake Bay bald eagle population has experienced significant growth over the past 30 years. Within the Chesapeake Bay Bald Eagle Recovery Region, approximately 280 nests occur on Federal or State lands (48 nests from Koppie 2007b and 230 nests from Otto 2007). In addition to the long term habitat protection afforded on these lands, nearly 200 other nests occur within areas regulated by the Maryland Critical Areas Act (Koppie 2007b), which is discussed below. Together, these areas will continue to play active roles in providing additional protection of nests, nest buffers, forest blocks, and roosting habitat for bald eagles in the foreseeable future.

Habitat loss is still likely to occur in this region in the foreseeable future through incremental land clearing. It is projected that between 1978 and 2020, the developed area of the Chesapeake Bay watershed will increase by 74 percent in Maryland and 80 percent in Virginia (Gray *et al.* 1988). The Service acknowledges ongoing shoreline development will continue for the foreseeable future, which will likely set limits on the rate of future expansion and overall population growth of the bald eagle in the Chesapeake Bay region. Bald eagle nesting pairs currently continue to increase despite the increased construction of new homes, business parks, boat marinas, and other infrastructure within habitats sustaining bald eagles. Therefore, it appears that unoccupied forested habitat currently still remains available, leading to the conclusion that the species has not yet reached the carrying capacity limits for nesting eagle pairs in the Chesapeake Bay region. The Service anticipates a continued upward population growth at least through the next decade based on the availability of habitat and behavioral adaptation. In addition, bald eagles have been able to adapt to higher densities of birds by decreasing the size of nesting territories in certain areas of the region where birds are starting to saturate the habitat. At some point, the Service expects the growth rate to decrease and level off, establishing a population that is stable over the long term.

A study published in 1996 used modeling to predict that the population of bald eagles in the Chesapeake Bay region would increase until reaching carrying capacity, after which there would be a rapid decline of the population (Fraser *et al.* 1996, p. 185). However, we find that model to be unpersuasive for a number of reasons. First, it predicts that a decline might have begun by about 2005, but bald eagle numbers continue to increase in the Chesapeake Bay area. In Maryland, the population has increased from 338 breeding pairs to 400 between 2003 and 2004, and in Virginia bald eagle pairs increased from 371 to 485 between 2003 and 2006.

Second, the predictive model showing a decline in the Chesapeake Bay bald eagle population does not take into account nest protection measures or refugia such as State and Federal wildlife refuges (Fraser *et al.* 1996, p. 185). In Virginia, the Eastern Virginia Rivers National Wildlife Refuge Complex was established to protect bald eagle nesting sites and communal roost sites that are part of concentration areas along the Rappahannock and James rivers. These refuges are within the Rappahannock River Watershed and the James River Watershed, which hold approximately half of Virginia's nesting population of bald eagles. In addition, the first ''eagle refuge,'' Mason Neck National Wildlife Refuge, was established to protect bald eagles along the Potomac River in 1967. In Maryland, communal roost sites and nesting areas are protected at the U.S. Army Aberdeen Proving Ground, Blackwater National Wildlife Refuge, Naval Surface Warfare Center at Indian Head, and an area below the Conowingo Dam along the Susquehanna River. All these areas (excluding the Conowingo Dam) are located within forested habitats on federal lands and therefore have long term protection, as explained under Factor A (Koppie 2007a).

Third, the model does not take into account the increase in bald eagle tolerance to human disturbance. The Service has documented several cases in which bald eagles around the Chesapeake Bay have continued to nest and successfully produce young within distances that were previously considered too close to human activity (Koppie 2007a). In addition, in both Virginia and Maryland, compression of nesting territories (i.e., eagles nesting in closer proximity to each other than in recent decades) has been observed, suggesting that the density of nesting pairs can be higher than once documented (Koppie 2007a).

In addition, certain State authorities and programs may afford additional, unquantifiable habitat protection. For example, in Maryland the Critical Area Act covering the Chesapeake Bay and Atlantic Coastal Bays enables the State and local governments to jointly address the impacts of land development on habitat and aquatic resources. This program can indirectly protect bald eagle habitat by, among other things, categorizing predominant land uses, focusing new development towards existing developed areas, and designating natural resource areas, habitat protection areas and buffers. These measures may reduce the rate of bald eagle habitat alteration depending on how they are employed across the landscape. To the extent that the Critical Areas program is maintained, it has the potential to contribute to forested shoreline preservation within 1,000 feet of the Chesapeake and Atlantic Coastal Bays where upwards of 70 percent of Maryland's eagles nest (Koppie 2007b).

There are currently an estimated 1,093 breeding pairs in the Chesapeake Bay Recovery Region. Habitat loss is still likely to occur in the Chesapeake Bay region in the foreseeable future. However, based on the number of nests and associated habitat found on protected lands, the existence of refuges and other lands specifically to conserve concentration and foraging areas, the availability of additional unoccupied habitat, behavioral adaptation, potentially increased compression of nesting territories, and the continuation of protection under BGEPA (as discussed under Factor A), we do not expect the bald eagle population in the Chesapeake Bay area to decline below the recovery target of 300–400 nesting pairs in the foreseeable future. Similarly, we do not anticipate that habitat loss will have a significant negative impact on important concentration areas.

Issue: Eagles have not recovered in the Southwestern United States. They are threatened with oil and gas development. The Bureau of Land Management is allowing gas wells and pipelines to be constructed in prime eagle habitat, and it will only get worse after delisting. For example, the Bureau of Land Management is allowing gas wells and pipelines to be constructed in prime bald eagle habitat around Navajo Reservoir.

Response: We do not have any data to indicate that oil and gas development is currently threatening the future security of the bald eagle or its habitat in the Southwest. The Bureau of Reclamation manages the land around the Navajo Reservoir, and the Resource Management Plan includes areas specifically designated to protect bald eagles (U.S. BR 2005, p. 2–2, map 2–1). We believe the measures described in the Resource Management Plan will provide adequate protections for bald eagles and their habitat around the Navajo Reservoir after delisting.

Issue: One commenter stated that the final rule needs to include a discussion on the declines in some fisheries as a past and present concern. For example, the demise of a kokanee salmon run in Glacier National Park ended a large autumn aggregation of bald eagles in that area. Declines in alewives and herring in Maine have also restricted eagle aggregations.

Response: Bald eagle populations have increased despite isolated declines in local fish populations. As opportunistic feeders, bald eagles will move to alternative food sources, particularly during the non-nesting season. Therefore, we do not believe this is a threat that would limit the population of bald eagles in the lower 48 States, or a significant portion of its range in the foreseeable future such that continued protection under the Act would be warranted.

Issue: One commenter felt that a State-level management plan for bald eagles in the Southwest Recovery Region was needed because the Arizona Bald Eagle Nestwatch Program will likely disappear after delisting.

Response: The Conservation Assessment and Strategy for the Bald Eagle in Arizona has been developed by the Arizona Game and Fish Department, cooperating agencies, and Tribes to continue management practices for the bald eagle after delisting, including the Bald Eagle Nestwatch Program (Driscoll *et al.* 2006, pp. 1, 33). As we stated in our August 30, 2006, petition finding, the Arizona Bald Eagle Nestwatch Program will likely remain in place because the funding comes from a variety of sources, including State wildlife grants, donations, Arizona Game and Fish Department's Heritage Funds (State lottery), and matching funds for Federal grants. In any case, there is no specific requirement under the Act for a State management plan.

Issue: BGEPA does not require landowners or developers to provide notification of their projects that may affect eagle nests. BGEPA and MBTA only come into effect after discovery of an infringement. There currently is no mechanism under BGEPA to allow for lawful activities (such as transportation construction and maintenance) to proceed. Left without options, landowners will be very tempted to cut down nest trees rather than lose the use of their property.

Response: Actions that result in take as defined under BGEPA or MBTA are prohibited unless permitted by the Service. Thus, such notification is not required under either statute, but an action resulting in take is prohibited nonetheless. As currently occurs under the Act, providing such notification may be in the interest of a project proponent as it can help them avoid potential legal liabilities from enforcement of BGEPA or MBTA. We believe that working cooperatively with landowners to avoid or minimize adverse impacts to bald eagles is likely to achieve more positive conservation than reliance on regulatory enforcement. In addition, we have proposed a program that would allow us to authorize limited take associated with otherwise lawful activities under BGEPA (72 FR 31141; June 5, 2007), similar to the incidental take authorizations that we have made under sections 7 and 10 of the Act.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Issue: Poaching and illegal trade of bald eagle parts is still a threat that will increase if the bald eagle is delisted.

Response: There is no legal commercial or recreational use of bald eagles, and such uses of bald eagles will remain illegal under various statutes, as described under Factor B below. We consider current laws and enforcement measures apart from the Act sufficient to protect the bald eagle from illegal activities, including poaching and illegal trade.

Issue: Eagle parts and feathers should continue to be available for Native American religious and cultural needs. If the bald eagle is delisted, Native Americans should be given priority for eagle parts and feathers.

Response: To respond to the religious needs of Native Americans, in the early 1970s, we established the National Eagle Repository in Commerce City, Colorado,

which serves as a collection point for dead raptors, including bald eagles. As a matter of policy, all Service units transfer salvaged bald eagle parts and carcasses to this repository. Federal and State conservation agencies, zoological parks, rehabilitators, and others who may legally possess and transport dead bald and golden eagles are encouraged to send the dead birds, and their parts, to the repository so they can be utilized by federally recognized Native American Tribes (16 U.S.C. 668a and 50 CFR 22.22).

Native Americans are given priority for eagle parts and feathers, and only members of Federally recognized tribes can obtain a permit from us authorizing them to receive and possess whole eagles, parts, or feathers from the repository for religious purposes. This policy is authorized by the provisions of BGEPA and will continue after delisting.

Issue: One commenter did not want the bald eagle delisted due to the importance of the bald eagle to Native American religious and spiritual practices and ceremonies. Another commenter recommended continuing the Act's protections until recovery had been achieved such that Native Americans no longer need a permit for Indian religious activities. Several commenters stated that Native Americans should not be allowed to sacrifice eagles, even if doing so is for religious ceremonies.

Response: As required by the Act, we are delisting the bald eagle because it no longer meets the definition of a threatened species; the bald eagle will continue to be protected under the BGEPA and MBTA once it is delisted. These statutes prohibit unauthorized take and require permits for limited designated uses of eagles, their parts, and related items. The BGEPA expressly authorizes issuance of permits to take bald eagles for the religious purposes of Indian tribes. We will continue to issue only permits that we determine are consistent with the preservation of the bald eagle.

Factor C. Disease or Predation

Issue: One commenter stated that avian influenza is a threat to the bald eagle and that it should be thoroughly discussed in the delisting rule. Another commenter was concerned about the threats to bald eagles from other diseases such as avian vacuolar myelinopathy, West Nile virus, and raptor beak overgrowth syndrome.

Response: The Department of the Interior is currently testing migratory birds for the presence of H5N1 high path avian influenza. At this time, there are no confirmed cases of migratory birds, including bald eagles, testing positive for avian influenza in the United States (USGS 2007a). At least 80 bald eagles and possibly thousands of American coots have died from avian vacuolar myelinopathy since it was discovered in 1994 at DeGray Lake in Arkansas. Studies on avian vacuolar myelinopathy are continuing, but the cause is still unknown (USGS 2007b). These and other diseases may affect individual bald eagles at the local level, but as discussed below under Factor C, are not considered to be a significant threat to the overall bald eagle population.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Issue: Several commenters were concerned that many States and local jurisdictions will remove the protections for the bald eagle after delisting. One commenter stated that Memoranda of Agreement should be in place between the Service and the States to provide protection for the bald eagle after delisting. One commenter wanted to make sure that States with small bald eagle populations will still provide protection after delisting. One State government commented that State laws provide little habitat protection. Several States indicated that they will play a large role in bald eagle conservation after delisting.

Response: Some States will likely maintain the sensitive status of the bald eagle under individual State laws; however, such protection is not needed to assure that the bald eagle population in the lower 48 States will continue to be a viable population after delisting. As described in the discussions of Factors A and B below, the Service believes that BGEPA and other Federal laws that will remain in place after delisting provide the necessary protections in the future for a recovered bald eagle population. Many States have developed State-specific management plans, regulations, and/or guidance for landowners and land managers to protect and enhance bald eagle habitat, and we encourage the continued development and use of these planning tools to benefit bald eagles. Such measures can only offer more protection for bald eagles than is already offered by BGEPA and MBTA. The States will play a key role in continuing to monitor bald eagles in the lower 48 States to make sure that the species continues to maintain its recovered status.

Issue: One commenter asserts that BGEPA and MBTA will continue to protect bald eagles after delisting, and, because of these protections, bald eagles will likely become overpopulated in some areas of the country.

Response: The bald eagle has not yet reached carrying capacity in many parts of its range, and we anticipate that the population will continue to increase in these areas following delisting. In prime congregation areas, numbers of nesting pairs will level off as the nesting habitat reaches carrying capacity. Many of the bald eagles displaced from saturated habitats will be able to relocate to other suitable habitats. However, territorial competition between eagles will likely maintain a naturally fluctuating population once carrying capacity has been reached.

Issue: Several commenters were concerned that the Service will not maintain adequate funding for staff to provide technical assistance or enforce BGEPA after delisting.

Response: The Service is committed to maintaining adequate staff to respond to requests for technical assistance. The ultimate mechanisms for delivering that assistance will be determined prior to making a decision on the proposed BGEPA permit program (72 FR 31141; June 5, 2007).

Issue: Several commenters expressed concern that the proposed delisting did not include grandfathering of existing take authorizations/permits under sections 7 and 10 of the Act.

Response: After delisting of the bald eagle, the Service will honor existing Act authorizations until the Service completes a final rulemaking for permits under the BGEPA. We do not intend to refer for prosecution the incidental take of any bald eagle under the MBTA, as amended (16 U.S.C. 703–712), or the BGEPA, as amended (16 U.S.C. 668–668d), if such take is in full compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the Act or the terms and conditions of a permit issued under the authority of section 10(a)(1)(B) of the Act. The Service has proposed a rulemaking to establish criteria for issuance of a permit to authorize activities that would ''take'' bald eagles under the BGEPA. The Service has addressed the existing Act authorizations in that rulemaking, which if finalized, might extend comparable authorizations under the BGEPA (72 FR 31141; June 5, 2007).

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Issue: Several commenters were concerned about ongoing impacts of contaminants. One commenter noted that mercury is still a threat to bald

eagles in the Northeast United States. Another commenter noted that PCBs and DDE were still an ongoing threat to the Great Lakes population of bald eagles. Another commenter noted that the upper Midwest population of bald eagles is experiencing a heavy metal contaminant problem that affects the ratio of immature eagles to adults. Another commenter stated that too many nests in northern Illinois have zero productivity due to contaminants.

Response: As we discuss further in Factor E below, we acknowledge that certain contaminants may pose a threat to individual bald eagles. We believe many of these instances are localized and that contaminants will not be a large enough threat to limit the population of bald eagles in the lower 48 States or any significant portions of its range in the foreseeable future such that the protection of the Act would be warranted. This is evidenced by the population increases that have occurred despite the presence of certain levels of contaminants, including mercury and PCBs, in the environment.

Issue: One commenter was concerned that climate change may be an issue, and we should, therefore, keep the bald eagle listed until we can guarantee that habitats are safe.

Response: Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made ''solely on the basis of the best scientific and commercial data available.'' We did not receive any data during the public comment period to indicate that climate change is currently threatening the future security of the bald eagle or its habitat. Since the bald eagle is currently successful in a wide range of climate conditions throughout North America, climate change will not likely be a factor threatening the species in the foreseeable future.

General Comments

Issue: The Service may take too long to re-list the bald eagle if it is warranted.

Response: If data from the post-delisting monitoring plan show that the bald eagle population is decreasing below a trigger threshold specified in the plan, we will investigate the cause of the decline and take the necessary measures to address the decline. If the population decline is severe, then we will promptly evaluate whether re-listing under the Act is warranted, including the Act's provision for emergency listing, as appropriate.

Issue: The Service used an out-of-date, non-scientific population productivity value of 0.7 young/pair.

Response: Our information indicates that a productivity value of 0.7 young/pair for a stable population is still the best available data (see Sprunt *et al.* 1973, p. 104; Buehler 2000, p. 20).

Issue: The delisting is too reliant on current eagle numbers. Research on survivorship, sex ratios, and population recruitment are all important parameters of recovery, not just productivity. Delisting criteria should be based on numbers of active nests, not breeding pairs.

Response: The recovery criteria and goals were established by recovery teams composed of experts in each geographic region. The purpose of the criteria was to allow the Service to monitor the status of the recovery efforts. By setting a goal to monitor population numbers and productivity, the Service, in conjunction with the recovery teams, could determine whether the threats that led to the bald eagle's endangerment had been removed. Monitoring the additional parameters would have been more costly and would not provide any more data that would enable the Service to monitor recovery. Given the increase in the population parameters, the threats have been shown to have decreased to the point where the bald eagle no longer meets the definition of threatened or endangered under the Act.

Issue: The population data presented are estimates and not supported by field work. Data provided by the commenter indicate that the percentage of immature eagles to adults is dropping, which may influence reproduction or survival in the bald eagle population.

Response: The data discussed by the commenter are midwinter counts collected on one day in a 2-hour period from northern Minnesota to Reelfoot, Tennessee. These data, on their face, did show a fluctuation in the number of immature bald eagles throughout the time period from 1961 to 2006, with some years having a higher number than others. However, these data also indicated a trend of increasing adults from 470 in 1961 to 1,299 in 2006. Throughout this time period, the number of adults also fluctuated. Because surveys of wintering bald eagles, such as the midwinter counts described above, are weather dependent (mild winters cause fewer birds to move south) and can include birds migrating down from Canada, the Service has relied on nesting data as the stronger indicator of bald eagle population trends in the lower 48 States. We plan to continue monitoring population trends with implementation of our post-delisting monitoring plan. However, we support the public involvement related to midwinter counts, and such data have highlighted the importance of wintering habitats used by these eagles.

Distinct Vertebrate Population Segment

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We, along with the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), developed the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (DPS policy) (61 FR 4722; February 7, 1996), to help us in determining what constitutes a Distinct Population Segment (DPS). The policy identifies three elements that are to be considered in a decision regarding the status of a possible DPS. These elements are: (1) The discreteness of the population in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing. Our policy further recognizes it may be appropriate to assign different classifications (i.e., threatened or endangered) to different DPSs of the same vertebrate taxon (61 FR 4725; February 7, 1996).

Sonoran Desert Distinct Population Segment

As discussed above, the Service made a negative 90-day finding on a petition to list the Sonoran Desert bald eagle population as an endangered DPS (71 FR 51549; August 30, 2006). In this final determination on the proposed delisting of the entire bald eagle population in the lower 48 states, we also consider, as a final determination, whether the Sonoran Desert population of the bald eagle constitutes a DPS, and should remain listed as either an endangered or threatened species. The main bald eagle population center of the Sonoran Desert currently consists of 42 breeding pairs (AZ Game and Fish Dept. 2006, p. 6) that are found in the southern half of Arizona, west of the New Mexico state boundary. One breeding pair in Arizona is found outside the Sonoran Desert.

Discreteness

The DPS policy states that a population segment of a vertebrate

species may be considered discrete if it satisfies either one of the following two conditions: It must be markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors; or it must be delimited by international boundaries within which significant differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. The second criterion, international boundaries, is easily addressed because the Sonoran Desert population of bald eagles is not delimited by international boundaries that could be the basis of a review of management of habitat, conservation status or regulatory mechanisms. Therefore, the Sonoran Desert population of bald eagles is not discrete based on this criterion. As discussed below, under the first criterion, we find that the Sonoran Desert population is markedly separated from other populations as a consequence of behavioral factors. Therefore, we do not address separation by physical, physiological, or ecological factors.

In looking at whether Sonoran Desert bald eagle are markedly separated from other populations it is helpful to evaluate whether there is a level of interchange between this population and adjacent populations. Biologists in Arizona made a concerted effort to band all nestlings in Arizona since 1987. Of those birds that were sighted with bands between 1987 and 2005, 41.8 percent hatched in Arizona, 18.8 percent likely hatched in Arizona before 1987 (due to a different band type), less than one percent were from another State, and 38.8 percent were from unknown origin (unbanded) (Driscoll *et al.* 2006, p. 26). One adult breeding in Arizona is known to have originated from another State (banded as a nestling in 1988 in southeast Texas). Only one nestling with a band was identified as subsequently nesting outside the recovery region (Temecula, California) (Driscoll *et al.* 2006, p. 27). Roughly 20 percent of the population does not receive a band for a variety of reasons (*e.g.*, logistics of reaching the nestlings), and therefore 38 percent of the population without bands would not be unusual.

In addition, because of the clinal variation in these birds, bald eagle populations from around the same latitude would likely be the supplier of birds that would immigrate into the population. Currently, we do not have any populations surrounding the Sonoran Desert that are large enough that juveniles would likely start to disperse into the Sonoran Desert. Within the last 30 years, these adjacent populations have not increased in size to the same degree as we have seen with the populations in other parts of the bald eagle's range. Given that we do not have large bald eagle population centers surrounding the Sonoran Desert, and given the limited habitat found between currently known populations, it is likely that interchange between the Sonoran Desert and other populations will be minimal in the foreseeable future.

These data indicate that immigration to and emigration from the Sonoran Desert population is very limited. Reproductive isolation of the bald eagles nesting in the Sonoran Desert region of Arizona, although probably not absolute, appears to be substantial. Our DPS Policy does not require that populations experience total reproductive isolation in order to meet the discreteness criterion; rather, they need only to be ''markedly separated.'' We believe the documented low levels of immigration and emigration indicate that this population is currently markedly separated from other bald eagles in the United States.

On the basis of the immigration by the southeast Texas eagle, in 1995, the Service determined as part of the Service's final rule reclassifying the bald eagle from endangered to threatened (60 FR 36000; July 12, 1995) that eagles in the Southwestern Recovery Region were not reproductively isolated. The banded bald eagle from Texas, although located within the Southwestern Recovery Region, occupies an area outside the Sonoran Desert. Furthermore, no additional banded bald eagles from outside the Sonoran Desert have been discovered immigrating into the Sonoran Desert since 1995. In addition, the analysis during the 1995 rule was conducted prior to implementation of the DPS policy in 1996. Therefore, now reviewing the same question in the context of the DPS policy, combined with more data on immigration and emigration, leads us to a conclusion that this population is discrete.

Significance

If we determine that a population segment is discrete under one or more of the discreteness conditions, then we evaluate its significance based on ''the available scientific evidence of the discrete population segment's importance to the taxon to which it belongs'' (61 FR 4725). We make this evaluation in light of congressional guidance that the Service's authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity (61 FR 4722; February 7, 1996). This consideration may include, but is not limited to the following elements: (1) Evidence of the persistence of the population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

(1) Evidence of the persistence of the population segment in an ecological setting that is unusual or unique for the taxon.

As stated in the DPS policy, the Service believes that occurrence in an unusual ecological setting is potentially an indication that a population segment represents a significant resource warranting conservation under the Act (61 FR 4724). In considering whether the population occupies an ecological setting that is unusual or unique for the taxon, we evaluate whether the habitat shares many features common to the habitats of other populations. The Sonoran Desert bald eagle population inhabits a desert ecosystem characterized by hot and dry summers that, on its face, seems to represent an ecological setting that is highly unusual or unique for the species. However, bald eagles in the Sonoran Desert population essentially use the same ecological niche as those in other parts of the lower 48 States population. Bald eagles in the Sonoran Desert feed primarily on fish, consistent with bald eagles in other parts of the range. Habitat structure and proximity to a sufficient food source are usually the primary factors that determine suitability of an area for nesting (Grier and Guinn 2003, p. 44). Nationwide, bald eagles are known to nest primarily along seacoasts and lakeshores, as well as along banks of rivers and streams (Stalmaster 1987, p. 120). Similar to the remainder of the population, bald eagle breeding areas (eagle nesting sites and the area where eagles forage) in the Sonoran Desert are located in close proximity to a variety of aquatic sites, including reservoirs, regulated river systems, and free-flowing rivers and creeks.

We considered whether cliff nesting is an adaptation to the conditions in the Sonoran Desert that indicates the Southwest is a unusual or unique ecological setting for bald eagles. While Stalmaster (1987) noted that cliff nesting

is common in Arizona, he also noted that exceptions to tree nests in other areas do occur. Gerrard and Bortolotti (1988, p. 41) note that bald eagles in other areas may nest on cliffs if suitable trees are not available. For instance, bald eagles are known to nest on cliffs on the Channel Islands off California (NOAA 2006). Bald eagles in Alaska also are known to nest on cliffs, sea stacks, hillsides, and rock promontories where there are no suitable nest trees (Sherrod *et al.* 1976, p. 153). It is likely that up to 10 percent of the bald eagles in Alaska nest on the ground (Schempf 2007). Ground nesting has been documented in northwestern Minnesota and Florida but is the exception rather than the rule (Hines, P. and H. Lipke 1991; Shea, R.E. and Robertson W.B. Jr. 1979). Eagles also nest in a variety of odd situations, such as utility poles, abandoned heavy equipment, mangroves, and root wads washed up on sandbars. Cliff nesting in the Sonoran Desert bald eagles does not seem to be an indication of a behavioral adaptation unique to the Sonoran Desert. Bald eagles will use whatever high nest sites are available near riparian areas they inhabit: in the Sonoran Desert these sites often happen to be cliffs. In fact, although bald eagles utilize cliffs, ledges, and pinnacles for nesting in the Sonoran Desert, they have also nested in cottonwood, willow, sycamore, pinyon pine, and ponderosa pine trees. Many Sonoran Desert eagle pairs have built and used both tree and cliff nests within their territories. This behavior demonstrates the flexibility in nest site selection that bald eagles have throughout the eagles' entire geographic range.

Bald eagles in the Sonoran Desert are smaller in size and breed earlier in the season than most other bald eagles, which could indicate behavioral adaptations to a unique setting. However, examination by latitude reveals differences between birds in the northern regions and birds in the southern regions. For instance, Stalmaster (1987, pp. 16–17) notes northern eagles are much larger and heavier than their southern counterparts. This is consistent with Bergmann's Rule, which holds that animal size increases with increasing latitude due to changes in environmental temperature. Consistent with this rule, Hunt *et al.* (1992) reports that bald eagles in Arizona are smaller than those in Alaska, California, and the Greater Yellowstone Region. Gerrard and Bortolotti (1988, p. 14) note that bald eagles in Florida, which is farther south than Arizona, are the smallest, with a gradation of small to large from south to north. Timing of various breeding events in bald eagles is also tied to latitude of the nesting area, with eagles at more northern latitudes breeding at later dates (Stalmaster 1987, p. 63). Stalmaster (1987, p. 63) notes that bald eagles in Florida initiate breeding activities in October, even earlier than Sonoran Desert bald eagles. Bald eagles in Florida also lay eggs earlier (Stalmaster 1987, p. 63; Gerrard and Bortolotti 1988, p. 76). Accordingly, Florida bald eagles hatch and fledge earlier than those in the Sonoran Desert.

In summary, Stalmaster's (1987) and Gerrard and Bortolotti's (1988) studies indicate that bald eagles in other parts of the lower 48 States are known to nest on cliffs if suitable trees are not available. Hunt *et al.* (1992) notes that Florida bald eagles are the smallest bald eagles, and that eagle size increases as the nest sites are located farther north. Stalmaster (1987) notes that bald eagles in Florida initiate breeding activities in October, even earlier than Sonoran Desert bald eagles. The best available scientific information indicates that the Sonoran Desert bald eagles are not unique in these behavioral aspects. Instead, bald eagle behavior and morphology gradually changes at different latitudes from north to south within the lower 48 States. In fact, even though bald eagles do persist in the Southwest desert setting, they remain consistently associated with riparian ecosystems. Bald eagles use whatever high nest sites are available near riparian areas they inhabit in the Sonoran Desert; these sites often happen to be cliffs. Therefore, because these riparian areas are common to eagle habitats throughout the species' range, the best available data indicate that the Sonoran Desert population of eagles does not occupy an ecological setting that is unusual or unique for the taxon or that has resulted in any adaptations that are unusual or unique for the taxon.

Many biological opinions prepared by the Service in connection with section 7 consultations in the Sonoran Desert and other Service documents issued over the last 30 years stated that Arizona bald eagles live in a unique ecological setting and demonstrate unique behavioral characteristics, including the use of cliffs instead of trees as nest sites, breeding at earlier times of the year, and development of smaller body sizes. Many of these biological opinions and other documents were issued prior to the Stallmaster (1987) and Gerrard and Bortolotti (1988) studies. Furthermore, these Service documents were prepared prior to the issuance of the DPS policy in 1996, or abstracted from such earlier biological opinions without re-analyzing their relevance. The term ''unique ecological setting'' was not used in these documents in the context of its meaning within the DPS policy, which requires that the unique ecological setting be important to the taxon as a whole. While the climate conditions differ in the Southwest compared to other parts of the lower 48 States where bald eagles are found, this attribute alone does not complete the requirements of the DPS policy. A unique ecological setting must also provide some element that makes the members of the population important to the taxon as a whole, such as an evolutionary advantage (61 FR 4724–4725). The factual statements in the biological opinions and other documents concerning the location of the population within the desert and the description of their behaviors did not include consideration of the population's importance to the taxon as a whole because these documents were either issued prior to the promulgation of the DPS Policy or were issued for other purposes than evaluation of the population under the DPS Policy.

The biological opinions and other documents, prior to 1995, also stated that the Arizona bald eagles had been considered a distinct population for the purposes of section 7 consultation and recovery efforts under the Act. The practice of dividing species distributed across the large areas within the United States into separate recovery regions was employed for management convenience (71 FR 51555). For the bald eagle, we created five different recovery plans for these regions. The Service's current practice, however, is to create one plan for the listed entity because the previous practice led to confusion regarding the status of the recovery plan entity under section 4 of the Act. In addition, ''recovery units'' have been, and continue to be, identified as part of the recovery planning process for listed species as a management convenience. In the past, for the purposes of section 7 consultation, the Service may have only evaluated whether the impact of a proposed action was jeopardizing the management unit, either the recovery plan entity or the recovery unit. However, this process was discontinued based on the consultation handbook that was finalized in March 1998 (USFWS and NMFS 1998, p. 4–36). As previously discussed, separating the listed entity into smaller management pieces may be useful in addressing the conservation needs of the species. However, it is important to note that the establishment of separate recovery plans or ''recovery units'' within a plan does not create a

new listed entity under section 4 of the Act. The Service has since acknowledged that for both recovery planning and consultation, the listed entity is the appropriate level of analysis.

The Sonoran Desert can experience periods in the summer that are hot, with low humidity, but it is not a unique ecological setting for bald eagles for the purpose of the significance prong of the DPS policy. The best available scientific data suggest that the ecological setting is essentially the same as used by bald eagles elsewhere—riparian habitat. Although the Sonoran Desert obviously differs in some ways from other habitats that the bald eagle inhabits, every area differs somewhat from other occupied areas and the mere existence of difference does not settle this question. To the degree that the Sonoran Desert differs from other ecological settings used by the bald eagle, we conclude that it does not differ in a way that is dispositive under the DPS policy, because the adaptations exhibited by bald eagles in the Sonoran Desert are not unique to this setting. Rather, the variability in bald eagle nest site selection, breeding phenology, and size are noted elsewhere in the range where the species confronts similar limitations, such as the absence of nesting trees or high temperatures.

The question under the DPS policy is whether persistence of a species in an unusual or unique ecological setting supports a conclusion that the discrete population segment is important to the taxon to which it belongs (See *National Association of Home Builders* v. *Norton,* 340 F.3d 835, 849 (9th Cir. 2003) emphasizing that under the DPS policy significance must be to the taxon as a whole). The mere fact that a species persists in an ecological setting that differs to some degree from other ecological settings in which it is found does not mandate a finding that a population is significant. Here, we find that the species' persistence in the Sonoran Desert does not support such a conclusion because there is no evidence that these particular eagles have adapted in response to these conditions in any way that benefits the taxon as a whole because similar adaptations are found in other settings. Without evidence of such an adaptation, there is likewise no evidence that the bald eagle's persistence in the Sonoran Desert is important to the bald eagle as a whole.

Therefore, we conclude that the discrete population of bald eagles in the Sonoran Desert is not ''significant'' within the meaning of the DPS policy as a result of persistence in a unique or unusual ecological setting.

(2) Evidence that loss of the population segment would result in a significant gap in the range of the taxon.

As ''[t]he plain language of the second significance factor does not limit how a gap could be important,'' *National Ass'n of Home Builders* v. *Norton,* 340 F.3d 835, 846 (9th Cir. 2003), we considered a variety of ways in which the loss of the Sonoran Desert population might result in a significant gap in the range of the bald eagle in the lower 48 States, much less the broader taxon. There has been much speculation about the loss of the Sonoran Desert population given that repopulation of this area would have to occur from northern Mexico or adjacent States, and available evidence indicates that little immigration has occurred in this population. We agree that the low number of eagles in neighboring States would likely require a large amount of time to repopulate the Sonoran Desert region, if they ever did. The small number of bald eagles and large distances between neighboring populations currently limit immigration and emigration between them, and bald eagles in the neighboring populations would have to increase their population size and expand their distribution to occupy the gaps.

Given repopulation through immigration is unlikely in the foreseeable future, we have to evaluate whether this would represent a significant gap to the taxon. The current range of the Sonoran Desert bald eagle could be significant if the population in the Sonoran Desert is numerous and constitutes a significant percentage of the total number of bald eagles, the loss of which would be a significant gap in the population. Bald eagles in the Sonoran Desert are neither numerous nor constitute a significant percentage of the total bald eagles within the lower 48 States. Currently, 43 pairs are found in Arizona, which represents less than 1% of the current estimated number of breeding pairs of bald eagles in the lower 48 states. In addition, this area did not support a large proportion of the bald eagle population historically. A small number, estimated at 15–20 breeding pairs, historically bred in this area (Tilt 1976, p. 15). Given the historical and current population number of bald eagles in the lower 48 States, the Sonoran Desert population of bald eagles represents a relatively small number of breeding pairs in comparison to other areas within the lower 48 States. Also, significant numbers of bald eagles that breed elsewhere do not winter in the Sonoran Desert.

In addition, as discussed in the first and fourth significance factors, we have no evidence that loss of the Sonoran Desert population would represent a significant gap due to a loss of biologically distinctive traits or adaptations or genetic variability of the taxon. In addition, as discussed in the discreteness section, loss of the Sonoran Desert population would not create a significant gap by impeding gene flow within the taxon, as the Sonoran Desert population does not connect otherwise unconnected populations. Finally, loss of the Sonoran Desert population would not result in a significant gap in the range of the taxon due to the sheer reduction of existing or potential geographical range. The actual amount of suitable bald eagle habitat in the Sonoran Desert, limited to a few riparian corridors, is a tiny fraction of the total suitable habitat available for bald eagles in the lower 48 States, much less their entire range. The limited size of the current and historical bald eagle population in the Sonoran Desert directly reflects that fact.

(3) Evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside of its historic range.

The Sonoran Desert population does not represent the only surviving natural occurrence of the bald eagles in the lower 48 States.

(4) Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Hunt *et al.* (1992, pp. E–96 to E–110) contains the genetic work completed to date on the Arizona bald eagle population. Vyse (1992, p. E–100, E–101) notes the data are inconclusive, as evidenced by such statements as: ''These findings must be assumed to be preliminary (and treated with due caution), because of a lack of information concerning sampling procedures. The results we have obtained could easily be explained by sampling procedures''; and ''At present these data (HinfI/M–13) are too incomplete to be considered further.'' In addition, Zegers *et al.* 1992, p. E–106 to E–109): ''Question 4 * * * is difficult to answer with precision because of the different sample sizes between 1985 and 1990 * * *. [T]his difference is possibly an artifact of the many fewer samples in 1985''; ''six loci may not be enough to give a reliable estimate of the true genetic distance''; and ''We feel caution should be exercised when interpreting these results due to the low numbers of individuals sampled from most states but especially because of the few loci examined.''

Although Hunt *et al.* (1992) suggested that the desert Arizona population may be reproductively isolated, neither enzyme electrophoresis nor DNA fingerprinting resolved any specific genetic markers with which Arizona eagles could be differentiated from other populations. The available genetic studies on bald eagles are dated, the sample size was small, and researchers conducting the studies found the results to be inconclusive. As discussed above, the Sonoran Desert population does not display any biologically distinctive traits that could signal any unique genetic characteristics. Therefore, given the assumptions and cautions in using the data, we have determined that the best available data do not support a conclusion that the Sonoran Desert bald eagle population has genetic characteristics that are markedly different from other bald eagles.

Conclusion

We have reviewed the best scientific and commercial data available and have evaluated the data in accordance with 50 CFR 424.14(b). On the basis of our review, we find that although the Sonoran Desert bald eagle population is discrete, it is not significant in relation to the remainder of the taxon. Sonoran Desert bald eagles lack any biologically or ecologically distinguishing factors. Although they do persist in an arid region, Sonoran Desert bald eagles do not have any adaptations that are not found in bald eagles elsewhere. The adaptability of the species allows its distribution to be widespread throughout the North American continent. Therefore, we conclude that the Sonoran Desert population of the bald eagle in the lower 48 States is not a listable entity under section 3(16) of the Act.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in delisting a species. We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with the bald eagle); and/or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the Act's definition of threatened or endangered. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the significant portion of its range (SPR) phrase refers to the range in which the species currently exists. For the purposes of this analysis, we will evaluate whether the currently listed species, the bald eagle in the lower 48 States, should be considered threatened or endangered. Then we will consider whether there are any portions of bald eagle's range in danger of extinction or likely to become endangered within the foreseeable future.

For the purposes of this final rule, we consider ''foreseeable future'' for the bald eagle to be 30 years. Bald eagles fully mature at 4 to 5 years of age (Buehler 2000, p. 19). Gerrard and Bortolotti (1988) observed that successful breeding may not occur for 2 years or more after reaching maturity. Thus, a life cycle from birth to breeding is about 6 years (Gerrard and Bortolotti 1988, p. 57). We used 5 bald eagle generations (30 years) to represent a reasonable biological timeframe to determine if threats could depress the population size and therefore would be significant. We have roughly 30 years of detailed information on how bald eagle populations have responded to the threats identified when the species was listed. Based on this body of information and the combination of bald eagle biology and the threats of greatest consequence (contaminant exposure, shooting, and habitat modification), we conclude that 30 years is a reasonable timeframe over which we can extrapolate the likely extent of the threats and their impact on the species.

The following analysis examines all five factors currently affecting, or that are likely to affect, the bald eagle in the lower 48 States within the foreseeable future.

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* This section will first describe the habitat needs of the bald eagle. It will then discuss the potential threats to that habitat, and the degree to which those threats are ameliorated by various factors. Our analysis concludes that: (1) The habitat threats to such a wide-ranging species, while not readily quantifiable, are much less significant than once feared given the strong recovery of the eagle over the last 30 years; (2) the threats that do exist vary considerably across the landscape, based in part on the ownership of the land in question and the fact that many lands have significant protection independent of the Act; (3) nesting habitat on protected lands is likely sufficient to maintain the recovered population in the foreseeable future; (4) several regulatory mechanisms will limit the degree to which habitat loss will occur on other lands; and (5) recent anecdotal data suggest that even when habitat loss occurs, the impact on bald eagles may be less than previously anticipated.

Throughout their life cycle, bald eagles are associated with a variety of aquatic habitats. Beyond this generalized need for aquatic habitat, bald eagles are not particularly specialized in their habitat needs, thriving near a variety of different environments, including reservoirs, lakes, rivers, estuaries, and coastal areas throughout North America. Within the aquatic habitats, bald eagles feed primarily on fish, but may also consume waterfowl, gulls, cormorants, and a variety of carrion.

Bald eagles usually nest in trees near water, but may use cliffs in the southwestern United States and Alaska. Ground nests have also been reported from Alaska. Nests are usually built in large trees along shorelines, but may be up to one-half mile or more from the shoreline. Adults use the same breeding territory, and often the same nest, year after year. They may also use one or more alternate nests within their breeding territory.

The habitat needs of bald eagles vary somewhat outside of the breeding cycle, although bald eagles are still strongly

dependent on aquatic habitats as their primary food source. The timing and distance of dispersal from the breeding territory varies. Some bald eagles stay in the general vicinity of their breeding territory while some migrate up to hundreds of miles to their wintering grounds and remain there for several months. Young eagles may wander randomly for several years before returning to nest in their natal areas. Eagles seek wintering (non-nesting) areas offering an abundant and readily available food supply with suitable night roosts. Night roosts typically offer isolation and thermal protection from winds. Bald eagles generally concentrate in large numbers in suitable habitat areas in the winter. Important breeding and wintering areas have generally been located in areas at distances from human activity. As discussed below, however, recent data have begun to challenge long-held assumptions that bald eagles require significant isolation from all human activity.

The eagle's decline was largely due to chemicals now known to impair reproductive success (see discussion of this threat under Factor E). Through the recovery planning process, however, various threats to habitat were noted, such as loss of nesting, roosting, and perching habitat through recreational shoreline development, forestry, and urban and suburban expansion. In addition, habitat can be degraded through human disturbance, especially during breeding season. However, as discussed in detail below, in the context of the eagle's dramatic recovery (and continuing population increases), the threat posed by future destruction or modification of habitat is minor compared to what would be required for the bald eagle to be likely to become in danger of extinction throughout all or a significant portion of its range within the foreseeable future.

Currently, habitat availability is not preventing the growth of the bald eagle population in the lower 48 States. Areas that were unoccupied have been repopulated, and the eagle population continues to increase, indicating that carrying capacity has not been reached in many parts of their range. Based on the most recent data, the population in a few States with relatively limited habitat may have started to stabilize; Colorado has shown a slight decline in the numbers of pairs between survey years of 2001 and 2005 (Ver Steeg 2006, p. 2). Other States continue to experience rapid population growth: the number of pairs in Illinois and Iowa doubled between 1999 and 2006 (Conlin 2006, p. 1; Vonk 2006, p. 1). Most States are continuing to show a slight increase in the number of breeding pairs. The population in the lower 48 States as a whole will likely continue to increase in the foreseeable future but at a gradually declining rate that is much slower than has been documented during the past 30 years of the recovery period. Once the carrying capacity has been reached in different parts of the range, we expect the population to naturally stabilize and then fluctuate.

When the recovery planning started, the bald eagle population was at a precarious stage and any threat to the remaining birds was identified, given the uncertainty of its continued survival, much less recovery. At that time, any significant habitat loss (particularly if it affected the remaining pairs) was of grave concern. However, with the eagle population increasing by well over an order of magnitude since that time, the immediate concern posed by habitat loss has dissipated. The only remaining concern related to habitat is whether, over the long term, development or other factors might cause habitat loss sufficient to limit the eagle population to a point that the viability of the population is threatened.

In the future, available habitat will almost certainly limit the population of bald eagles in the lower 48 States. Furthermore, we acknowledge that habitat loss will likely eventually result in slow declines of bald eagle populations in some areas. Through comments and information in our files, we are aware that heavy development pressures and important eagle habitat overlap in parts of Florida and the Chesapeake Bay region. According to the U.S. Census Bureau, Florida is the third fastest growing State in the nation, and the State's human population is projected to increase by 79 percent by 2030 (compared to 2000). The Chesapeake Bay region States (Maryland, Delaware, and Virginia) all have varying degrees of projected increase that average around 32 percent over the same time period. Moreover, the population of bald eagles in Florida has started to stabilize, not showing an increase or decrease between 2003 and 2005. Thus, it is likely that the number of breeding pairs in Florida will begin to decline within the foreseeable future, and possible that the same result could occur in the Chesapeake Bay region.

The relevant question under section 4 of the Act, however, is whether such a decline will occur in the foreseeable future to a degree that the bald eagle is likely to become in danger of extinction again throughout all or a significant portion of its range. In analyzing this question, we considered the fact that the habitat threats that do exist vary considerably across the landscape. This is in part based on the ownership of the land in question—some lands have significant protection independent of the Act. Because the threats do vary across the range, we discuss in greater detail at the end of this section those portions of the range that have come to our attention based on comments or information in our files.

One of the biological factors that will ensure the bald eagle is not now endangered or likely to become so in the foreseeable future is that bald eagles are not particularly specialized in the type of aquatic habitat they use, but instead thrive near a variety of different environments including reservoirs, lakes, rivers, estuaries, and the marine environment. Currently, bald eagles occupy one or more of these environments in each of the lower 48 States, and have large breeding populations in those geographic areas that historically supported significant breeding populations. This tremendous distribution of bald eagles throughout the lower 48 States, combined with the species' ability to exploit such a wide range of geographic habitat settings, provides an important buffer against any potential threats to any of the significant portions of the range and to the species as a whole.

High quality habitat has been characterized as those areas in which human development and disturbance are absent (McGarigal *et al.* 1991). However, recent data suggest that eagles across many parts of their range are demonstrating a growing tolerance of human activities in proximity to nesting and foraging habitats. Eagles in these situations continue to successfully reproduce in settings previously considered unsuitable. For example, where our Southeastern nesting management guidelines have been followed in Florida, some bald eagle pairs have shown a remarkable adaptation to human presence by nesting in residential subdivisions and commercial and industrial parks, and on cell phone towers and electric distribution poles. A common thread throughout these urban and suburban landscapes is the availability of ample food sources such as natural lakes, rivers, and ponds; artificial stormwater retention ponds; and public landfills (Millsap *et al.* 2002, p. 10). A study of bald eagle nesting patterns in western Florida detected no differences in nest-site occupancy, nest success, or number of young fledged between bald eagles occupying suburban or rural nest sites, except bald eagles in suburban sites nested earlier (Millsap *et al.* 2002, pp. 14, 25). In western Washington,

breeding bald eagles responded less to pedestrian activity than had been documented in other studies in the United States, possibly reflecting a higher degree of habituation to human activities by eagles in this area (Watson 2004, p. 301). The Service has documented several cases in which bald eagles around the Chesapeake Bay have continued to nest and successfully produce young within distances that were previously considered too close to human activity (Koppie 2007a). In addition, in both Virginia and Maryland, compression of nesting territories has been observed, suggesting that the density of nesting pairs can be higher than once documented (Koppie 2007a). This evidence suggests that as eagles begin to reach the carrying capacity in local areas and face development or other encroachments, some eagles will successfully adapt to these circumstances. To the extent that this is true, degradation of habitat due to human disturbance is not as large a threat as once believed.

To understand the potential for nesting habitat loss due to development in the foreseeable future, we used a GIS (Geographic Information Systems) analysis to estimate the number of known bald eagle nests throughout the lower 48 States that occur on ''protected land.'' The ''protected'' land category includes Federal, State, Tribal, and other areas designated as privately protected, such as lands owned by The Nature Conservancy or similar non-governmental entities. To identify such lands, we used the Conservation Biology Institute Protected Areas Database, the National Atlas Federal Lands data layer, and the State GAP Analysis data (Otto 2007). Included in another data layer are the bald eagle nests in the lower 48 States that are identified as a result of a compilation of data we received from individual States.

The resolution and quality of this information was not at a highly detailed scale, so there may be nests assigned to the wrong type of land use. For instance, the data from the National Atlas Federal lands data layer only includes Federal lands of 640 acres or more. However, given that our analysis was done at a broad scale, the resolution and quality of this data can generally give us an indication of the percentage of nests over the entire 48 States on protected land. Our intent in this analysis was only to gain perspective on those lands on which eagle nesting habitat is not likely to be lost in the foreseeable future due to the particular land category status. These areas may not all be managed specifically for bald eagles; however, as discussed below, a variety of legal and practical considerations will act to minimize negative impacts to bald eagle habitat once the protections of the Act are removed.

Through the GIS analyses, we have identified more than 6,000 bald eagle nests in the lower 48 States on lands that provide protection for bald eagles. Of these, more than 3,400 occur on Federal lands managed by the Departments of Agriculture or the Interior, and an additional 275 occur on lands managed by the Department of Defense, including approximately 170 on lands managed by the U.S. Army Corps of Engineers. The remaining roughly 2,700 nests included within the 6,000 bald eagle nest figure are found on lands in either State or private ownership. Based on many years of conducting consultations under section 7 of the Act, reviewing habitat conservation plans under section 10 of the Act, reviewing National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) documentation for Federal actions, and other interactions with Federal and State agencies, we have found that management activities on public lands usually provide for maintaining some vegetation buffers of varying widths along riparian corridors and coastal areas. These were sometimes required by the Service as reasonable and prudent measures to address impacts to eagles, but often these buffers were incorporated into project planning because they were required to satisfy another of the action agencies' governing environmental or management laws, or because maintaining such buffers represents a good management practice even in the absence of a legal requirement. The practice of maintaining vegetative buffers is particularly relevant to (and generally supportive of) bald eagle conservation, because of the need of the species to have nesting and roosting sites (generally in trees) in close proximity to water.

As mentioned in the Effects of This Rule section, we intend to honor the existing incidental take statements associated with existing section 7 consultations, as long as the action agency and other covered entities comply with all their terms and conditions. We therefore anticipate that habitat that would be either protected or conserved as a result of these Act authorizations remaining in place. Looking to the foreseeable future, each land management agency has its own authorizing statutes and implementing regulations that may either directly or indirectly conserve habitat for bald eagles, such as by means of buffers (as discussed above). The following paragraphs discuss some of the relevant authorities for the Federal agencies managing land with substantial numbers of eagle nests.

The U.S. Forest Service reports that bald eagles occur on 142 National Forests in the lower 48 States (Bosch 2006). More than 2,000 known bald eagle nests are found within these areas. The Forest Service manages most of its lands for multiple uses, including management for timber production, recreation, and the needs of wildlife, fish, and sensitive plants. Under the National Forest Management Act of 1976 (16 U.S.C. 1600 et seq.), it is the policy of Congress that all forested lands in the National Forest System shall be maintained in appropriate forest cover with species of trees, degree of stocking, rate of growth, and conditions of stand designed to secure the maximum benefits of multiple use sustained yield management in accordance with land management plans. Particular habitat protection for bald eagle is afforded through the protection of streams, stream-banks, shorelines, lakes, wetlands, and other bodies of water from detrimental in changes in water temperature, blockages of water courses and deposits of sediment (16 U.S.C 1604(g)(3)(E)(iii)). In developing, maintaining, and revising management plans for units of the National Forest System, the Secretary of Agriculture is required to provide for multiple-use and sustained-yield of the products and services obtained from the System in accordance with the Multiple-Use, Sustained-Yield Act of 1960, including coordination of outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness (16 U.S.C. 1604(e)(1)).

The number of nests on Forest Service lands has grown substantially over the last 30+ years, and there is no indication that we have achieved the carrying capacity of the National Forest System. Even at some point in the future when the system's carrying capacity is reached, the multiple-use, sustained yield policies of the U.S. Forest Service are generally consistent with the conservation needs of the bald eagle because they will maintain a large-scale, shifting mosaic that should provide generally stable habitat conditions and a stable number of breeding pairs throughout the National Forest System.

The Service's National Wildlife Refuge (NWR) System contains more than 160 national wildlife refuges that provide important nesting grounds for bald eagles (U.S. FWS 2006c, p. 1). These refuges host more than 600 bald eagle nests. The Service established four

refuges specifically to provide management for the bald eagle: the Bear Valley NWR in Oregon was established in 1978 to protect a major night roost site for wintering bald eagles; the Karl E. Mundt NWR in South Dakota/Nebraska protects one of the important bald eagle winter roosting areas and provides important habitat for 100–300 individual bald eagles; the Mason Neck NWR in Virginia protects essential nesting, feeding, and roosting habitat; and the James River NWR in Virginia protects one of the largest summer roosting areas for juvenile bald eagles east of the Mississippi River.

The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans (16 U.S.C. 668dd). Refuges may be opened for public access and limited uses, with priority afforded to wildlife-dependent recreation. Evaluation of proposed uses typically requires an examination of the appropriateness and compatibility with the System mission and the purposes for which a particular refuge has been established, among other considerations.

The System regulations at 50 CFR part 27 contain a number of prohibitions regarding wildlife that are applicable to bald eagles, including taking, disturbing, or injuring them on refuge lands without a permit. In administering the System, the Secretary of the Interior shall provide for the conservation of fish, wildlife, and plants and their habitats within the System and ensure that the biological integrity, diversity, and environmental health of the System are maintained for the benefit of present and future generations of Americans. The Service applies those requirements through its Administrative Manual Chapter on Biological Integrity, Diversity, and Environmental Health (601 FW 3). Key underlying principles of the policy are that wildlife conservation comes first; each refuge is managed to ensure its biological integrity, diversity, and environmental health; and biological integrity, diversity, and environmental health is considered in a landscape context.

The number of nests on refuges has also grown substantially over the last 30+ years, and there is no indication that we have achieved the carrying capacity of the NWR system. When carrying capacity is reached at some point in the future, the policies and management practices of the Service, with their emphasis on wildlife conservation and the requirement that all uses of System lands meet the test of being compatible with the purposes for which a particular unit of the System was established, are consistent with the conservation needs of the bald eagle because they will provide generally stable habitat conditions and numbers of breeding pairs throughout the system. Therefore, we expect that units of the National Wildlife Refuge System will continue to be managed in ways that contribute substantially to the conservation of bald eagles and meet their habitat needs.

Approximately 130 National Park units have bald eagles located within their boundaries, according to the National Park Service Endangered Species database (U.S. NPS 2006), with more than 300 bald eagle nests on the lands managed by the National Park Service (NPS). These lands include National Parks, National Seashores, National Monuments, and National Wild and Scenic Rivers. Lands managed by the National Park Service are subject to the NPS Organic Act of 1916, which provides that the ''fundamental purpose'' of those lands ''is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations'' (16 U.S.C. 1). Most units of the National Park System also have their own specific enabling legislation, but the 1970 General Authorities Act makes it clear that all units are united into a single National Park System. Furthermore, no activities shall be allowed ''in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress'' (16 U.S.C. 1a–1).

NPS regulations specifically protect wildlife, including nests, by prohibiting disturbing wildlife or nests from their natural state and by prohibiting take of wildlife and the intentional disturbance of nesting or breeding activities (36 CFR 2.1(a), 2.2(a)). The basic policy document applied to the NPS is Management Policies 2006 (''MP''). Those policies provide that NPS will manage natural resources ''to preserve fundamental physical and biological processes, as well as individual species, features, and plant and animal communities,'' and ''will try to maintain all the components and processes of naturally evolving park ecosystems'' (MP 4.1). With respect to wildlife, NPS ''will maintain as parts of the natural ecosystems of parks all plants and animals native to park ecosystems'' by ''preserving and restoring the natural abundances, diversities, distributions, habitats, and behaviors of native plant and animal populations and the communities and ecosystems in which they occur''; ''restoring native plant and animal populations in parks when they have been extirpated by past human-caused actions''; and ''minimizing human impacts on native plants, animals, populations, communities, and ecosystems, and the processes that sustain them'' (MP 4.4.1).

NPS relies on natural processes whenever possible to maintain native species, but ''may intervene to manage individuals or populations of native species'' if the intervention will not cause unacceptable impacts to the population of the species or to the ecosystem, and if it is necessary for one of several reasons, such as an unnaturally high or low population due to human influences or to protect a rare species (MP 4.4.2). Based on these requirements, management of NPS lands has and will continue to support the conservation needs of bald eagles, and there is little likelihood that eagles on NPS lands will suffer habitat-based disturbance.

The Bureau of Land Management (BLM) manages lands with more than 200 bald eagle nests. Similar to the U.S. Forest Service, BLM lands are generally managed for multiple-use purposes, under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), which includes a declaration of policy that ''the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use'' (43 U.S.C. 1701(a)(8). For mining activities, BLM provides specific protections for eagle nests and concentration areas (43 CFR 3461.5(k) and (l)). As with lands of the National Forest System, such multiple-use practices are generally consistent with the conservation needs of bald eagles because on a system-wide basis they provide for a generally stable amount and distribution of bald eagle habitat.

The Department of Defense and the U.S. Army Corps of Engineers collectively manage lands that host more than 440 bald eagle nests.

Department of Defense facilities that support at least 275 of these nests include some 43 Army, 17 Navy, 7 Air Force, and 3 Marine Corps installations with nesting or regular eagle use. Under the Sikes Act, the Secretary of Defense must provide for the conservation of natural resources on each installation (16 U.S.C. 670a), with an Integrated Natural Resources Management Plan. Each plan is prepared in cooperation with the Service and the State wildlife agency. As appropriate to the installation, the plan includes provisions for wildlife management (with respect to all wildlife, not just species listed under the Act), habitat enhancement, and wetland protection. As applicable, such plan's primary management goals typically seek to maintain and improve forested habitat for eagles, minimize human disturbance in eagle nesting and wintering areas, improve food supplies, and minimize hazards to eagles. Nests are protected by special management areas. To maintain effective protections, installations have a priority to monitor their nesting and wintering eagles.

In addition, two other authorities specific to management of migratory birds (including bald eagles) on Department of Defense installations are relevant. First, the Armed Forces are authorized by regulation under the Migratory Bird Treaty Act to take migratory birds incidental to military readiness activities (50 CFR 21.15). However, this authorization is contingent upon the Armed Forces conferring and cooperating with the Service to develop and implement appropriate conservation measures to minimize and mitigate any significant adverse effects on a population of a migratory bird species that the Armed Forces determine may result from those activities. Second, on July 31, 2006, the Department of Defense entered into a Memorandum of Understanding (MOU) with the Service under Executive Order 13186, discussed below.

The remainder of the nests on Defense and Corps lands, at least 65 nests, are on lands managed by the Army Corps of Engineers. These lands include major riparian corridors, such as the Mississippi and Missouri Rivers, associated with large civil works projects maintained for navigation and flood control. The projects, with their aquatic suitable habitat for eagles, are likely to remain in place in the foreseeable future. To the extent further work on these projects is proposed, established policies require the Corps to consider opportunities to enhance habitat for wildlife (33 CFR 236.4(b)), including bald eagles. The Corps must also consult with the Service under a provision of the Fish and Wildlife Coordination Act (16 U.S.C. 662) to determine how the Corps can protect wildlife, again including bald eagles. While Defense and Corps lands are managed primarily for military readiness and civil projects, they have historically made significant, positive contributions to eagle conservation. Eagles have also adapted to many of the military, training, and operational activities on these lands. Because of the management plans and conservation measures in place on the Defense and Corps lands, the Service believes that these lands will continue to contribute to eagle recovery for the foreseeable future.

According to the GIS analysis described above, approximately 40 percent of the total of approximately 15,000 known bald eagle nests occur within the ''protected lands'' category where long-term adverse habitat modification is unlikely to occur. Note that there are more known nests than known breeding pairs. This is because some breeding pairs have more than one nest and because some known nests are abandoned (not currently maintained by any breeding pair). The underlying data used in this analysis is with respect to all known nests, and is without any indication of whether a particular nest is currently active, serves as an alternate nest, or has been abandoned. On the other hand, there are certainly additional nests on protected lands (and elsewhere) currently used by breeding pairs that are not in our data set. The pilot study conducted for the bald eagle post-delisting monitoring plan indicates that the State data for number of nests only accounts for 42 to 81 percent of actual nests (Otto 2007).

Although there is not a scientifically established quantitative correlation between nests and breeding pairs, and therefore we cannot state precisely how many breeding pairs in fact nest on protected lands in a given year, these data give us an indication of the amount of nesting habitat that is protected. Moreover, the 40 percent of nests on protected lands are distributed throughout all areas that are significant for breeding and wintering. These areas therefore will provide protections to significant areas of bald eagle nesting, roosting, perching, and feeding habitat and will continue to provide strongholds throughout the range of the species in the foreseeable future.

Combining the five recovery plans' goals for the bald eagle breeding population leads to a total delisting goal of about 4,000 breeding pairs in the lower 48 States. This level, coincidentally, represents about 40 percent of the 9,789 currently known breeding pairs. While the numbers of recorded nests to breeding pairs are not exact comparisons and, as indicated above, the protection on protected lands is not absolute, our analysis does indicate that it is highly likely that the number of breeding pairs necessary to maintain the species' recovery can be accommodated for the foreseeable future on the protected lands.

In addition to the habitat protection afforded on account of management related to ownership, several other factors will limit the degree to which habitat loss will occur on any lands in the foreseeable future. First, eagle habitat in some areas, because of its remoteness, faces little threat associated with human population expansion. For example, northern Minnesota, Wisconsin, and Michigan have 2,859 breeding pairs and development pressures are negligible within the northern portions of these States.

Second, a number of applicable laws will at least indirectly protect bald eagle habitat. The most important of these is the BGEPA, a Federal statute that applies throughout the United States regardless of land ownership status. The BGEPA (16 U.S.C. 668–668d), enacted in 1940 and since amended, was then intended to be the primary vehicle to protect and preserve bald eagles. The statute prohibits anyone, without a permit issued by the Secretary of the Interior, from ''taking'' bald eagles, including their parts, nests, or eggs (16 U.S.C 668(a)). The BGEPA further defines ''take'' as ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb'' (16 U.S.C. 668c).

Even after the bald eagle was added to the List of Threatened and Endangered Wildlife under the Act, BGEPA's prohibition against disturbance continued to be an important component in protecting eagles from human interference. For instance, the Service, in conjunction with various States, developed guidelines based upon BGEPA that have been an essential component of our technical assistance to the public and have helped people avoid harmful impacts to eagles.

But given that the BGEPA will now be the primary law preserving bald eagles, and recognizing the need for predictability in implementing it in the foreseeable future, we further clarified our interpretation of the BGEPA's take prohibition. On June 5, 2007, we published a final rule (72 FR 31132, effective on July 5, 2007) defining the

term ''disturb'' under 50 CFR 22.3 as meaning:

> to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior (72 FR 31139).

This definition largely reflects how ''disturb'' has been interpreted in the past by the Service and other Federal and State wildlife and land management agencies. The final definition of ''disturb'' encompasses impacts that, based on the best scientific information available, are likely to cause injury to an eagle, or a decrease in its capacity to reproduce. This may include effects from disturbance caused by habitat manipulation.

Although the BGEPA is not a land management law (it contains no provisions that directly protect habitat except for nests), it does protect eagles in their habitat. Activities that disrupt eagles at nests, foraging areas, and important roosts can illegally disturb eagles. Therefore, areas adjacent to eagle nests, important foraging areas, and communal roost sites are indirectly accorded protection under the BGEPA to the degree that their loss would disturb or kill eagles. Those losses may result from habitat alteration. For instance, in our final rule defining ''disturb'' we noted:

> Removal of trees is not in itself a violation of the Eagle Act. The impacts of such action can be a violation, however, if the loss of the trees kills an eagle, or agitates or bothers a bald or golden eagle to the degree that results in injury or interferes with breeding, feeding, or sheltering habits substantially enough to cause a decrease in productivity or nest abandonment, or create the likelihood of such outcomes (72 FR 31137).

We also intend the definition to apply to a situation where eagles, as part of their normal nesting behavior, return to the vicinity of the nest, but the habitat alterations are so vast in scale that the eagles become agitated as a result, alter their behavior, and never return to the nest itself (72 FR 31136).

We have also finalized after public notice and comment National Bald Eagle Management Guidelines (72 FR 31156; June 5, 2007) that are to be used in conjunction with this new definition of the term ''disturb.'' The Guidelines are intended to: (1) Publicize the provisions of the BGEPA that continue to protect bald eagles, in order to reduce the possibility that people will violate the law; (2) advise landowners, land managers, and the general public of the potential for various human activities to disturb bald eagles; and (3) encourage additional nonbinding land management practices that benefit bald eagles. The Guidelines themselves are not law. Rather, they are recommendations based on several decades of behavioral observations, science, and conservation measures to avoid or minimize adverse impacts to bald eagles. The document is intended primarily as a tool for landowners and planners who seek information and recommendations regarding how to avoid disturbing bald eagles.

It is important to note that the Guidelines contain numerous recommendations that relate to bald eagle habitat. For instance, to avoid disturbing nesting bald eagles, we recommend: (1) Keeping a distance between the activity and the nest (distance buffers), (2) maintaining preferably forested (or natural) areas between the activity and around nest trees (landscape buffers), and (3) avoiding certain activities during the breeding season. The buffer areas serve to minimize visual and auditory impacts associated with human activities near nest sites. Ideally, buffers would be large enough to protect existing nest trees and provide for alternative or replacement nest trees. Again, the primary purpose of these Guidelines is to provide information that will minimize or prevent violations of only Federal laws governing bald eagles.

When this rule becomes effective, the Act's protections and prohibitions will no longer apply to the bald eagle. We recognize that the above-described BGEPA habitat protections that will remain are not identical to those afforded under the Act, nor are they intended to be. There is, however, considerable overlap in the statutory definitions of ''take'' under both statutes (16 U.S.C. 1532(19) and 668c). Moreover, the regulatory definitions of ''harm'' and ''harass'' (50 CFR 17.3) that further define the term ''take'' under the Act are similar to the newly promulgated ''disturb'' definition under BGEPA.

As described, we have interpreted ''disturb'' to include certain biological or behavioral effects caused by activities, including some habitat manipulation. This view is supported by the only court to have addressed the relationship between the prohibitions of the Act and the BGEPA:

> Both the Act and the Eagle Protection Act prohibit the take of bald eagles, and the respective definitions of ''take'' do not suggest that the ESA provides more protection for bald eagles than the Eagle Protection Act* * *. The plain meaning of the term ''disturb'' is at least as broad as the term ''harm,'' and both terms are broad enough to include adverse habitat modification.

(*Contoski* v. *Scarlett*, Civ No. 05–2528 (JRT/RLE), slip op. at 5–6 (D. Minn. Aug 10, 2006).

Unlike the Act, the BGEPA does not include a private right of action, meaning a third party cannot bring legal action to enforce the statute, but the BGEPA provides criminal and civil penalties for persons who ''take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle * * * or any golden eagle, alive or dead, or any part, nest, or egg thereof'' (16 U.S.C. 668 (b)). A violation of the Act can result in a criminal fine of $100,000 ($200,000 for organizations), imprisonment for one year, or both, for a first offense. Penalties increase substantially for additional offenses, and a second violation of this Act is a felony. We anticipate that traditional governmental enforcement of the BGEPA prohibitions will continue to have a deterrent effect despite the absence of a private right of action.

Finally, the Act provides broad substantive and procedural protections for listed species but at the same time allows significant flexibility to permit activities that affect listed species. In particular, the Act provides that we may exempt or authorize the incidental take of listed wildlife in the course of otherwise lawful activities (sections 7(b)(4) and 10(a)(1)(B), respectively). Nationwide, since 2002, the Service has issued an average of 52 incidental take statements per year that covered anticipated take of bald eagles under section 7 of the Act. During that same 5-year period, we also issued about two (1.8) incidental take permits per year under section 10(a)(1)(B) of the Act for bald eagles. The requirements, including minimization, mitigation, or other conservation measures, of those authorizations were designed to ensure that those actions did not jeopardize the continued existence of the bald eagle. It is also apparent that these limited authorizations did not impede the recovery of the bald eagle. The number of section 7 informal consultations concluding that the bald eagle would not likely be adversely affected by a particular action is also notable. For example, in 2006, although we issued 57 section 7 incidental take statements, we engaged in 5,184 informal consultations where take was either not anticipated, or averted through early coordination, incorporation of

management recommendations, or project modification.

The regulations at 50 CFR part 22 govern the issuance of bald eagle permits for certain types of take, transportation, and possession, such as for Indian religious purposes, scientific research and exhibition, and depredation. The BGEPA regulation does not presently contain take mechanisms similar to that of the Act with respect to incidental take coverage. On June 5, 2007, however, we published a proposed rule to create such a permitting scheme under the BGEPA (72 FR 31141). The public comment period closes on September 4, 2007. The regulations we have proposed would (1) establish a take permit under the BGEPA, (2) provide BGEPA authorizations comparable to the authorizations granted under the Act to entities who continue to operate in full compliance with the terms and conditions of permits issued under section 10 of the Act and incidental take statements issued under section 7 of the Act, and (3) authorize take of eagle nests in limited circumstances that pose a risk to human safety or to the eagles themselves.

We anticipate that, if that proposal is adopted through the final rule, the majority of permits would be issued to cover activities that cause disturbance in proximity to eagle nests, important foraging sites, and communal roosts. However, by adhering to the National Bald Eagle Management Guidelines, landowners and project proponents will be able to avoid bald eagle disturbance under the BGEPA most of the time. We anticipate only rarely issuing permits for take associated with activities that adhere to the Guidelines because the great majority of such activities will not take bald eagles. In this capacity, the Guidelines and technical advice that we will provide will function much like our informal consultations under section 7 of the Act, but will be available to all landowners. If when applying the Guidelines, avoiding disturbance is not practicable, the project proponent may apply for a take permit. Additionally, in some limited cases, where other forms of take besides disturbance are unavoidable, we anticipate that a permit may be issued for such other form of take.

For reasons enumerated in our proposal, we cautiously estimate the number of eagle take permits would increase if the proposal is adopted from an average of 54 authorizations currently issued under the Act to 300 BGEPA permits, annually. But we may only issue these authorizations if they are ''compatible with the preservation'' of bald eagles (16 U.S.C. 668a). Like the Act, this BGEPA standard acknowledges that limited take of eagles is not inconsistent with the protection of the species.

As suggested in our proposed rule, we believe the demand for permits, and the effects of issuing those permits, both individually and cumulatively, including minimization and mitigation measures, would not be significant enough to cause a decline in eagle populations from current levels. Our proposal identifies a recognized threshold for determining the level of decline that would be incompatible with the BGEPA standard, which we regularly employ to assess other species we manage under the MBTA. We recognize that external factors could arise that negatively affect eagle populations. Whatever the cause, if data suggest population declines are approaching a level where additional take would be incompatible with the preservation of the eagle, we would refrain from issuing permits until such time that we determine the take would be compatible with the preservation of the bald eagle. For a fuller explanation of the proposed threshold and safeguards, see the proposed rule at 72 FR 31143–31144.

In summary, the BGEPA will remain in force following delisting. The BGEPA prohibits the take of bald eagles, including disturbance, which we have identified and interpreted to occur in some circumstances as a result of habitat alteration. Adherence to the Guidelines, as appropriate in a given situation, may provide for buffers or other measures that protect bald eagle habitat on both private and public lands. Although a take permitting scheme has been proposed, it should not significantly diminish these habitat protections. The proposed permitting mechanism should not reduce the bald eagle population to a level that might necessitate re-listing. Rather, based on the current proposal, we conclude that the number of anticipated permits, coupled with BGEPA's protective ''preservation'' standard, should ensure that the population will not decline below current levels. Therefore, we expect BGEPA to contribute to the availability of habitat for the recovered bald eagle population in the foreseeable future.

To a much lesser extent, the MBTA also provides indirect protection to bald eagle habitat. The MBTA makes it unlawful to at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or eggs of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof (16 U.S.C 703(a)). Bald eagles are among the migratory birds protected by the MBTA. Therefore, a modification to eagle habitat that directly takes or kills a bald eagle (such as cutting down a nest tree with chicks present) would constitute a violation of the MBTA, as well as the BGEPA.

The Clean Water Act (CWA) (33 U.S.C. 1251 *et seq.*) is the cornerstone of surface water quality protection in the United States. It will continue to protect aquatic habitats upon which the bald eagle depends following delisting. The CWA employs a variety of regulatory and non-regulatory tools to sharply reduce direct pollutant discharges into waterways, finance municipal wastewater treatment facilities, and manage polluted runoff. These tools are employed to achieve the broader goal of restoring and maintaining the chemical, physical, and biological integrity of the nation's waters so that they can support ''the protection and propagation of fish, shellfish, and wildlife and * * * recreation in and on the water'' (33 U.S.C. 1251(a)(2)).

The first step in achieving these goals is the establishment of water quality standards (WQS), either by States or the Environmental Protection Agency (EPA) (33 U.S.C. 1313). Necessary reductions in pollutant loading are achieved by implementing the following: (1) The Section 402 National Pollution Discharge Elimination System permit program, covering point sources of pollution; (2) the Section 404 permitting program, regulating the placement of dredged or fill materials into wetlands and other waters of the United States; and (3) Section 401, which requires federal agencies to obtain certification from the State, territory, or Indian tribes before issuing permits that would result in increased pollutant loads to a waterbody. Surface waters are monitored to determine whether the WQS are met. If they are, then anti-degradation policies and programs are employed to keep the water quality at acceptable levels. If waterbodies are not meeting WQS, they must be identified and a strategy for meeting the standards developed. The most common type of strategy is the development of a Total

Maximum Daily Load (TMDL). TMDLs determine what level of pollutant load would be consistent with meeting WQS. TMDLs also allocate acceptable loads among sources of the relevant pollutants. These regulatory programs, coupled with the CWA's protective goals, will continue to help protect the aquatic habitats and prey species of the bald eagle in the foreseeable future.

In 2001, the President signed Executive Order 13186, ''Responsibilities of Federal Agencies to Protect Migratory Birds,'' requiring Federal agencies to incorporate migratory bird conservation measures into their agency activities. Under this Executive Order, each Federal agency whose activities may adversely affect migratory birds was required to enter into a Memorandum of Understanding (MOU) with the Service, outlining how the agency will promote conservation of migratory birds. The Executive Order has a number of provisions that specifically relate to habitat, including the requirements that agencies, as practicable, (1) restore and enhance habitat, (2) prevent or abate the pollution or detrimental alteration of the environment, (3) design habitat conservation principles, measures, and practices into agency plans and planning processes, (4) ensure that NEPA analyses evaluate the effects of actions and agency plans on migratory birds, with emphasis on species of concern, and (5) identify where unintentional take reasonably attributable to agency actions is having, or is likely to have, a measurable negative effect on migratory bird populations, focusing first on species of concern, priority habitats, and key risk factors.

The Executive Order also encourages an agency to implement those criteria immediately even if it has not yet completed its MOU. Two MOUs have been approved to date with the Department of Defense (U.S. FWS 2006d) and the Department of Energy (U.S. FWS 2006e) that emphasize a collaborative approach to conservation of migratory birds, including minimizing disturbance to breeding, migration, and wintering habitats. While these MOUs are non-binding and therefore are not considered here as existing regulatory mechanisms, they provide an opportunity for us to continue to reduce the threat of habitat loss to bald eagles after delisting by working with our Federal partners.

In addition, the Fish and Wildlife Coordination Act (16 U.S.C. 661–667d) (FWCA) requires that agencies sponsoring, funding, or permitting activities related to water resource development projects request review by the Service and the State natural resources management agency. The Service's review is non-binding, and therefore the Coordination Act is not considered here as an existing regulatory mechanism. However, given that bald eagles reside in aquatic habitats, FWCA will allow the Service to continue to make recommendations on minimizing and offsetting impacts that might occur from these types of activities on bald eagles.

In conclusion, the bald eagle population is continuing to increase in the lower 48 States, showing that reduced availability of habitat is not a current threat to the species. Nesting habitat is secure on many public and private locations throughout the lower 48 States. Although localized habitat loss due to development may be a threat to individual bald eagles in the foreseeable future, particularly on private lands, we expect these threats will be reduced by the Federal laws that will remain in effect after delisting (e.g., BGEPA, MBTA, and CWA) and will not be of sufficient magnitude or intensity to threaten or endanger the species throughout all or a significant portion of its range. In addition, bald eagles have demonstrated increasing levels of tolerance to human disturbance that will allow bald eagles to use habitats previously thought to be unavailable due to disturbance.

Even in the areas where the threat of development is the greatest, we find that the bald eagle is secure for the foreseeable future. In the Chesapeake Bay region, as discussed in our response to comments above, at least 482 breeding pairs nest on federal lands, and we do not anticipate that number to drop in the foreseeable future, even if the numbers of breeding pairs eventually begin to decrease on some other lands (particularly private lands). Even in Florida, where the development pressure outside of protected lands is likely to be greatest, the current population of over 1,133 breeding pairs could suffer a substantial decrease (which we think unlikely within the foreseeable future, for all of the reasons discussed above) without the bald eagle being or likely to become in danger of extinction. The recovery goal for the southeastern region, as updated by the recovery team, is for 1,500 breeding pairs. The southeastern region includes Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and eastern Texas. Florida's current bald eagle estimate alone is 76 percent of what would be needed for the entire 11-State region. Florida would have to reverse its upward trend and lose nearly two-thirds of its current breeding pairs to get back down to the southeastern recovery goal. We have no data suggesting that a change of this magnitude is reasonably foreseeable. Finally, although the limited habitat available in Arizona makes the bald eagles there particularly vulnerable to habitat threats, as discussed elsewhere, Arizona is not a significant portion of the range of the bald eagle, and what threats do exist there will not affect the conservation of the species throughout all of the lower 48 States, much less its entire range. Therefore, threats of present or future destruction, modification, or curtailment of the bald eagle's habitat or range do not rise to the level where the bald eagle population in the lower 48 States meets the definition of either threatened or endangered throughout all or a significant portion of its range.

B. *Overutilization for Commercial, Recreational, Scientific, or Educational Purposes.* The bald eagle population's first major threat was large-scale mortality from unregulated shooting that occurred early in the last century. The threat was significantly reduced when the shooting of bald eagles was prohibited in 1940 with the Bald Eagle Protection Act, which is now the BGEPA. Shooting of bald eagles was prohibited by an additional law when bald eagles were added to the list of birds protected by the MBTA in 1972.

The Madison National Wildlife Health Center monitored causes of wildlife mortality, between 1963 and 1993, including bald eagle mortality. Out of the 4,300 bald and golden eagles rangewide (including Alaska) that were known to be killed, 15 percent of the bald eagles were killed due to shooting (La Roe *et al.* 1995, p. 68). Even if all of the 4,300 eagle deaths that were investigated were bald eagles, the deaths from shooting would be around 645 deaths spread across a 30-year timeframe. In 1997, Alaska alone had 8,250 breeding pairs (Buehler 2000, p. 37), and the Service estimated the lower 48 States population as 5,295 breeding pairs. In addition, during this same timeframe, the bald eagle population continued to increase, suggesting that this level of mortality was not a serious threat to the bald eagle in the lower 48 States. Since this threat is not centered in any specific geographic area, there are no significant portions of the range that might be threatened for this reason with extinction in the foreseeable future.

There is no legal commercial or recreational use of bald eagles, and such uses of bald eagles will remain illegal

into the foreseeable future under BGEPA and MBTA. We consider current laws and enforcement measures sufficient to protect the bald eagle from illegal activities, including trade. The BGEPA prohibits the taking or possession of, and commerce in, bald and golden eagles, with limited exceptions. The law provides significant protections for bald eagles by prohibiting, without specific authorization, take, possession, sale, purchase, barter, offering to sell or purchase or barter, transport, export or import any bald or golden eagle, alive or dead, or any part, nest, or egg thereof. Take under the BGEPA is defined as ''to pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb'' (16 U.S.C. 668c).

The Service will continue to enforce the take prohibitions in the BGEPA. Over the past 5 years, the Service has seen an increase in the investigation of suspected BGEPA violations. In 2006, 324 cases under BGEPA were investigated, a portion of which were bald eagles (Garlick 2007). Legal imports and exports of bald eagle parts, feathers, and live birds have increased over the past 5 years. In 2006, there were 142 bald eagle imports and exports of which the Service is aware (Garlick 2007). These numbers are still relatively low compared to the bald eagle population in the lower 48 States of 9,789 breeding pairs, particularly given that many of these circumstances did not involve taking of live birds from the wild. As the population of bald eagles continues to increase, we would expect a corresponding increase in the number of investigations. We expect that even if this same low level of illegal take, and import and export of eagle feathers and parts, to continue in the foreseeable future, it will be without any significant effects to the species.

The bald eagle is a designated migratory bird that benefits from protections under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–712), which implements various treaties and conventions between the United States and Canada, Japan, Mexico, and the former Soviet Union for the protection of migratory birds. Unless permitted by regulations, the MBTA provides that it is unlawful to pursue, hunt, take, capture, or kill; attempt to take, capture or kill; possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not.

We exercise very strict control over the use of bald eagles or their parts for scientific, education, and Native American religious activities (50 CFR 22.21, 22.22). To respond to the religious needs of Native Americans, we established the National Eagle Repository in Commerce City, Colorado, which serves as a collection point for dead eagles (see 50 CFR 21.31(e)(4)(vi)(C)). As a matter of policy, all Service units (as well as many other Federal and State agencies) transfer salvaged bald eagle parts and carcasses to this repository. Members of Federally recognized tribes can obtain a permit from us authorizing them to receive and possess whole eagles, parts, or feathers from the repository for religious purposes. After removal from protection under the Act, we will still have the ability to issue permits under BGEPA for limited exhibition and education purposes, selected research work, and other special purposes, including Native American religious use, consistent with Federal regulations implementing the BGEPA (50 CFR part 22). We will not issue these permits if they are incompatible with the preservation of the bald eagle under the BGEPA or the terms of the conventions underlying the MBTA (16 U.S.C. 668a and 16 U.S.C. 704(a), respectively), and therefore, these permits are not a threat to the bald eagle population in the lower 48 States.

In summary, there is no current overutilization of the bald eagle for commercial, recreational, scientific, or educational purposes, and the protections afforded by BGEPA and MBTA will continue to reduce this threat to prevent the likelihood of endangerment for the bald eagle in the lower 48 States or a significant portion of its range into the foreseeable future.

C. *Disease or Predation.* Predation has been documented, but it does not constitute a significant problem for bald eagle populations. Eggs, nestlings, and fledglings are the most vulnerable to predators. Eggs in tree nests have been reportedly predated by black-billed magpies (*Pica pica*), gulls, ravens and crows, black bears (*Ursus americanus*), and raccoons (*Procyon lotor*). Nestlings have been reportedly killed by black bears, raccoons, hawks and owls, crows and ravens, bobcat (*Felis rufus*), and wolverine (*Gulo gulo*), although there is little actual documentation. Nestling mortality is more likely due to the effects of starvation and sibling attack. Few nonhuman species are capable or likely to prey on immature or adult bald eagles. The exception to this is at the time of nest departure; fledglings on the ground are vulnerable to mammalian predators.

Immatures and adults in poor condition from starvation, injury, or disease may also be vulnerable to mammalian predators. Bald eagles will defend their nest against other avian species, especially ravens and other raptor species (Buehler 2000, p. 14).

Diseases such as avian cholera, avian pox, aspergillosis, tuberculosis, and botulism may affect individual bald eagles, as do parasites such as the Mexican chicken bug, but are not considered to be a significant threat to overall bald eagle numbers. According to the National Wildlife Health Center (NWHC) in Madison, Wisconsin, only a small percentage of bald eagles submitted to the NWHC between 1985 and 2003 died of infectious disease. The widespread distribution of the species generally helps to protect the bald eagle from catastrophic losses due to disease. Recently, H5N1 high path avian influenza may affect eagles. Currently the Department of the Interior is testing migratory birds for the presence of H5N1 high path avian influenza. At this time, there are no confirmed cases of migratory birds, including bald eagles, testing positive for avian influenza in the United States (USGS 2007a).

Based on data compiled from the National Wildlife Health Center, 99 bald eagles died of avian vacuolar myelinopathy (AVM) between 1994 and 2003. Confirmed cases of bald eagle deaths due to AVM are recorded in Arkansas, North Carolina, South Carolina, and Georgia. Studies on avian vacuolar myelinopathy are continuing, but the cause is still unknown. Natural or manmade toxins are suspected as the most likely cause of AVM based on histopathological findings. A sentinel study demonstrated that exposure to the agent that causes AVM is site-specific, seasonal, and relatively short in duration (USGS 2007b). These States' bald eagle populations have increased between 1994 and 2005, and, based on the most recent population estimates, have a total of 392 breeding pairs. Based on the increase in the population levels, these localized mortalities are not having a significant impact on the bald eagle in the lower 48 States or these portions of the range. We do not expect this disease to be a threat in the foreseeable future because there has been no increase in the number of mortalities throughout the 9 years of monitoring and the number of mortalities is extremely small in relation to the total population. The mortalities are also small in relation to the population in these portions of the range, such that these portions will not become threatened in the foreseeable future.

In more recent years, the West Nile Virus (WNV) has affected some individual bald eagles. According to

NWHC, between January 2002 and January 2004, 81 bald eagles were tested for WNV at the Center, and four tested positive. Individual States have also conducted tests on dead bald eagles with an overall small percentage testing positive. For example, the State of New York annually counts the number of bald eagles residing in the State, which has averaged more than 300 individual bald eagles each year since 2000. Within the State of New York, only two confirmed cases of WNV have been present. Given the small percentage of bald eagle mortality due to WNV, we expect this threat will not significantly affect the bald eagle population in the lower 48 States or any significant portion of its range in the foreseeable future.

During several years in the 1990s, bald eagles wintering along the lower Wisconsin River experienced an unusual rate of mortality. Beginning in 2000–2001, after a gap of 5 years, similar bald eagle mortality has reoccurred each winter, with less than 30 confirmed cases as of 2004. Many of the eagles exhibit signs of neurologic impairment. One hypothesis is that the syndrome is caused by a severe thiamine deficiency as a result of feeding largely on gizzard shad, but that hypothesis remains to be adequately tested (Wisconsin Department of Natural Resources 2005). This syndrome is very localized, and is not having a significant impact on the Statewide bald eagle population given that Wisconsin's eagle population has been rising each year since the mid-1980s, with 1,065 nesting pairs counted in 2006 (Eckstein 2007, p. 3). Given the small percentage of Wisconsin bald eagles affected by this disease, this threat will not affect the lower 48 States' bald eagle population in all or a significant portion of its range in the foreseeable future.

In summary, like all wildlife populations, the bald eagle is affected by numerous natural and environmentally related diseases, as well as predation. While these diseases and predation may have measurable impacts on small, local populations, no known natural or environmentally related disease threats currently have, or are anticipated to have, widespread impacts on the bald eagle population in the lower 48 States. While these impacts are measurable, they are not affecting those small areas given the increase in the population levels of bald eagles in those areas. We do not expect an increase in this threat in the foreseeable future, and, therefore, this is not a threat to any significant portion of the bald eagle's range. Therefore, neither predation nor disease is likely to constitute a significant threat to the bald eagle currently or in the foreseeable future throughout all or any significant portion of its range.

D. *The Inadequacy of Existing Regulatory Mechanisms.* As with all of the five factors, we have to determine whether any particular factor is a threat to the species. The main threats to the bald eagle at the time of listing were threats to reproductive success from contaminants and habitat loss or degradation. Regulatory mechanisms, in and of themselves, were never identified as a threat for bald eagles. Indirectly, regulatory mechanisms were needed to assure that the threats identified in the other factors were removed or reduced. Because we address these regulatory mechanisms in the other factors, we will only mention them briefly in this section.

The BGEPA explicitly protects individuals and nests (16 U.S.C. 668); it will also minimize threats to bald eagle habitat because acts that disturb bald eagles, their nests, or their eggs violate the prohibitions of the BGEPA. The MBTA also provides protection by making it unlawful to pursue, hunt, take, capture, or kill; attempt to take, capture or kill; possess, sell, barter, purchase, deliver; or cause to be shipped, exported, imported, transported, carried or received any migratory bird (which bald eagles are considered), part, nest, egg or product, manufactured or not. In addition to these laws that provide direct protection to the bald eagle, the Clean Water Act and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. 136 *et seq.*) provide regulations indirectly contributing to the reduction of various manmade threats. Given the level of threats identified in the discussion of the other factors, these protections, taken together, provide adequate regulatory mechanisms for the bald eagle in the lower 48 States in the foreseeable future, and, therefore, factor D is not a threat throughout all or any significant portion of the range.

E. *Other Natural or Manmade Factors Affecting Its Continued Existence.* Bald eagles have been subjected to direct and indirect mortality from a variety of human-related activities such as poisoning (including indirect lead poisoning), electrocution, collisions (such as impacts with vehicles, power lines, or other structures), and death and reproductive failure resulting from exposure to pesticides.

The first major decline in the bald eagle population probably began in the mid to late 1800s. Widespread shooting for feathers and trophies led to extirpation of eagles in some areas. Shooting also reduced part of the bald eagle's prey base (waterfowl and shorebirds). Carrion treated with strychnine, thallium sulfate, and other poisons was used as bait to kill livestock predators and indirectly killed many eagles as well. These were the major factors that contributed to a reduction in bald eagle numbers through the 1940s. Shooting and poisoning of bald eagles and other migratory birds is now prohibited by BGEPA and MBTA, as discussed in Factor B.

In the late 1940s, shortly after World War II, the use of dichloro-diphenyl-trichloroethane (DDT) and other organochlorine pesticide compounds became widespread. Initially, DDT was sprayed extensively along coastal and other wetland areas to control mosquitoes (Carson 1962, p. 122). Later, it was widely used as a general crop insecticide. Dichlorophenyl-dichloroethylene (DDE), the principal metabolic breakdown product of DDT, devastated eagle productivity from the 1950s through the mid-1970s. DDE accumulated in the fatty tissue of adult female bald eagles, and impaired calcium metabolism necessary for normal eggshell formation, causing eggshell thinning. Many eggs broke during incubation, while others suffered embryonic mortality resulting in massive reproductive failure. On December 31, 1972, the U.S. Environmental Protection Agency, under the authority of FIFRA, canceled and suspended registration of DDT in the United States.

The threat of death and reproductive failure was dramatically reduced in 1972 when DDT was banned from use in the United States. An additional step to halt the bald eagle's decline was taken in 1976, when FIFRA registrations of dieldrin, heptachlor, chlordane, and other toxic persistent pesticides were cancelled for all but the most restricted uses in the United States. The residual effects of DDT are now highly localized and have a negligible impact on the bald eagle population in the lower 48 States.

The organochlorine compound concentrations are continuing to decline even in the localized areas in which high levels have persisted through time. For instance, the Channel Islands area of southern coastal California has historically had severe problems related to DDE impacts to bald eagle productivity because this was a DDT manufacturing site (64 FR 35460). On March 16, 2006, biologists with the Montrose Settlements Restoration Program announced that a bald eagle egg successfully hatched on Santa Cruz Island in the Northern Channel Islands (NOAA 2007, p. 1). This bald eagle

successfully fledged and took its first flight on July 14, 2006 (NOAA 2007, p. 1). This is the first successful bald eagle fledging on the Northern Channel Islands since 1949 when they nested on Anacapa Island (NOAA 2007, p. 1). Given the recent success in this area, other areas that had high levels of organocholorine concentrations will likely show similar success in the foreseeable future.

The threat of pesticide-related impacts on bald eagles will continue to decline after delisting due to the requirement that pesticides be registered with the Environmental Protection Agency (EPA). Under the authority of FIFRA, the EPA requires environmental testing of new pesticides. It specifically requires testing the effects of pesticides on representative wildlife species before a pesticide is registered. The registration process provides a safeguard to avoid the type of environmental catastrophe that occurred from organochlorine pesticides, such as DDT, that led to the listing of this species as endangered. In addition, the Food Quality Protection Act (1996) has resulted in a similar EPA review of existing pesticides already on the market. This protection from effects of pesticides afforded under the FIFRA will continue into the future even after delisting the bald eagle under the Act.

Polychorinated biphenyls (PCBs) have been demonstrated to cause a variety of adverse health effects including effects on the immune system, reproductive system, nervous system, and endocrine system. In 1976, manufacturing, processing, and distribution in commerce of PCBs were prohibited by Section 6(e) of the Toxic Substances Control Act (15 U.S.C 2601, 2605(e)). Some industrial and commercial applications where PCBs were used include: Electrical, heat transfer, and hydraulic equipment; as plasticizers in paints, plastics, and rubber products; and in pigments, dyes, and carbonless copy paper. More than 1.5 billion pounds of PCBs were manufactured in the United States prior to 1977 (U.S. EPA 2007, p. 1). PCBs do not readily break down and may persist in the environment for decades. Individual bald eagles may consume prey that has accumulated high levels of PCBs, leading to a risk of reproductive failure (Bowerman 1993). Given the prohibitions in the use of PCBs, we expect impaired reproductive success because of PCBs to be relatively low and localized to those areas in the range where concentrations remain relatively high. Monitoring of concentrations of PCBs throughout each of the Great Lakes has shown concentrations of PCBs in lake trout that are stable or decreasing (Environment Canada and the U.S. EPA 2005, pp. 122–131). Although there are areas around the Great Lakes that have not yet recovered to the level present before persistent organic pollutants were used, the reproductive rates in the shoreline populations of Great Lakes bald eagles as a whole have increased. This population increase indicates that widespread effects of persistent organic pollutants have decreased (Environment Canada and U.S. EPA, 2005 p. 272). Given that PCB use is prohibited and monitoring data show the levels of PCBs decreasing, we expect the effects of PCBs to continue to decrease in the foreseeable future and not to affect the bald eagle population in the lower 48 States or any significant portion of its range.

Mercury occurs naturally in the earth's crust and cycles in the environment as part of both natural and human-induced activities. The amount of mercury mobilized and released into the biosphere has increased since the beginning of the industrial age. Mercury has long been known to have toxic effects on humans and wildlife. Mercury is a toxic, persistent, bioaccumulative pollutant that affects the nervous system.

Mercury is emitted into the atmosphere by industrial activities like coal-fired power generation. It can travel long distances in the atmosphere and can be deposited on the surface of the earth in remote areas far from the industry emitting the atmospheric mercury. Mercury that accumulates in soil can be transported to waterways in runoff and subsurface water flow. Once in the water, mercury begins to accumulate in the aquatic organisms, with concentrations highest at the top of the food chain. Methylmercury is the form of mercury that bioaccumulates in fish. Mercury contamination is the most frequent basis for fish advisories, represented in 60 percent of all water bodies with advisories. Forty-one States have advisories for mercury in one or more water bodies, and 11 States have issued Statewide mercury advisories.

Consumption of prey with elevated levels of mercury can cause adverse effects on growth, development, reproduction, metabolism and behavior in birds (Eisler 1987, p. 36). Elevated levels of mercury have been reported in bald eagles in the Northeast, Great Lakes region, Northwest, Florida, and recently Montana. An ongoing study of the exposure and impacts of mercury on bald eagles in Maine and New Hampshire indicates that concentration levels are suggestive of reproductive or behavioral impacts (DeSorbo and Evers 2006, p. 5). However, bald eagle population levels in these areas have continued to increase even with the increasing mercury concentration levels. While potentially high levels of mercury may be present in localized areas, there currently are no data suggesting that the bald eagle populations in these localized areas are adversely affected. If the mercury concentration did increase in these isolated small areas, only a few bald eagle pairs would be affected around these particular lakes. These lakes would likely be too small to meaningfully contribute to the resilience, redundancy, or representation of the bald eagle in the lower 48 States. Therefore, mercury exposure currently is having a negligible impact on the bald eagle population in the lower 48 States and any significant portions of its range.

EPA has recognized the need for regulations for water-quality criteria and in 2001 announced a new water quality-criterion for methylmercury that is protective of human health. On August 9, 2006, EPA announced draft guidance for implementing the water quality criterion (71 FR 45560). Given that high mercury concentrations affect a variety of different species, including humans, we expect that under the current laws mercury levels will continue to be monitored and managed to a point that mercury will not have significant adverse effects on the bald eagle population in the lower 48 States or a significant portion of its range in the foreseeable future.

Lead poisoning has caused death and suffering in birds and other wildlife for many years. Bald eagles died from lead poisoning as a result of feeding on waterfowl that were killed or crippled by hunters using lead shot. Bald eagles also died from feeding on waterfowl prey that had inadvertently ingested lead shot in the environment as they fed. Since 1991, the Service has recommended phasing out of lead shot for waterfowl hunting (U.S. FWS, 2006b, p. 2). However, the use of lead shot continues in most States for hunting upland game birds. Another contributor to possible lead poisoning is use of lead fishing sinkers. Such use remains legal in every State except New Hampshire, and could potentially pose a threat to the bald eagle. However, according to a report in 1995, after 30 years of study, lead poisoning was diagnosed in only 338 eagles, including both bald and golden, from 34 States. Even if a majority of these deaths were bald eagles over the 30-year period, this represents a relatively small number of bald eagles given the large increase we have seen in the population during that same timeframe (LaRoe *et al.* 1995. p.

68). Lead poisoning is a threat to a very few individual bald eagles each year and we do not expect the numbers of bald eagles affected by lead to increase given the increased public awareness of the threats posed by using lead shot.

Other causes of injury and mortality to individual bald eagles continue to exist. Of the 4,300 bald and golden eagle deaths investigated between the early 1960s and 1990s, accidental death and impacts with vehicles, power lines, or other such structures accounted for 23 percent of the bald eagle deaths rangewide (including Alaska) (LaRoe *et al.* 1995. p. 68). Low numbers of these types of impacts can be found scattered throughout the population, and are not concentrated in any specific geographic region of the lower 48 States. Because these threats are found in low levels throughout the population, the population as a whole can absorb these impacts. Considering the increase in the population size of bald eagles in the lower 48 States during the time period studied, these impacts were not a significant threat to the population as a whole. Given the 30-year time period studied and the continued increase in the population size during that time period, this threat will likely not increase in the foreseeable future to the point where the bald eagle in the lower 48 States or a significant portion of its range will meet the definition of threatened or endangered under the Act.

Raptor electrocution has been a concern since the early 1970s and accounted for 12 percent of the causes of bald eagle mortality in the 4,300 bald and golden eagle deaths studied since the 1960s (LaRoe *et al.* 1995. p. 68). Generally, electrocutions are more prevalent in sites where a susceptible species' prey base is present and where suitable perches, other than power structures, are lacking. Birds can be electrocuted during any season, but there can be seasonal fluctuations in electrocution frequency that are related to weather conditions or bird behavior (USGS 1999, p. 358). Raptor electrocutions generally can be reduced by adopting safe electrical-pole-and-line configurations or managing raptor perching. With the increase in the bald eagle population, electrocution mortality has likely increased (Koppie 2007a). However, given the continued increase in the population, the effects of such deaths are negligible on the population as a whole and there are no particular areas within the range where this threat is concentrated. The Service and the Edison Electric Institute's Avian Power Line Interaction Committee (APLIC) have worked together to develop guidelines to minimize the incidence of bird electrocutions on power lines. Their ''Avian Protection Plan Guidelines'' provide detailed guidance to utility company employees for minimizing and avoiding the incidence of bird electrocutions, including the bald eagle. They are used in conjunction with APLIC's ''Suggested Practices for Raptor Protection on Power Lines: The State of the Art in 2006'' to reduce the number of avian electrocutions on existing and new utility poles. Although this is only guidance, it illustrates the collaborative working relationship to minimize bird electrocution. Given the small number of individual birds that are killed by electrocution and the continued increase in the population size, this is not a significant threat to the bald eagle in the lower 48 States or a significant portion of its range currently or in the foreseeable future.

Development of wind energy production facilities is increasing in localized areas of the lower 48 States, especially in the Atlantic coast flyway area. National projections by the U.S. Department of Energy for U.S. onshore installed wind-energy capacity show an increase from 11.9 GW in 2005 to 72.2 GW in 2020 (National Academy of Sciences 2007). Some wind power facilities have caused mortality to birds of prey and other avian species. There is no evidence, however, indicating that bald eagles have been taken to date. But post-construction studies at existing wind power facilities have been limited in scope and duration, and facilities are now being proposed in areas where bald eagles are more likely to occur. Bald eagles may still be susceptible to mortality, injury, or disturbance in the future if wind energy facilities are not carefully sited to avoid breeding, foraging, or migratory areas. But BGEPA and MBTA prohibitions on the take of bald eagles will still apply after delisting, thereby creating an incentive for thoughtful siting and design of future wind facilities. If wind power development is not carefully planned, bald eagle take may occur in the foreseeable future. But we currently do not have any data indicating that this threat would rise to the level of causing the bald eagle population to be threatened or endangered, especially given the protections afforded by BGEPA and the MBTA.

The main cause of bald eagle endangerment in the lower 48 States, the use of pesticides, has been reduced by cancellation or limitations placed on use of key pesticides under FIFRA. Some contaminants are still prevalent in certain local areas of the lower 48 States that cause death or reduced productivity in a small number of eagles within the population. In addition, several other minor threats remain for individual bald eagles, including electrocution and vehicle strikes. However, due to the large geographic range of the bald eagle and its widespread recovery, these localized negative impacts appear to have a negligible effect on regional or national populations and, therefore, are not threats to the bald eagle population in the lower 48 States. We have determined that these other natural or manmade factors affecting the bald eagle are not likely to cause the bald eagle to become endangered or threatened in the foreseeable future throughout all or any significant portion of its range.

Conclusion of the 5-Factor Analysis

As required by the Act, we considered the five potential threat factors to assess whether the bald eagle is threatened or endangered throughout all or a significant portion of its range in the lower 48 States. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed in its entirety. For instance, if the threats on a species are acting only on a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list the entire species.

The wide distribution of bald eagles throughout the lower 48 States, combined with the eagles' ability to exploit a wide range of geographic aquatic habitat settings, provides an important buffer against any potential threats to any of the significant portions of the range and to the species as a whole. Bald eagles have demonstrated increasing levels of tolerance of human activities that will allow bald eagles to use habitats previously thought to be unavailable due to the proximity of human activities. Several regulatory mechanisms will remain after delisting that will continue to protect bald eagles and their nests. Approximately 40 percent of the bald eagle nests occur on areas where long-term adverse habitat modification is unlikely to occur, including National Wildlife Refuges, National Parks, and National Forests. The BGEPA, MBTA, and CWA will continue to limit threats to habitat.

Large-scale mortality from unregulated shooting, like that which occurred early in the last century, has been eliminated and is prohibited by both the BGEPA and the MBTA. Like all wildlife populations, the bald eagle is affected by numerous natural and environmentally related diseases.

However, these localized effects on individuals are not significantly affecting the bald eagle population in the lower 48 States or a significant portion of its range, nor are they likely to do so within the foreseeable future.

The main cause of bald eagle endangerment in the lower 48 States, the use of certain organochlorine pesticides, has been banned or reduced. While some contaminants are still prevalent in certain local areas of the lower 48 States, these localized impacts are not having a significant effect on the population levels of bald eagles in the lower 48 States. Regulatory mechanisms such as FIFRA will continue to regulate levels of contaminants such that the bald eagle in the lower 48 States will likely not become endangered in the foreseeable future. Moreover, the existing regulatory mechanisms summarized here have been proven adequate to control all of the potentially significant human-caused threats identified for the species.

Bald eagle recovery goals have been met or exceeded for the species on a rangewide basis. There is no recovery region in the lower 48 States where we have not seen substantial increases in eagle numbers. We believe the surpassing of recovery targets over broad areas and on a regional basis, and the continued increase in eagle numbers since the 1995 reclassification from endangered to threatened, demonstrates that threats have been reduced or eliminated such that the bald eagle population in the lower 48 States no longer meets the definition of threatened or endangered.

Having determined that the bald eagle in the lower 48 States does not meet the definition of threatened or endangered, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (U.S. DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there or likely to become so within the foreseeable future. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there; conversely, if the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the range. Resiliency of a species allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetically based diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

To determine whether the bald eagle is threatened in any significant portion of its range, we first considered how the concepts of resiliency, representation, and redundancy apply to the conservation of this particular species. The recovery of the bald eagle in the lower 48 States provides important perspective. The species has demonstrated that it had sufficient resiliency and redundancy to recover from a severe population crash. That recovery was due in large part to the widespread distribution of the species: once the threats (most significantly the use of DDT) were removed, the population began to expand back into the main breeding and wintering areas that we currently see today housing a majority of the population. These breeding and wintering areas are distributed in such a fashion as to

capture a majority of the latitudinal and environmental conditions that vary throughout the range. Approximately 75 percent of the breeding population occurs in these key core areas that are distributed throughout the northern, southern, eastern, and northwestern portions of the lower 48 States. In general, the large breeding areas have large expanses of aquatic habitat such as Florida, the Chesapeake Bay region, Maine, the Great Lakes, and the Pacific Northwest (Buehler 2000, p. 1). Winter habitat can also be characterized by having roost sites that are open and close to water with good food availability (Buehler 2000, pp. 3, 7). Bald eagles tend to congregate in large population centers during the winter such that large populations are present in a few areas that have good habitat characteristics. In the lower 48 States, these wintering concentration areas are found mainly along rivers in the Pacific Northwest, including the Puget Sound and the lower Klamath Basin; and along major inland river systems in the Midwest and the Chesapeake Bay.

The main breeding and wintering areas again provide adequate resiliency and redundancy for the bald eagles in the lower 48 States. Although there is little data on the genetic diversity within the species, these same areas appear to provide for adequate representation. A variation in body size in bald eagle individuals is present that is likely due to environmental temperature changes in latitude, as discussed in the significance discussion in the DPS section of this rule. Bald eagles in the southern States tend to be smaller and lighter than eagles found in the northern States (Stalmaster 1987, pp. 16–17). However, we do not have any data currently suggesting this morphological difference is heritable. Even if this trait was heritable, the current distribution of the main breeding and wintering areas discussed above does capture this environmental variation.

Applying the process described above for determining whether a species is threatened in a significant portion of its range, we next addressed whether any portions of the range of the bald eagle in the lower 48 States warranted further consideration. We noted that, as discussed in Factor E, there are several small geographic areas where localized contaminant threats still exist. However, we concluded that these did not warrant further consideration because (1) they are very small (in the context of the range of this species) and affect only a few bald eagles, and thus there was no substantial information that they were a significant portion of the range, or (2) the contaminant levels are decreasing and eagle populations increasing, and thus there was no substantial information that the bald eagles in these areas were likely to become in danger of extinction in the foreseeable future.

In contrast, the threat of habitat loss discussed in Factor A found in Florida and the Chesapeake Bay region is distributed over relatively larger geographic areas of obvious importance to bald eagle conservation. Therefore, we determined that these areas warranted further consideration as portions of the range that may be both significant and threatened. However, as discussed separately in the Factor A analysis, we conclude that the threat of habitat loss in Florida and the Chesapeake Bay region does not rise to the level that the bald eagle is likely to become in danger of extinction in these portions of the range in the foreseeable future. Therefore, we need not determine whether Florida or the Chesapeake Bay region constitute a significant portion of the bald eagle's range.

Finally, we decided to assume that the Sonoran Desert population, as well as the population in the broader area of the Southwest (Arizona, New Mexico, Utah, and Nevada), of which the Sonoran Desert population is the major component, warranted additional consideration out of an abundance of caution and based on the controversy concerning the status of the bald eagles in this region. The following provides our analysis of whether these portions of the range are significant.

Turning first to the question of whether the Sonoran Desert portion of the range makes a meaningful contribution to the representation of the bald eagle, we note that the Sonoran Desert population is a peripheral population, and, as such, requires special consideration, as differing environmental conditions at the periphery of a species' range may give rise to genetic adaptations valuable to the long-term conservation of the species. However, as discussed immediately above and in detail in the DPS analysis, there is no evidence that the morphological and behavioral characteristics of bald eagles in the Sonoran Desert are genetically based (and, therefore, heritable). Even if they were genetically based, the best available data suggest that those characteristics are sufficiently represented in other portions of the species' range. Therefore, we conclude that the Sonoran Desert population does not make a meaningful contribution to the representation of the bald eagle. We reach the same conclusion for the broader population in the Southwest because there is no evidence that the breeding pairs in the broader area have adaptations that are not sufficiently represented in other portions of the range.

Next, we conclude that the Sonoran Desert and broader southwest portions of the range do not make a meaningful contribution to the resiliency of the bald eagle. As discussed previously, habitat suitability determines the density and distribution of bald eagle populations. The Southwest, for example, does not contain particularly high-quality habitat: it does not support large expanses of the bald eagle's preferred breeding habitat type of forested areas adjacent to large bodies of water (Buehler 2000, p. 6). Therefore, this geographic area, both historically and currently, supports a small number of breeding pairs that are more widespread and fewer in number compared to other regions with abundant prey and nest substrate (Jacobsen *et al.* 2006, p. 27). Several accounts suggest that the breeding areas may have been more widespread prior to European development; however, these accounts do not suggest a large breeding population ever occurred in this region of the United States.

The isolation of the Sonoran Desert population and the fact that the ecological setting in the Southwest differs somewhat from other portions of the bald eagle range might provide some insulation from threats that in the future may affect other portions of the range. Therefore, these portions of the range might make some contribution to the resiliency of the species. However, we find that any such contribution is minor, and, therefore, not meaningful because of the small number of pairs that are present in this area. Nor does the southwestern portion of the range include any important concentration of habitat necessary to carry out the life-history functions of the bald eagle.

Finally, we conclude that the Sonoran Desert and broader southwestern portions of the range do not make a meaningful contribution to the redundancy of the bald eagle. As discussed above, even the broader southwestern portion of the range contains only a small number of bald eagles and a tiny portion of the suitable habitat in the lower 48 States. Given the overall numbers of eagles and their broad distribution in the lower 48 States, the southwestern portion of the range provides almost no redundancy to the species.

In light of the above, we conclude that neither the Sonoran Desert nor the Southwest constitute a significant

portion of the range of the bald eagle in the lower 48 States, and its loss would not result in a decrease in the ability to conserve the bald eagle. Therefore, we do not need to determine whether either of these portions of the range are in fact threatened. We note that although we have determined that these portions of the range are not significant for the purposes of section 4 of the Act, we recognize that the bald eagles in the Southwest have great importance to people in this region, particularly Native Americans, and will continue to be protected under the BGEPA. We will continue to work with the States, tribes, and conservation organizations in this region continue to conserve the bald eagle in the southwestern United States.

In summary, the bald eagle has made a dramatic resurgence from the brink of extinction. The banning of DDT, coupled with the cooperative conservation efforts of the Service, States, other Federal agencies, non-government organizations, and individuals, have all contributed to the recovery of our National symbol. We have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause the bald eagle to become in danger of extinction within the foreseeable future throughout all or any significant portion of its range. The bald eagle no longer requires the protection of the Act, and, therefore, we are removing it from the Federal List of Endangered and Threatened Wildlife.

Effects of This Rule

This final rule revises 50 CFR 17.11(h) to remove the bald eagle in the lower 48 States from the Federal List of Endangered and Threatened Wildlife, and also removes the special rule for the bald eagle at 50 CFR 17.41(a). The prohibitions and conservation measures provided by the Act, particularly sections 7, 9, and 10 no longer apply to this species. Federal agencies will no longer be required to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the bald eagle. Critical habitat was not designated for the bald eagle, so the delisting will not affect critical habitat provisions of the Act.

The provisions of the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act (including prohibitions on the taking of bald eagles) will remain in place. This rule will not affect the bald eagle's status as a threatened or endangered species under State laws or suspend any other legal protections provided by State law. This rule will not affect the bald eagle's Appendix II status under CITES.

For existing section 7 and 10 authorizations under the Act that cover bald eagles, the Service will honor existing Act exemptions and authorizations of incidental take until such time as the Service completes a final rulemaking for permits under the Bald and Golden Eagle Protection Act. We do not intend to refer for prosecution the incidental take of any bald eagle under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703–712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. 668–668d), if such take is in full compliance with the terms and conditions of an incidental take statement issued to the action agency or applicant under the authority of section 7(b)(4) of the Act or the terms and conditions of a permit issued under the authority of section 10(a)(1)(B) of the Act. The Service has proposed a rulemaking to establish criteria for issuance of a permit to authorize activities that would ''take'' bald eagles under the Bald and Golden Eagle Protection Act (72 FR 31141, June 5, 2007). The comment period for the proposed rulemaking will close on September 4, 2007. Applying the preservation standard of the BGEPA, we do not anticipate that the proposed permitting program would reduce the bald eagle population below its current level.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been recovered and delisted. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures provided by the Act. If, at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. We have proposed a draft post-delisting monitoring plan in a separate part of today's **Federal Register** and expect to finalize that post-delisting monitoring plan within a year.

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Headquarters Office (see **FOR FURTHER INFORMATION CONTACT** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended].

■ 2. Section 17.11(h) is amended by removing the entry for ''Eagle, bald'' under ''BIRDS'' from the List of Endangered and Threatened Wildlife.

§ 17.41 [Amended].

■ 3. Section 17.41 is amended by removing and reserving paragraph (a).

Dated: June 28, 2007.

Dirk Kempthorne,

Secretary of the Interior.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 07–4302 Filed 7–6–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Draft Post-Delisting Monitoring Plan for the Bald Eagle (Haliaeetus leucocephalus) and Proposed Information Collection

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft post-delisting monitoring plan; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft post-delisting monitoring plan (draft PDM Plan) for the bald eagle (*Haliaeetus leucocephalus*). The Endangered Species Act (ESA) requires that the Service implement a system, in cooperation with the States, to monitor effectively for at least 5 years, the status of all species that have been recovered and no longer need protection of the ESA. The bald eagle in the contiguous 48 states will be removed from the Federal List of Threatened and Endangered Wildlife and Plants (delisted) due to recovery. We are publishing the final rule for the delisting simultaneously with this notice elsewhere in today's **Federal Register**. We will also ask the Office of Management and Budget (OMB) to approve the information collection (IC) for the draft PDM Plan described below.

DATES: Comments from all interested parties on the draft bald eagle post-delisting monitoring plan must be received on or before October 9, 2007.

You must submit comments regarding the information collection aspects of the draft bald eagle post-delisting monitoring plan on or before October 9, 2007.

ADDRESSES: The draft PDM Plan may be downloaded from our Web site at *http://www.fws.gov/midwest/Endangered.* To request a copy of the draft PDM Plan, write to our Rock Island Field Office: U.S. Fish and Wildlife Service, 1511 47th Avenue, Moline, Illinois 61265; or call 309–757–5800 to receive a copy. You may also send an e-mail request to *baldeaglePDM@fws.gov.* Specify whether you want to receive a hard copy by U.S. mail or an electronic copy by e-mail.

Send your comments by any of the following methods. See ''Viewing Documents'' and ''Public Comments Solicited'' under **SUPPLEMENTARY INFORMATION** for important information.

- Mail: Bald Eagle Draft PDM Plan Comments, U.S. Fish and Wildlife Service, Rock Island Field Office, 1511 47th Avenue, Moline, Illinois 61265.
- *Hand Delivery/Courier:* Same address as above.
- *E-mail: baldeaglePDM@fws.gov.* Include ''Bald Eagle Draft PDM Plan Comments'' in the subject line of the message.
- *Fax:* 309–757–5807. Include ''Bald Eagle Draft PDM Plan Comments'' in the subject line.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: Direct all questions or requests for additional information about the draft PDM Plan to Jody Millar (see **ADDRESSES**). To request additional information about this information collection, contact Hope Grey (see **ADDRESSES**). Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We are publishing the final rule to remove the bald eagle from the Federal List of Threatened and Endangered Wildlife and Plants simultaneously with this notice elsewhere in today's **Federal Register**. Available data indicate that this species has recovered due to the Environmental Protection Agency's restrictions on organochlorine pesticides in the United States, and also due to implementation of successful management activities and protection of habitat under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA).

Section 4(g)(1) of the ESA requires that we implement a system, in cooperation with the States, to effectively monitor for not less than 5 years, the status of all species that have been recovered and delisted. In order to meet the ESA's monitoring requirement, and to facilitate the efficient collection of data, we have designed a sampling method to be implemented by various States, capable of detecting substantial changes in the bald eagle population in the lower 48 states.

The draft bald eagle post-delisting monitoring plan was developed in cooperation with State resource agencies and interested scientists, and will be carried out by the Service's Monitoring Team in collaboration with Federal, State, Tribal, and private cooperators. The monitoring plan proposes to start in the winter of 2008 and spring of 2009. We will conduct surveys every 5 years over the next 20 years.

Monitoring will consist of the collection of information on numbers of nesting bald eagles in selected locations based on State participation and density of identified bald eagle nest sites. At the end of each 5-year monitoring event we will review all available information to determine the status of the bald eagle.

Information Collection

OMB Control Number: New.

Title: Bald Eagle Post-Delisting Monitoring Plan.

Service Form Number(s): 3–2343, 3–2344.

Type of Request: New.

Affected Public: State agencies, Federal, Tribal, private land managers, wildlife rehabilitators, and cooperators.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once every 5 years for the Eagle and Nest Observation Checklist; on occasion for the Bald Eagle Mortality Report Form.

Activity	Number of respondents	Number of responses	Completion time per response (hours)	Annual burden hours
Eagle and Nest Observation Checklist (FWS form #3–2344)	17	357	6.2	2,213
Bald Eagle Mortality Report Form (FWS form #3–2343)	48	384	0.25	96
Total	65	741		2,309

Viewing Documents

The complete file for the monitoring plan is available for inspection, by appointment, during normal business hours at our Rock Island Field Office, 1511 47th Avenue, Moline, Illinois; 309–757–5800 (phone). The comments and materials we receive on the monitoring plan during the comment period will be available for public inspection by appointment during normal business hours at the Rock Island Field Office and at our Ecological Services Field Offices in Spokane, Washington (509–893–8002), Phoenix, Arizona (602–242–0210), Jacksonville (904–232–2580) or Vero Beach, Florida (772–562–3909), Manhattan, Kansas (785–539–3474), and Annapolis, Maryland (772–562–3909). Call those offices to make arrangements to view documents.

Public Comments Solicited

We request comments on the draft bald eagle post-delisting monitoring plan. All comments received by the date specified above will be considered during preparation of the final PDM plan. We prefer to receive comments via e-mail, but you may submit your comments by the alternate methods mentioned above.

Please submit Internet comments to *baldeaglePDM@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Bald Eagle Draft PDM Plan Comments'' in the subject line of the message, and your full name and return address in the body of your message. Please note that the Internet address *baldeaglePDM@fws.gov* will be closed when the public comment period is closed.

We will take into consideration the relevant comments, suggestions, or objections that we receive by the comment due date indicated above in **DATES**. These comments, suggestions, or objections, and any additional information received may lead us to adopt a final PDM Plan that differs from this draft PDM Plan. Comments merely stating support or opposition to the draft PDM Plan without providing supporting data are not as helpful.

Public Availability of Comments

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.

We also invite comments concerning this IC on:

(1) Whether the collection of information is necessary, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

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

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you send about this IC are a matter of public record. We will include and/or summarize each comment in our request to OMB to approve this IC.

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

Dated: June 26, 2007.

H. Dale Hall,

Director, Fish and Wildlife Service.

[FR Doc. 07–4303 Filed 7–6–07; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Monday,
July 9, 2007

Part IV

Securities and Exchange Commission

17 CFR Parts 230, 232, and 239
Electronic Filing and Simplification of Form D; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, and 239

[Release Nos. 33–8814; 34–55980; 39–2446; IC–27878; File No. S7–12–07]

RIN 3235–AJ87

Electronic Filing and Simplification of Form D

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is publishing for comment proposals that would mandate the electronic filing of information required by Securities Act of 1933 Form D. We also are proposing revisions to Form D and to Regulation D in connection with the electronic filing proposals. The revisions would simplify and restructure Form D and update and revise its information requirements. The information required by Form D would be filed with us electronically through a new online filing system that would be accessible from any computer with Internet access. The data filed would be available on our Web site and would be interactive and easily searchable by regulators and members of the public who choose to access it.

DATES: Comments should be submitted on or before September 7, 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)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number S7–12–07 on the subject line; or
- Use the Federal eRulemaking 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 S7–12–07. 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. We will post all comments on our Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for public inspection and copying in our Public Reference Room, 100 F Street, NE., Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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: Questions about this release should be addressed to Gerald J. Laporte, Chief, Corey A. Jennings, Attorney-Advisor, Office of Small Business Policy, Division of Corporation Finance, or Mark W. Green, Senior Special Counsel (Regulatory Policy), Division of Corporation Finance, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628, (202) 551–3460.

SUPPLEMENTARY INFORMATION: We are proposing revisions to Rules 100,[1] 101,[2] 104,[3] 201,[4] and 202[5] of Regulation S–T,[6] Rules 502[7] and 503[8] of Regulation D,[9] and Form D[10] under the Securities Act of 1933 (''Securities Act'').[11]

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I. Background

A. History and Purpose of Form D

Form D serves as the official notice of an offering of securities made without registration under the Securities Act in reliance on an exemption provided by Regulation D.[12] Both public and nonpublic companies file information using this form.

Regulation D was part of a Commission initiative in the early 1980s to provide a more coherent pattern of exemptive relief from the registration requirements of the Securities Act, and particularly to address the capital formation needs of small business.[13] At the time, we intended the Form D filing requirement in Rule 503 of Regulation D to serve an important data collection objective.[14] We expected that the empirical data provided in the Form D filings would enable us to evaluate the effectiveness of Regulation D as a capital raising device and eventually to further tailor our rules to provide appropriate support for both capital formation,

[1] 17 CFR 232.100.
[2] 17 CFR 232.101.
[3] 17 CFR 232.104.
[4] 17 CFR 232.201.
[5] 17 CFR 232.202.
[6] 17 CFR 232.10 *et seq.*
[7] 17 CFR 230.502.
[8] 17 CFR 230.503.
[9] 17 CFR 230.501–508.
[10] 17 CFR 239.500.
[11] 15 U.S.C. 77a *et seq.*

[12] Regulation D contains several separate exemptions for limited offerings. Form D also is to be used by issuers making offerings of securities without registration in reliance on the exemption contained in Section 4(6) of the Securities Act [15 U.S.C. 77d(6)]. Although we primarily discuss Regulation D in this release, the revised Form D also would continue to apply to Section 4(6) offerings. Regardless of the type of offering to which revised Form D would apply, it would be required to be filed electronically.

[13] We adopted Form D and Regulation D in 1982. Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251] (adopting Form D as a replacement for Forms 4(6), 146, 240 and 242). They had been proposed in the previous year. Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791] (proposing Regulation D and Form D).

[14] We stated in the proposing release:

''An important purpose of the notice * * * is to collect empirical data which will provide a basis for further action by the Commission either in terms of amending existing rules and regulations or proposing new ones. * * * Further, the proposed Form would allow the Commission to elicit information necessary in assessing the effectiveness of Regulation D as a capital raising device for small businesses.''

Id.

especially as it relates to small business, and investor protection.[15]

We modified the requirements relating to Form D in 1986, making Form D a uniform notification form that could be filed with state securities regulators.[16] This effort was undertaken with the cooperation of the North American Securities Administrators Association, the organization of state securities regulators, as part of the Commission's efforts to reduce the costs of capital formation for small business and to promote uniformity between federal and state securities regulation. We also eliminated the requirement to amend a Form D filing for an offering every six months during the course of the offering and the requirement to make a final Form D filing within 30 days of the final sale in the offering. We left intact the requirement to file a Form D notification within 15 days after the first sale of securities in an offering, leaving that as the sole current explicit requirement for a Form D filing.[17]

In 1989, we amended the Regulation D exemptions to eliminate the filing of Form D information as a condition to the availability of the exemptions.[18] At that time, we also added Rule 507 to Regulation D to provide an incentive for issuers to make a Form D filing, even though it was no longer a condition to the availability of the exemptions.[19] Specifically, Rule 507 disqualifies an issuer from using a Regulation D exemption in the future if it has been enjoined by a court for violating Rule 503 by failing to file the information required by Form D. Consequently, an issuer has an incentive to make a Form D filing to avoid the possibility that a court would enjoin the issuer for violating Rule 503 and, as a result, disqualify the issuer from using a Regulation D exemption in the future.

In 1996, we proposed to eliminate the Form D filing requirement and replace it with an issuer responsibility to complete a Form D and retain it for a period of time.[20] At the time, our Task Force on Disclosure Simplification had suggested that the Commission consider the continued need for a Form D filing requirement.[21] After reviewing comments on the proposal, we determined that the information collected in Form D filings was still useful to us in conducting economic and other analyses of the private placement market and retained the requirement.[22] In 1998, we solicited public comment on, but did not propose, requiring electronic filing of the Form D notice.[23] Commenters generally favored electronic filing in principle but expressed concern about Form D filers needing to follow the same procedures as then were required generally for filings with the Commission's electronic filing system, called the Electronic Data Gathering, Analysis and Retrieval or ''EDGAR'' system.

In summary, our previous statements on Form D have suggested that, at the federal regulatory level, the Form D filing serves primarily as a notification document that serves two primary purposes:

- Collection of data for use in the Commission's rulemaking efforts; and
- enforcement of the federal securities laws, including enforcement of the exemptions in Regulation D.[24]

The information submitted in Form D filings also is useful for other purposes. The staffs of state securities regulators and NASD, formerly the National Association of Securities Dealers, also use Form D information to enforce federal and state securities laws and the rules of securities self-regulatory organizations. Form D filings also have become a source of disclosure for investors.

Our Web site advises potential investors in Regulation D offerings to check whether the company making the offering has filed a Form D notice and advises that ''[i]f the company has not filed a Form D, this should alert you that the company might not be in compliance with the federal securities laws.'' [25] Our staff suggests that investors considering an investment in a Regulation D offering check the issuer's Form D filing if they are seeking a public source of information about the issuer and the offering. In addition, the information in Form D filings serves as a source of business intelligence for commercial information vendors, as well as for practitioners in the venture capital, private equity, and other industries that rely on Regulation D offerings and for competitors of issuers who file Form D information. Academic researchers use Form D information to conduct empirical research aimed at improving the workings of these industries.[26] Journalists use Form D information to report on capital-raising in these industries.[27]

B. Need To Update Form D and Require Electronic Filing

Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation.[28] It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. The rules we propose today would address deficiencies in the Form D data collection requirements.[29]

1. Eased Filing Burdens

Our proposed rules are intended to ease the costs and burdens of preparing and filing Form D information. The informational requirements would be streamlined and updated. The instructions would be clarified and simplified. Issuers would file the Form D information electronically through a new online filing system that would be accessible from any computer with Internet access. Issuers would provide the information in data fields by

[15] Release No. 33–6339 (Aug. 7, 1981) [46 FR 41791].

[16] Release 33–6663 (Oct. 2, 1986) [51 FR 36385].

[17] 17 CFR 230.503.

[18] Release No. 33–6825 (Mar. 15, 1989) [54 FR 11369].

[19] *Id.*

[20] Release No. 33–7301 (May 31, 1996) [61 FR 30405].

[21] SEC Task Force on Disclosure Simplification, Final Report 17 (Mar. 5, 1996), available at *http://www.sec.gov/news/studies/smpl.txt.*

[22] Release No. 33–7431, at 5 (July 18, 1997) [62 FR 39755, 39756].

[23] Release No. 33–7541 (May 21, 1998) [63 FR 29168].

[24] Release No. 33–6389 (Mar. 8, 1982) [47 FR 11251]; Release No. 33–7431 (July 18, 1997) [62 FR 39755].

[25] See *http://www.sec.gov/answers/formd.htm.*

[26] For a discussion of how academic researchers are using available data on private investments to improve the workings of the venture capital industry, see A. Ginsberg, *Truth, or Consequences: Academic Researchers Are Helping Policy Makers and Practitioners Understand the Problems Facing the Venture Capital Industry*, Innovation Review 8 (Berkley Center for Entrepreneurial Studies, Fall 2002).

[27] See, e.g., R.J. Terry and B. Hammer, NEA Closes $2.5 Billion Fund, Baltimore Bus. Journal, July 10, 2006.

[28] For example, information provided in response to the requirement to check the applicable specified exemptions from registration claimed by the issuer helps the Commission monitor and evaluate use of the claimed exemptions in order to protect investors and facilitate the development of a private market in which to raise capital.

[29] Additional changes to Regulation D are being proposed in a companion release on Regulation D which, if adopted, would result in exemption disqualification provisions in a new subparagraph (e) of Rule 502 and a new exemption under a revised Rule 507 of Regulation D. On May 23, 2007, the Commission approved for issuance the companion proposing release. The proposed new Form D reflects that proposed exemption.

responding to a series of discrete questions. It is expected that the fields would be checked automatically for appropriate characters and consistency with other fields and the questions would be accompanied by easily accessible links to instructions and other helpful information. We believe these system features, among others, would help facilitate a relatively easy-to-use filing process that would deliver accurate information quickly, reliably, and securely.[30] The Form D filing would continue to be required within 15 days of an issuer's first sale in an offering without Securities Act registration in reliance on one or more of the exemptions provided in Regulation D, and the rules would clarify when amendments are required. Paper filing of Form D would be eliminated. Currently, our rules require issuers to file five paper copies of the Form D with us by mail or physical delivery to Commission headquarters.[31] Our goal is to make filing Form D information as easy as many tasks commonly performed by people using the Internet today.

2. Better Public Availability of Form D Information

Requiring the electronic filing of Form D data would make the information filed more readily available to regulators and members of the public who choose to access it.[32] The information would be available on our Web site and, because the online filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information.

Unlike forms filed with us electronically, paper filings are available from us only in person in our Public Reference Room or by means of a mail request. We charge a nominal fee for copies of Form D filings. Some Form D filings are available at higher cost through private vendors through the Internet and telephone requests.

3. Federal and State Uniformity and Coordination

For over 20 years, Form D has served as a means to promote federal and state uniformity in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators.[33] The contemplated electronic filing system for Form D information would continue that tradition and could enhance the utility of Form D as a means to promote uniformity between federal and state securities regulation. The system would include an electronic database that could be more easily searched for information needed by both federal and state securities regulators to monitor the exempt securities transaction markets. The system also would permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators would be able to access the information on our Web site to learn if new Form D information of interest to them has been filed. It is our hope that state securities regulators would permit ''one-stop'' filing with the Commission and rely on Commission filings as satisfying state law filing requirements for offerings covered by a federal Form D filing.[34] This would reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

4. Improved Collection of Data for Commission Enforcement and Rulemaking Efforts

The proposed conversion to electronic filing of Form D information in an interactive data format would result in creation of a database and allow us and others to better aggregate data on the private securities markets and the use of the various Regulation D exemptions. Further, the software we intend to use for the Form D electronic filings would require that filers address each required data field in the form, thus reducing incomplete filings. Because of these and other features, the Form D electronic filing system should assist in our enforcement efforts and ease our ability to make use of filed Form D information. The Form D information database would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection. The evaluation could lead to improvements that would result in significant benefits to companies that rely on the Regulation D exemptions, especially smaller companies, as well as benefits to investors.

II. Discussion of Proposed Amendments

As noted above, we believe today's proposal would have a positive effect in many areas of interest to the Commission, state securities regulators, investors, and companies that rely on Regulation D exemptions. The proposed revisions generally involve simplifying Form D, easing the burdens of complying with the requirements of the form, and modernizing the information capture process.

For each offering of securities that is made without Securities Act registration in reliance on a claimed exemption under Regulation D, the issuer must file the information required by Form D with the Commission no later than 15 days after the first sale of securities. The form calls for issuers to provide basic identifying information and fundamental information about the offering. Some of the requirements of Form D have become outdated with the passage of time since the Commission adopted them. Further, some of the form's requirements and instructions could be clarified and made less burdensome. The revisions we propose today would address these issues. In addition, the move to electronic filing necessitates several modifications.

A. Proposed Amendments to the Substantive Content of Form D

Currently, Form D requires presentation of preliminary information and other information required by five sections designated ''A'' through ''E.'' The proposed revisions organize the information requirements around 14 numbered ''items'' or categories of information. Instructions at the end of the form would explain the requirements for each item. On the online form, we plan that terms and items at the front of the form would be linked to the instructions at the back of the form which would be immediately available by clicking on a particular

[30] The new online filing system is discussed in further detail in Part III of this release.

[31] 17 CFR 230.503(a). The Commission received 25,239 Form D filings in its most recently ended fiscal year, fiscal year 2006.

[32] Most filings made with us currently are filed through our EDGAR system. We began to make EDGAR filing mandatory in 1993. Initially, a number of forms—including Form D—were excluded from mandated electronic filing. Since the launch of the EDGAR system, we have increased the number of forms that are required to be filed on the EDGAR system, but Form D remains a paper-only filing.

[33] According to a unit of the American Bar Association, 48 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands accept filings on Form D. New York prescribes its own Form 99. Florida does not require any filing for the types of transactions other jurisdictions require to be reported on Form D. See Report on Blue Sky Survey of the NSMIA Subcommittee, Committee on State Regulation of Securities, American Bar Association Business Law Section (Feb. 2006).

[34] The contemplated electronic filing system would not, however, collect any fee a state might charge on behalf of the state.

term or item. In this regard, we propose to add to the General Instructions a sentence that provides that terms used but not defined in the form that are defined in Regulation D or Rule 405 [35] have the meanings given to them in Regulation D and Rule 405. The sentence would make explicit staff interpretive advice regarding Regulation D and, to the extent it defines the term ''promoter,'' Rule 405.

1. Basic Identifying and Contact Information

Item 1 would require basic identifying information, such as the name of the issuer of the securities, any previous names, type of legal entity and the issuer's year and place of incorporation or organization.[36] Item 2 would require issuers to provide place of business and telephone contact information.[37] Item 3 would require information about related persons (executive officers, directors, and promoters).[38] These requirements primarily are carried over from the current Form D, with restructuring to reflect the electronic form of the filing. We would, however, revise the form to provide specifically for the identification of multiple issuers in multiple issuer offerings. Form D currently does not provide for this, leading to confusion as to how multiple issuer offerings should be reported.[39] In addition, the form would ask for the Commission file number, if applicable.

The revised form would include instructions to clarify that post office box numbers and ''care of'' addresses are not acceptable as place of business information. The purpose of this information is to allow securities enforcement authorities to determine the location of the issuer's operations and personnel responsible for the offering. Post office box numbers and ''care of'' addresses do not provide this information. The proposed form would not provide for submission of more than one place of business or telephone number in multiple issuer offerings. Issuers in multiple-issuer transactions typically have the same place of business, and we generally do not need more than one address to contact the responsible personnel for enforcement purposes.

We propose to delete the current requirement that issuers identify owners of 10 percent or more of a class of their equity securities as ''related persons.'' Investors will continue to have access to this information, if it is material, in the private placement memorandum customarily supplied to them or in other information made available through the issuer.[40] We believe we can collect sufficient information to satisfy the regulatory objectives of Form D by requiring only the identification of executive officers, directors, and promoters. Moreover, issuers that are not reporting companies have raised privacy concerns with respect to the requirement to identify 10 percent equity owners who are not executive officers, directors, or promoters when the issuers are private companies, because they do not already have to disclose this information. From time to time issuers have asked us to grant confidential treatment to this information under Securities Act Rule 406,[41] but we have denied such requests consistently because the information currently is required by Form D. We estimate that about 95% of the companies filing Form D notices last year were private companies. With the electronic filing of the Form D information, the widespread availability of such data on our Web site may raise additional privacy concerns of issuers seeking to raise capital through a private offering.

We also propose to delete the requirement that issuers provide the name of the offering, because naming offerings reported on Form D is not as common today as it was before the 1986 tax reforms,[42] when the current Form D requirement was adopted. As such, we understand issuers have found this requirement to be unclear. The proposed form also would omit the current requirement to indicate whether a limited partnership issuer already has been formed or is in formation. We believe sufficient information will be obtained from the requirement to provide an issuer's year of incorporation or organization.

2. Information About Issuer

The form would ask for basic information about the issuer in Items 4 and 5. Issuers would identify their industry group and their revenue range from dropdown menus.[43] The industry group information would replace the current requirement in Form D to provide a description of the issuer's business. We believe simply selecting an industry group classification from a pre-established list is less burdensome for issuers and more useful for the regulatory purposes underlying the Form D filing requirement. The industry group classifications will provide us better, and more easily retrievable, information about industries and offerings where we may have identified policy issues.[44]

Information on revenues was required in Form D before 1986.[45] Because Form D was submitted on paper, however, that information was not able to be efficiently used for rulemaking purposes. We propose to include revenue range information in the Form D filing to help determine the types and sizes of issuers that rely on the Regulation D and Section 4(6) exemptions. For instance, this information would increase

[35] 17 CFR 230.405.

[36] Issuers would specify their legal entity type (e.g., corporation or limited partnership) from a dropdown menu.

[37] Some information of the type that Items 2 and 3 would require might automatically appear in appropriate places when the filer accesses the new online filing system. The system may replicate information provided by the filer in the course of obtaining the codes needed to access the new online filing system or in updating such information. The issuer would be able to make changes to such information.

[38] The instructions to Item 3 would clarify that disclosure would be required of each person who has functioned as a promoter of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

[39] Currently, in multiple issuer offerings, there is uncertainty as to whether all issuers can be listed in the same Form D or whether each issuer must submit essentially the same Form D. In this situation, the staff currently advises each issuer to submit a separate Form D notice because the forms are retrievable only by reference to the name of one issuer. The proposed changes would clarify the requirements of this item and eliminate the burden on issuers to file what are essentially duplicate forms in order to comply with the requirement to file Form D information. The new online filing system would be designed to support multiple issuer filings. As a result, all issuers easily could be identified in a single filing.

[40] Under some circumstances, an issuer must provide, rather than merely make available, beneficial holder information. For example, an issuer that offers securities to non-accredited investors without registration under the Securities Act in reliance on an exemption provided by Rules 505 [17 CFR 230.505) or 506 [17 CFR 230.506] must provide beneficial holder information under the circumstances specified by Rule 502(b) [17 CFR 230.502(b)].

[41] 17 CFR 230.406.

[42] Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085 (Oct. 22, 1986).

[43] As proposed, the revenue range would be for the most recently completed fiscal year. Where an issuer has been in existence for less than a year, it would identify its revenues to date.

[44] The instruction to Item 4 would provide that an issuer or issuers that could be categorized in more than one industry group should be categorized based on the industry group that most accurately reflects the use of the bulk of the offering proceeds. The instruction also would provide that, for purposes of responding to Item 4, the issuer should ''use the ordinary dictionary and commonly understood meanings of the terms identifying the industry groups.'' If an issuer selected the checkbox for ''Pooled Investment Fund,'' pop-ups would require the issuer also to select from among lower level checkboxes designating a specific type of pooled investment fund and to select between ''yes'' and ''no'' checkboxes as to whether the issuer is registered as an investment company under the Investment Company Act of 1940 (''Investment Company Act'') [15 U.S.C. 80a–1 *et seq.*].

[45] Release No. 33–6663 (Oct. 2, 1986) [51 FR 36385].

significantly the effectiveness of the data collected as a tool for assessing the use of the Regulation D exemptions for small businesses and other different sizes of issuers. The proposed item does, however, provide a ''Decline to Disclose'' option, which might be used if a private company considered its revenue range to be confidential information.

3. Identification of Claimed Exemptions and Exclusions

Item 6 would require the issuer to identify the exemption or exemptions being claimed for the offering, from among Rule 504's [46] paragraphs and subparagraphs, Rule 505, Rule 506, Rule 507 and Section 4(6), as applicable. This requirement, in general, is carried over from the current Form D requirement, but with a reference to proposed Rule 507 [47] and added specificity, requiring the issuer to identify the specific paragraph or subparagraph of any Rule 504 exemption being claimed as well as any specific paragraph of Investment Company Act Section 3(c) [48] which the issuer claims for an exclusion from the definition of ''investment company'' under the Investment Company Act.[49] We propose to require this increased level of specificity and additional type of information because of the need for data to assist our policymaking and rulemaking efforts in various areas. Identification of a claimed exemption or exclusion often is key to analysis of the appropriateness of the claim. State securities regulators also need this information to determine the extent of their jurisdiction over the offering.[50] Unlike current Form D, however, Item 6 would not enable the issuer to check a box to indicate a claim to the Uniform Limited Offering Exemption (ULOE) from state securities law requirements. We are inclined to believe that the ULOE box causes confusion and burdens for companies completing Form Ds without resulting in a significant amount of useful information. Most, if not all, companies claiming a ULOE exemption also will check the Rule 505 box, because Rule 505 is the Commission's companion exemption to the ULOE exemption.[51] Similarly, revised Form D would omit all other references to ULOE and the provisions that, in general, require specified information on a state-by-state basis in an appendix to the form and require specified representations and undertakings. We are inclined to believe that this information is burdensome to provide without sufficient benefits.[52]

4. Indication of Type of Filing

a. Proposed Amendments

We propose to carry over in new Item 7 the current Form D requirement to indicate whether the filing is a new filing or an amendment. Item 7 also would be used to designate the states to which the Form D is directed.[53] Including identification of a filing as new or an amendment is appropriate, because the form permits amendments and issuers may have valid reasons to wish to update or correct information previously provided in a Form D filing through an amendment. In addition, as discussed immediately below, we intend to clarify the circumstances where amendments are required.

b. Amendments to Form D

We recognize that some uncertainty may exist about when, how, and why an amendment to a Form D may or must be filed because those issues are not expressly addressed in the form. While both Rule 503 and the instructions to the current Form D discuss the information that is required when an amendment is filed,[54] neither explicitly requires the filing of an amendment. In certain offerings and situations, however, an issuer may have made a mistake of fact in the filed Form D. Situations also arise where changes occur and the initially filed Form D may not be an accurate expression of the current facts in an ongoing offering. Our staff currently interprets Rule 503 and the Form D instructions to require amendments in ongoing offerings where there has been a material change in information filed about the offering and where basic information previously submitted about the issuer has materially changed.

The staff has received questions regarding offerings of extended duration, and how to determine whether and how to file Form D amendments. For example, when offerings are expected to continue for an extended period, the Commission's staff often is asked to assist issuers in determining how to calculate an offering's aggregate offering price and when an amendment to the Form D should be filed. The staff's practice in this regard has been to advise issuers to use a good faith and reasonable belief standard to calculate the aggregate offering price and to amend the Form D annually.

We propose to revise Rule 503 and the instructions to and description of Form D to require amendments to Form D in the following three instances only:

- To correct a mistake of fact in the previously filed notice (as soon as practicable after discovery of the mistake);
- To reflect a change in the information provided in a previously filed notice (as soon as practicable after the change), except that no amendment would be required to reflect a change that occurs after the offering terminates or a change that occurs in the following only: [55]
  - An issuer's revenues;
  - The amount of securities sold in the offering;
  - The total offering amount, if the change, together with all other changes in that amount since the previously

[46] 17 CFR 230.504.

[47] As previously noted, a companion release proposes a new exemption under a revised Rule 507.

[48] 15 U.S.C. 80a–3(c).

[49] The issuer would be able to select all the exclusions on which it relies. Regulation D provides an exemption from the Securities Act and not an exclusion from the definition of the term ''investment company'' under the Investment Company Act. Some companies that use a Regulation D exemption, however, also are excluded from the definition of investment company under the Investment Company Act.

[50] Section 102(a) of the National Securities Markets Improvement Act of 1996 (''NSMIA'') [Pub. L. 104–290, 110 Stat. 3416 (Oct. 11, 1996)] enacted new Section 18 of the Securities Act [15 U.S.C. 77r], which limits the authority of the states to regulate offerings exempt under Commission ''rules or regulations issued under section 4(2)'' of the Act [15 U.S.C. 77d(2)], which includes Rule 506 but not Rules 504 or 505, and offers and sales to ''qualified purchasers'' as defined by the Commission under the Securities Act, which term would include persons specified in proposed Rule 146(c) of our companion release in which revised Rule 507 is proposed.

[51] See Release No. 33–7644 (Feb. 25 , 1999) [64 FR 11090].

[52] We note, however, that Section 18(c)(2)(A) of the Securities Act [15 U.S.C. 77r(c)(2)(A)] generally provides that nothing under Section 18 prohibits ''any State from requiring the filing of any document filed with the Commission [under the Securities Act], together with annual or periodic reports of the value of securities sold or offered to be sold to persons located in the State (if such sales data is not included in documents filed with the Commission), solely for notice purposes and the assessment of any fee, together with a consent to service of process and any required fee.''

[53] We propose to permit issuers to designate the states to which the Form D is directed, on the assumption that some states would adopt one-stop filing and allow filings that specify that they are directed to those states to constitute filings with those states.

[54] Rule 503(d) states that amendments to Form D ''need only report the issuer's name and the information required by Part C and any material change in the facts from those set forth in Parts A and B.'' The instructions to Form D set forth the information required in an amendment as only ''the name of the issuer and offering, any changes thereto, the information requested in Part C, and any material changes from the information previously supplied in Parts A and B.''

[55] We believe the specified changes should not require an amendment because changes of this type are expected to occur in the course of an offering. It is not necessary to report them for Form D to serve its primary function as a notice of an exempt offering.

filed notice, does not result in an increase of more than 10%;

○ The number of accredited investors who have invested in the offering;

○ The number of non-accredited investors who have invested in the offering (as long as the change does not increase the number to more than 35);

○ In offerings that last more than a year, information on related persons, if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

• In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the Form D or the filing of the most recent amendment.

Rule 503 also would require an issuer that files an amendment to provide current information in response to all requirements of Form D regardless of why the amendment is filed. We believe it would be relatively easy to provide such current information in most instances due to the form's streamlined information requirements, the likelihood that much of the information would not require change, and the expectation that the new online filing system would make available to the issuer the version of the Form D to be amended to enable the issuer to respond only to the changed items.

5. Information About Offering

Items 8 through 14 would require factual information about the offering itself. Most of the information sought currently is required by Sections B and C of Form D.

Duration of Offering. Item 8 would require the issuer to indicate whether it intends that the offering will last over a year. Such information currently is not specifically required by Form D. The absence of an information requirement of this type has presented compliance questions because regulators may not know whether an offering may span an extended period of time based on the information currently required by Form D.

Type of Securities Offered. Item 9 would carry over the current requirement to specify the type of securities being offered, such as debt or equity, with additional categories of securities added. Some of the additional categories would provide more clarity. The rest of the additional categories would identify types of securities, the specification of which we believe would help facilitate our rulemaking efforts.[56] The issuer would be required to specify all categories that apply to the securities that are the subject of the exemption(s) specified in response to Item 6.[57]

Business Combination Transaction. Form D currently requires that the issuer indicate only whether the offering is an exchange offer. Item 10, however, would require the issuer to indicate whether the offering is being made in connection with a business combination transaction such as a merger, acquisition or exchange offer regardless of the type of offering. We believe that, for purposes of Form D, it is important to identify whether an offering is being made in connection with a business combination transaction, whether structured as an exchange or in some other manner, because such transactions often give rise to policy concerns.

Minimum Investment Amount. Item 11 would carry over the requirement in Form D to specify the minimum investment amount per investor. We are maintaining this requirement because offerings that have low minimum investment amounts have presented particular enforcement challenges in the past.

Sales Compensation. Item 12 generally would carry over but reformat and, as a result, simplify the response to the requirements in Form D related to information on sales compensation. It would, however, add a requirement to provide the CRD number of each recipient named in response to Item 12. A CRD number corresponds to a broker or broker-dealer's record located in the Central Registration Depository, a computer database of brokers and broker-dealers owned jointly by state regulators and NASD. We believe it should be relatively easy for an issuer to obtain the CRD numbers from the brokers and broker-dealers it retains. Requiring disclosure of the CRD numbers would facilitate checking the brokers or broker-dealers' records.[58]

Offering and Sales Amounts. Item 13 would carry over the current requirements to provide the amount of total sales and the total offering amount, but in a restructured, simplified format. Instructions would be added to clarify interpretive issues that have arisen in completing the form, such as how to respond to this requirement if the amount of an offering is undetermined when the Form D filing is made.

Investors. Item 14 would elicit information on whether the issuer intends to sell securities to persons who do not qualify as accredited investors and the number of such persons, as well as the number of accredited investors who already have purchased securities in the offering. The form currently requires this information because it affects how we and state securities evaluate claimed exemptions.

Other Information. We propose to eliminate the items requiring information on use of proceeds and expenses of the offering because they do not yield information necessary for an evaluation of the claimed exemption or for rulemaking efforts. Many, if not most, Form D filings do not provide information that serves the form's purposes, because they specify only that the majority of proceeds will be used for ''general corporate purposes.'' In addition, because of the diversity in use of proceeds in Regulation D offerings, attempting to standardize responses to provide searchable data may be challenging and not worthwhile.

6. Signature and Submission

We propose to combine the federal and state signature requirements currently in Sections D and E of Form D into one signature requirement. This would simplify the filing and make it consistent with other signature requirements of Commission forms. We propose to incorporate into the signature block the consent to service currently in Form U–2, which is required to be filed separately but simultaneously with a Form D by many states. We are mindful in making these changes that the signature block continues to be of significance to state securities regulators. Our intention with these proposed changes is to maintain this usefulness in a manner that is consistent with easing burdens on filers.

The combined signature requirement, in general, would provide that each

[56] The new categories would be ''Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security,'' ''Pooled Investment Fund Interests,'' ''Tennant-in-Common Securities,'' and ''Mineral Property Securities.''

[57] If, for example, an issuer were filing a Form D as to the offering of both immediately exercisable options and their underlying common stock, the issuer would specify the categories ''Option, Warrant or Other Right to Acquire Another Security'' and ''Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security.'' In contrast, if the issuer were filing a Form D as to the offering of options exercisable over a year after purchase but not as to the offering of the underlying common stock, the issuer only would specify the category ''Option, Warrant or Other Right to Acquire Another Security.''

[58] Issuers and investors can check a broker's CRD record by accessing *http://brokercheck.nasd.com* or by calling a state regulator or the NASD's public disclosure hotline at 800–289–9999. See *http://www.nasaa.org/Investor_Education/Investor_Alerts_Tips/292.cfm.*

issuer signing the revised Form D[59] has read the Form D, knows the contents to be true, has duly caused the Form D to be signed on its behalf by the undersigned duly authorized person, and is[60]

- Notifying the Commission and the states in which the Form D is filed of the offering and undertaking to furnish to them, on written request, the information provided by each issuer to offerees;
- Consenting to service of process on individuals holding specified positions; and
- Certifying that it is not disqualified from relying on Regulation D for one of the reasons stated in proposed Rule 502(e).[61]

In undertaking to furnish to the states in which the Form D is filed, on written request, the information provided to offerees, the issuer would not be affecting any limits NSMIA imposes on the ability of these states to require information.[62]

The proposed signature requirement would be more extensive than the current federal signature requirement and would differ in various ways from the current state and Form U–2 signature requirements. The proposed signature requirement would be more extensive than the current state signature requirement, for example, by requiring a consent to service of process. The proposed signature requirement would be less extensive than the current state signature requirement principally because it would not ask whether any party described in Rule 262[63] currently was subject to any of the disqualification provisions of that rule.[64] The principal difference between the proposed signature requirement and the Form U–2 signature requirement is that Form U–2 requires the notarized signature of a corporate officer (or that person's equivalent in the case of other entities) and requires a consent to jurisdiction and venue as well as a consent to service.[65]

Request for Comment

- Would the proposed presentation of the revised Form D, together with linked instructions, be generally understandable, sensible, and helpful to individuals completing the form? Should all terms that need to be defined to facilitate compliance with the form's requirements, such as the term ''promoter,'' appear in Regulation D?
- Should other items of information be required to be submitted in a Form D filing? Would requiring the CUSIP number of securities that have a CUSIP number be appropriate? Would requiring the trading symbol of securities that have a trading symbol be appropriate? Should we provide for the submission of a separate address for each issuer in multiple-issuer offerings to help assure securities regulators can contact the responsible personnel? Should we require issuers to provide information on ten percent or greater holders? Is such information useful to the public and other regulators and does it serve the purposes of the Form D filing requirement? If multiple types of securities are offered, should we require information about each type of security? Should we permit issuers to check an exemption box for ULOE or ''None'' and, if so, why? Should we require or permit issuers to provide the items of information current Form D requires on a state-by-state basis in an appendix to the form? Should we require or permit issuers to describe potential waivers to minimum investment amounts or minimum investment amounts based on the identify of the offeree?[66] Should we require issuers that are pooled investment vehicles to disclose whether their advisers are registered as investment advisers under the Investment Advisers Act of 1940?[67] Should we require such issuers to disclose the number of their knowledgeable employees purchasing in the offering?[68]
- Should we eliminate any items of information that we propose to request in the revised Form D? Should we not require specified information because it does not provide sufficiently useful information or because providing it is unnecessarily burdensome? Should we retain any information requirements from the current Form D that we propose to eliminate? For example, should we retain, because it would provide useful information, the part of the current state signature requirement that asks whether any party described in Rule 262 currently was subject to any of the disqualification provisions of that rule? Should we require information that we have not proposed to require? For example, should we require an issuer to disclose information about the value of its assets such as the range of the value of its total assets or whether the value of its total assets was $5 million or less on the last day of its most recently ended fiscal year?[69] Is requiring a reporting company's Commission file number appropriate or might it be unduly burdensome without resulting in the collection of significant, useful information?
- Are the revised instructions on filing amendments to a Form D filing clear and appropriate? For example, should the proposed requirements to file an amendment to correct a mistake of fact or reflect specified changes be limited to material matters explicitly? Should amendments be required under other circumstances? For example, should an amendment be required to report the termination of an offering that lasts more than a year? Should the obligation to amend for a mistake end at a specified time and, if so, when? For offerings that last more than a year, should an issuer be permitted to wait at least a year since the later of the filing of the Form D or the filing of the most recent amendment if, as proposed, it otherwise would be required to file an annual amendment between January 1 and February 14? Should an issuer that files an amendment be permitted to provide responses only to some items of

[59] Each issuer in a multiple-issuer offering would be required to sign the Form D. If all issuers authorized the same person to sign on their behalf, however, only that person would need to sign.

[60] Both the current federal and state signature requirements expressly provide that the issuer has duly caused the Form D to be signed on its behalf by the undersigned duly authorized person. Only the current state signature requirement, however, expressly provides that the issuer has read the Form D and knows the contents to be true.

[61] As previously noted, a companion release proposes that exemption disqualification provisions appear in a new subparagraph (e) of Rule 502. If the new subparagraph were not adopted, the certification would address the current disqualification provisions in Regulation D, as applicable.

[62] See Section 18 under the Securities Act.

[63] 17 CFR 230.262.

[64] The proposed signature requirement, unlike the current state signature requirement, would omit both an undertaking to provide a Form D to specified state administrators and a representation regarding ULOE. As noted above, however, under the proposed signature requirement, issuers would undertake to furnish to the states in which the Form D is filed, on written request, the information provided by each issuer to offerees. Also as noted above, revised Form D would omit all references to ULOE and the provisions that, in general, require specified information on a state-by-state basis in an appendix to the form and require specified representations and undertakings.

[65] The proposed signature requirement's addressing consent to service but not consent to jurisdiction or venue would be consistent with the signature requirement in Form ADV [17 CFR 279.1],which can satisfy both federal and state filing requirements for investment adviser registration.

[66] For example, an issuer might set a lower minimum investment amount for its management than it would for an offeree with no prior relationship to the issuer.

[67] 15 U.S.C. 80b–1 *et seq.*

[68] We use the term ''knowledgeable employees'' as defined in Rule 3c–5 [17 CFR 270.3c–5] under the Investment Company Act.

[69] An issuer other than an investment company that had total assets of $5 million or less on the last day of its most recently ended fiscal year is, as further described in Part VIII, a small entity under the Securities Exchange Act of 1934 (''Exchange Act'') [15 U.S.C. 78a *et seq.*] and may be under the Securities Act for purposes of the Regulatory Flexibility Act [5 U.S.C. 603]. As a result, our receipt of such information may facilitate our regulatory flexibility analysis in future rulemaking.

proposed Form D? If an issuer were permitted to respond to only some items, to which items should the issuer be required to respond?

• Should Form D filings for offerings that last more than a year be required to be updated over time? Should the proposed annual update requirement apply to offerings that have not lasted over a year as of the proposed February 14 annual update due date? Should an annual update be required within a specified number of days of the anniversary of an offering rather than by February 14?

• Would the proposed requirement that an issuer identify its industry group(s), in lieu of providing a description of its business, provide data useful to the public and other regulators regarding the types of businesses that rely upon Regulation D?

• Would the proposed addition of Item 5 requiring an issuer to specify its revenue range provide useful data to the public and other regulators regarding the sizes of businesses that rely upon Regulation D? Is it necessary to provide an option to decline to disclose their revenue range for both companies that are and are not reporting companies under the Exchange Act? [70]

• Would the proposed addition in Item 12 of a requirement to provide each broker's CRD number provide useful information to the public and other regulators with minimal burden on the issuer?

• Should proposed Item 13 permit an issuer to state that the amount of total sales and total offering amount are undetermined rather than, as proposed, provide a good faith estimate, where the securities are offered in exchange for property other than cash and the value of the property cannot be determined without unreasonable effort or expense?

• Should we include language in Form D clarifying that an issuer's undertaking in the signature block to furnish information to states in which the Form D is filed does not affect any limits NSMIA imposes on the ability of these states to require information?

• Do the current requirements for information on use of proceeds and expenses in the Form D, which would be eliminated, provide useful information to the public and other regulators?

• Would the proposed combined federal and state signature requirement be adequate to replace the current state signature requirement and make it unnecessary for issuers to file Form U–2?

• Do issuers and others have an interest in ''one-stop'' filing with the Commission, in which states would rely on Commission filings as satisfying state law filing requirements for an offering covered by a Form D filing? Should such a one-stop filing service include the centralized collection of state filing fees? Would issuers be willing to pay a fee to the Commission or to an organization of state regulators for one-stop filing, if the collection of such a fee were properly authorized? How much would issuers be willing to pay for one-stop filing services?

B. Required Electronic Filing of Form D

We propose to amend Regulation S–T,[71] Rule 503 of Regulation D, and Form D to implement a requirement for issuers to file the information required by Form D with us electronically through an online filing system.[72]

Rule 101(c)(6) of Regulation S–T [73] currently requires the information required by Form D to be filed in paper. The proposed amendments would delete the reference to Form D from Rule 101(c)(6) and would revise subparagraph (a)(1) of Rule 101 [74] to add a new subparagraph (xiii) that would add Form D to the rule's list of documents required to be filed electronically.

Rule 100 of Regulation S–T,[75] which specifies the persons or entities subject to the electronic filing requirements of Regulation S–T, expressly includes, among others, Exchange Act reporting companies whose filings (such as Form D) are subject to review by the Division of Corporation Finance. In order to assure that Rule 100 also would apply to non-reporting companies that would file Form D, the proposed amendments would revise paragraph (a) of Rule 100 of Regulation S–T [76] to add a reference to entities that are not Exchange Act reporting companies but whose filings are subject to review by the Division of Corporation Finance.

We also propose to amend Regulation S–T to make hardship exemptions unavailable to Form D filings. The proposed amendments would revise subparagraph (a) of Rules 201 [77] and 202 [78] to exclude Form D from the filings for which hardship exemptions are available. We believe hardship exemptions should not be available for Form D filings because of the relative ease of electronic filing and the limited value of paper filings. In proposing the conversion of the Form D filing from a paper system to an electronic system, we assume that issuers will have access to a computer and the Internet. In the absence of an issuer's having a personal or office computer and Internet access, public libraries around the country often have computer and Internet access that an issuer could use. We therefore do not envision the need for a hardship exemption to permit paper filing.[79]

The proposed amendments would revise Rule 503 of Regulation D and Form D in several ways related to electronic filing. The proposed amendments would delete from Rule 503 references to the paper-based concept of copies in subparagraphs (a) and (b) and a manual signature in subparagraph (b). Subparagraph (a) would continue to specify when a notice on Form D initially must be filed [80] and would be revised to specify also when an amendment to a Form D filing must or could be filed.[81]

Subparagraph (b) would continue to require a signature. Rule 302 of Regulation S–T [82] would specify the manner of signature for Form D as it does for electronic filings generally.[83]

[70] A reporting company is a company that files reports under Section 13(a) [15 U.S.C. 78o] or 15(d) [15 U.S.C. 78m] of the Exchange Act.

[71] Regulation S–T is the Commission's general regulation governing electronic filing.

[72] The online filing system would automatically capture and tag data items and is discussed in further detail in Part III of this release.

[73] 17 CFR 232.101(c)(6).

[74] 17 CFR 232.101(a)(1).

[75] 17 CFR 232.100.

[76] 17 CFR 232.100(a).

[77] 17 CFR 232.201(a).

[78] 17 CFR 232.202(a).

[79] We also propose an amendment to Rule 104(a) of Regulation S–T [17 CFR 232.104(a)] to make it clear that unofficial PDF copy submissions are unavailable to Form D notices. The new online filing system, further described below, is expected to make filed Form D information available on our Web site in an easy-to-read format similar to that which could be provided through an unofficial PDF copy.

[80] As proposed, Rule 503(a)(1) generally would provide that an issuer offering or selling securities in reliance on Rule 504, 505 or 506 must file a Form D for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering. As previously noted, a companion release proposes a new exemption under a revised Rule 507. If that proposal were adopted, Rule 503(a)(1) would be revised to specify Rule 507 as well.

[81] Subparagraph (a) would continue to provide that an issuer must file the Form D no later than 15 calendar days after the first sale of securities in the offering. As currently, an issuer could, however, file the Form D at any time before that if it has determined to make the offering. Also as currently, a mandatory capital commitment call would not constitute a new offering, but would be made under the original offering, so no new Form D filing would be required solely as a result. See Part II.A.4.b of this release for a discussion of when an amendment must or could be filed.

[82] 17 CFR 232.302.

[83] Rule 302 requires, in general, that electronic filings contain typed signatures, that each signer manually sign a signature page or other document confirming the typed signature by the time the filing is made, and that the issuer maintain the manually signed document for five years and make it available to the Commission and its staff upon their request.

The proposed amendments also would add to subparagraph (b) a statement that electronic Form D filing through our new online filing system is mandatory. In addition, the proposed amendments would delete subparagraphs (c), (d), and (e). Subparagraph (c) requires an issuer that makes sales under Rule 505 to provide an undertaking on its Form D to provide specified information to the Commission upon the staff's written request. This paragraph no longer would be necessary because, as noted above, the proposed signature requirement would provide that each issuer signing the Form D would be undertaking to furnish to the Commission and the states specified on the Form D, on written request, the information provided by each issuer to offerees. Subparagraph (d), regarding amendments, no longer would be necessary because subparagraph (a) would address when to file amendments and it is expected that the new online filing system would make available to the issuer the version of the Form D to be amended to enable the issuer to key in only the changes. Subparagraph (e), regarding the date a Form D filing is considered filed, no longer would be necessary because Rule 13 of Regulation S–T [84] would specify the way to determine the filing date for a Form D filing as it does for electronic filings generally.[85] Finally, the proposed amendments similarly would revise the General Instructions of Form D regarding copies required, manual signatures, amendments, mandatory electronic filing and filing date.

Request for Comment:

- Would Form D filers of all sizes have easy access to the Internet?
- Is it necessary or appropriate to provide for a hardship exemption? [86]
- Are the proposed amendments intended to mandate electronic filing of Form D clear and appropriate?

C. General Solicitation and General Advertising Issues Presented by Electronic Filing of Form D

Rule 502(c) of Regulation D [87] sets forth the prohibition on general solicitation and general advertising applicable to most Regulation D offerings. Specifically, issuers and persons acting on the issuer's behalf are prohibited from offering or selling securities by any form of general solicitation or general advertising. Information filed using Form D has up to now been available to the general public.[88] The electronic filing and availability of Form D information, however, may present the concern that it is being used as a marketing document to generate interest in offerings because the information would be easily and broadly available. This, in turn, may raise concerns regarding compliance with Regulation D's prohibition on the use of general solicitation and general advertising. To address these compliance concerns, we propose to revise Rule 502(c) to include a safe harbor from the prohibition on ''general solicitation'' and ''general advertising'' for information provided in a Form D filed electronically with the Commission if the information was provided in good faith and the issuer made reasonable efforts to comply with the requirements of Form D. An issuer that complied with the terms of the safe harbor would be assured that the electronic availability of its Form D filing would not, in and of itself, cause the issuer to have violated this prohibition.

Such a safe harbor would not be warranted if it merely shielded activity that is, in fact, intended to generate interest in the offering. Accordingly, we propose to limit the amount of information submitted on the form [89] and limit the application of the safe harbor to where the information has been provided with a good faith and reasonable effort to comply with the requirements of Form D. Electronic Form D would not contain any place where ''free writing'' could occur. When submitting a paper filing, filers may insert information that is not required by the form, but that could be a vehicle for attracting investors. The electronic form would not permit such misuse. Limiting the safe harbor to information provided with a good faith and reasonable effort to comply with the requirements of Form D would be consistent with Preliminary Note 6 [90] to Regulation D, and Rule 508,[91] and the ''notification'' nature of Form D's requirements.

Request for Comment

- How should the Commission address any general solicitation and general advertising issues related to filing Form D information electronically or the widespread availability of such information?
- Do filers anticipate that the proposed omission from Form D of any place to provide information customarily placed in footnotes or otherwise to engage in ''free writing'' would inhibit their ability to file the information required by the form in accordance with applicable requirements? If so, are there particular types of additional information Form D could permit or require that would enable issuers to respond adequately consistent with our goal of not allowing Form D filings to be used as marketing documents that would raise issues of compliance with an applicable ban on general solicitation and general advertising?
- Is the proposed safe harbor from the prohibition on general solicitation and general advertising necessary and appropriate?

III. Electronic Filing Procedure

We propose to mandate electronic filing of the Form D notice through an online filing system expected to be developed, which would be accessible from any computer with Internet access. The information filed would be available on our Web site and, because

[84] 17 CFR 232.13. Rule 13 generally provides that a filing by direct transmission beginning on or before 5:30 p.m. Eastern time on a business day is deemed filed that day and, if such a filing were to begin after that time, it would be deemed filed on the next business day.

[85] The description of Form D at 17 CFR 239.500 is similar to Rule 503 and would be amended similarly. In this regard, if the proposed new exemption under a revised Rule 507, as proposed in the companion release, is adopted, the form description also would be amended to add revised Rule 507 to the list of Regulation D rules providing exemptions in the same manner as previously discussed above with respect to proposed Rule 503(a)(1).

[86] See Part III of this release for details on the contemplated electronic filing procedure.

[87] 17 CFR 230.502(c).

[88] In 1998, we issued a release soliciting comment on a proposal to require the filing of an exhibit to certain Form D filings on a nonpublic basis. Release No. 33–7541 (May 21, 1998) [63 FR 29168]. We recognized that adoption of the proposal would raise issues under the Freedom of Information Act, 5 U.S.C. 552 *et seq.*, *Id.* [63 FR 29168, 29171]. Some of the proposals made in that release were adopted in 1999, but the nonpublic filing proposal was not acted upon. Release No. 33–7644 (Feb. 25, 1999) [64 FR 11090].

[89] Similarly, current Rule 502(c) includes a safe harbor from the prohibition on general solicitation and general advertising for a notification in compliance with Rule 135c of an unregistered offering by an issuer required to file reports under Section 13 or 15(d) of the Exchange Act. The information allowed to be included in a Rule 135c notification is limited to very basic identifying information about the issuer and the offering.

[90] Preliminary Note 6 to Regulation D provides, in part, that ''Regulation D is not available to any issuer for any transaction or chain of transactions that, although in technical compliance with the these rules, is part of a plan or scheme to evade the registration provisions of the [Securities] Act.''

[91] 17 CFR 230.508. Rule 508 provides, in part, that ''A failure to comply with a term, condition or requirement of [specified rules under Regulation D] will not result in the loss of [an] exemption * * * if the person relying on the exemption shows * * * [a] good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [such rules].''

the online filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information.[92] As discussed above, our objectives in converting Form D filings to an electronic format include lessening the burden on issuers of filing the Form D notice, enhancing federal and state coordination, increasing the information available regarding the effectiveness of our Securities Act exemptions and increasing the information available to researchers using Form D data to conduct empirical research aimed at improving the efficiency and effectiveness of our private markets. We believe our approach to filing and dissemination formats would make it relatively easy to file, access and analyze Form D information.

A. Mechanics

We expect that the new online filing system for Form D information would be accessible from any computer with Internet access. An issuer could both submit and amend its Form D filing through this system. The new online system would permit an issuer, in Item 7, to designate the states to which the Form D is directed. The Form D itself would include drop-down menus and other guidance functions to assist in completing the form.

In order to file, we expect that issuers would need the same codes as are required to file on our electronic filing system, EDGAR, today. An issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned an identification number, which we call a ''Central Index Key (CIK)'' code, would obtain the codes by filing electronically a Form ID[93] at *www.filer management.edgarfiling.sec.gov* and filing, in paper by fax within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document would be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, confirm the authenticity of the Form ID[94] and, if filed after electronically filing the Form ID, include the accession number assigned to the electronically filed Form ID as a result of its filing.[95] Under the online system, if the Form D filing is made on behalf of multiple issuers, each issuer most likely would be required to have its own CIK code and a confirming code, which we call a ''CIK Confirmation Code (CCC)'' for validation.

To access and file a Form D through the new online system, issuers would begin by having a valid identification number, confirming code and password, which we call a ''Password (PW)'' and logging on to the system. The identification number, confirming code and password, together with a password modification authorization code, which we call a ''Password Modification Authorization Code (PMAC),'' we call ''EDGAR access codes.'' The issuer should have all necessary information available before going online to file.[96] Data entry would be required to be performed quickly enough to avoid time-outs that end the session. A time-out most likely would occur one hour following the user's last activity on the system. Time-outs would be implemented due to cost and technical limitations. The system would not provide a way to save an incomplete form online from session to session.

An issuer most likely would be able to prepare an amendment based on the content of a previously filed form.[97] The system would validate as many fields as possible for data type and required fields while the filer fills in the fields on the screen. Issuers would have an opportunity to correct errors and verify the accuracy of the information before submitting the filing. An online help function likely would be available.[98]

The issuer would be able to download and print the filing before and after submission. Once the filing is submitted, the system would indicate receipt of the filing. In many cases, the system would display a unique number assigned to the submission, which we call an ''accession number'' but, in any event, the accession number would follow in an e-mail notification to the filer. A filer would be able to see the filing on our Web site shortly after filing.

Consistent with our prior goals for the Form D and interaction with the states, upon filing of the Form D notice with the Commission, state securities regulators would be able to identify on our Web site Form D filings that specify their states.[99] Filers generally would specify one or more states in response to proposed Items 1 (jurisdiction of incorporation or organization), 2 (principal place of business and contact information), 3 (related person addresses), 7 (states to which Form D directed) and 12 (addresses of recipients of sales compensation) of Form D. State specification information would be interactive and easily searchable because the new online filing system would automatically capture and tag that information as it would other Form D filing information.

Most Form D filings currently are made by law firms on behalf of issuers.[100] We expect that the

[92] Using this system would result in the Form D information being filed in the standard format of XML. We would disseminate the information in two formats—normal textual and XML tagged.

[93] 17 CFR 239.63, 249.446, 269.7 and 274.402.

[94] An issuer could confirm the authenticity of a Form ID by, for example, stating that ''[name of issuer] hereby confirms the authenticity of the Form ID [filed] [to be filed] on [specify date] containing the information contained in this document.''

[95] 17 CFR 232.10(b). An ''accession number'' is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

[96] Some information provided by the filer in the course of obtaining EDGAR access codes or updating such information might automatically appear in appropriate places when the filer accesses the new online filing system. As a result, in order to make changes to such information, it might be necessary to do so through an updating process through the main EDGAR system rather than the Form D online filing system. The updating process is a well-established typically online process applicable to EDGAR filers generally that would be relatively easy to complete.

[97] When an issuer files an amendment to a Form D filing, it most likely would access its Form D filing on the online filing system and type over the inaccurate information. In that case, the online filing system would replace the inaccurate information with the new information, save the revised version of the Form D filing in its amended state causing it be an amendment and a new filing, and record the date of amendment. The information in the Form D that was accessed for purposes of the amendment would, however, remain unchanged on the system accessible to the public.

[98] The new online filing system technically would be part of EDGAR but would be similar to the online filing system for Forms 3 [17 CFR 249.103 and 274.202], 4 [17 CFR 249.104 and 274.203], and 5 [17 CFR 249.105] filed under Section 16(a) [15 U.S.C. 78p(a)] of the Exchange Act, in general, by officers, directors and principal security holders of reporting companies that have a class of equity securities registered under Section 12 [15 U.S.C. 781] of the Exchange Act . Form D filers would access the online filing system and, essentially, prepare the filing by responding to questions and filling in blanks. The Form D online filing system, unlike the online filing system for Forms 3, 4 and 5, likely would not, however, provide Form D filers the alternative of preparing their Form D filings before accessing the system and then submitting them through, rather than preparing them on, the online system.

[99] In Release No. 33–6339 (Aug. 18, 1981) [46 FR 41791], the Commission stated the following in its discussion of Rule 503: ''It should be noted that, although the revised filing requirements do not require that the user also file a notice with the state(s) in which the offering is to be sold, it is anticipated that the Commission will routinely furnish copies of the notice forms to the appropriate state commissions.''

[100] Our Division of Corporation Finance conducted a one-month review of Form D filings and determined that, based primarily on the cover letters that accompany most Form D filings, about

Continued

simplification and restructuring of Form D and the conversion of Form D filings to an electronic system may decrease legal fees to make Form D filings and perhaps allow more issuers to file a Form D notice themselves without the assistance of a law firm.

B. Database Capabilities of Electronic Form D Repository

A review of Form D filings by our Division of Corporation Finance uncovered errors and omissions in the information provided.[101] In an effort to enhance the quality of the data collected by the proposed electronic Form D, we anticipate including internal checks in the new online system that would decrease the number of errors and omissions in Form D filings. Such a system would prevent an issuer from submitting Form D information electronically unless all necessary data fields were completed in a manner consistent with the nature of each field [102] and the logical relationships between or among the fields.[103] This would not only promote the integrity of the data collected by the Form D repository, but would also make it easier for issuers to complete or amend their filings.

C. System Implementation

We expect that the new online system would begin receiving mandated filings on a specified date if we were to adopt a final rule mandating electronic filing of Form D information. We are considering a period before that date during which we would permit voluntary electronic filing of Form D information using the new online filing system and form to enable issuers to become familiar with them. This period also would help alert us to any problems in the electronic Form D filing process. Issuers that chose not to file electronically during the transition period could use the current paper form. Although the information in proposed new Form D is somewhat different from that in current paper Form D, we believe a short period when either version of the form could be used may be appropriate.

Request for Comment:

- Do filers of Form D anticipate any burdens of filing electronically that we have not addressed in this release and should consider?
- What information, if any, included on the Form D filing should be unavailable for the public to view online?
- We would like comments regarding the availability of technology required to complete the form online. We also would like comments on any possible additional burdens an electronic filing requirement may place upon issuers that may prevent them from making Form D filings.
- Should any field in the proposed Form D be optional because it may not be applicable to certain issuers or offerings?
- What types of data should the database be able to sort and ascertain about the use of Form D and reliance upon Regulation D?
- Would a voluntary period be needed for electronic Form D filing? Would the need depend upon the length of time between any adoption and effectiveness of mandated electronic filing? If a voluntary period were needed, how long should it last? Would issuers be likely to volunteer during this period?
- Should public companies be phased in to mandated electronic filing of Form D sooner than private companies?
- Where a Form D is filed on behalf of multiple issuers, would it be unduly burdensome to require all of the issuers to have EDGAR access codes and, if they do not already have them, require them to file a Form ID authenticated by a faxed notarized document? Should only one issuer specified in such a filing be required to obtain EDGAR access codes?
- Is the Form ID authenticating process unduly burdensome for the purpose of filing a Form D notice? Would other less burdensome processes provide adequate security measures? Should issuers that only file Form D with the Commission be able to authenticate a Form ID by providing to the Commission a copy of a local business license rather than by faxing the otherwise required notarized authenticating document? Would this be easier for issuers?
- In the future, should public companies be exempted from the Form D filing requirement in Rule 503 and instead be required to file Form D information as part of their periodic annual and quarterly reports? Should these companies be exempted from the Form D filing requirement and instead be required to include that information on a current report on Form 8–K? [104] If these companies were required to include that information as part of their periodic annual and quarterly reports or on a current report on Form 8–K, should the companies also be required to tag the information in a manner consistent with the automatic tagging that would occur as to Form D filings made on the new online system in order to realize the benefits of uniformly tagged Form D information?

IV. General Request for Comment

The Commission is proposing these revisions to Form D and Regulation D to improve the functioning and efficiency of Regulation D. We welcome your comments. We solicit comment, both specific and general, upon each component of the proposals. We request and encourage any interested person to submit comments regarding:

- The proposals that are the subject of this release;
- Additional or different changes relating to Form D; and
- Other matters that may have an effect on the proposals contained in this release.

Comment is solicited from the point of view of both issuers and investors, as well as of capital formation facilitators, such as brokers-dealers, and other regulatory bodies, such as state securities regulators. Any interested person wishing to submit written comments on any aspect of the proposal is requested to do so.

V. Paperwork Reduction Act Analysis

The proposed amendments would affect two forms that contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[105] The titles of the affected information collections are Form D (OMB Control No. 3235–0076) and Form ID (OMB Control No. 3235–0328). The purposes of the proposed amendments are, in general, to clarify, simplify and update the information requirements of Form D and modernize the related information capture process. We are submitting the revisions to the Form ID collection of information to the Office of Management and Budget (''OMB'') for review under 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a

75% of the forms were filed by law firms on behalf of issuers.

[101] Some of the most frequent errors were failures to indicate whether a filing is an amendment or a new filing and claims that do not match the facts described (for example, issuers claiming that an offering is limited to accredited investors and then including information regarding participation of non-accredited investors in the offering).

[102] The system would check, for example, to make sure that number characters were used in responding to the field in proposed Item 13 for the offering and sales amounts.

[103] The system would check, for example, whether the filer has specified Rule 505 or Rule 506 as a claimed exemption in response to proposed Item 6 but also has specified that there have been over 35 non-accredited investor purchasers in response to proposed Item 14. If the filer has done so, a pop-up would warn that only 35 non-accredited investors are permitted in these types of offerings and would require the filer to select ''OK'' before proceeding.

[104] 17 CFR 249.308.

[105] 44 U.S.C. 3501 *et seq.*

person is not required to respond to, a collection of information requirement unless it displays a currently valid control number. Compliance with the collections of information as proposed to be revised would be mandatory. The information required by the collection of information in Form D as proposed to be revised would not be kept confidential by the Commission; the information required by Form ID would be kept non-public, subject to a request under the Freedom of Information Act.[106]

Form D is filed by issuers as a notice of sales without registration under the Securities Act based on claims of exemption under Regulation D and Section 4(6) of the Securities Act.

Form ID is filed by registrants, individuals, third-party filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR.[107] This form enables the Commission to assign an identification number (CIK), confirmation code (CCC), password (PW) and password modification authorization code (PMAC) to each EDGAR filer, each of which is essential to the security of the EDGAR system.

We expect that, if adopted, the proposed amendments would not affect the number of Form D filings made and, on balance, would obligate issuers to report on Form D essentially the same amount of information as they are required to report on Form D today. We therefore believe that the overall information collection burden of Form D would remain approximately the same as it is today.[108]

We estimate that approximately 196,800 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent for a total annual burden of 29,520 hours. We expect that, if adopted, the proposed amendments would cause an additional 18,600 respondents to file a Form ID each year and, as a result, would cause an additional annual burden of 2790 hours.[109]

We solicit comment on the expected Paperwork Reduction Act effects of the proposed rule amendments, including the following:

- The accuracy of our estimates of the additional burden hours that would result from adoption of the proposed amendments;
- Whether the proposed changes to the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility;
- Ways to enhance the quality, utility and clarity of the information to be collected;
- Ways to minimize the burden of the collections of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Any effects of the proposed amendments on any other collections of information not previously identified.

Any member of the public may direct to us any comments concerning these burden estimates and suggestions for reducing the burdens. Persons submitting 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 send a copy of the comments to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. [S7–12–07]. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. [S7–12–07], and be submitted to the Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Cost-Benefit Analysis

A. Background

The proposed amendments, if adopted, would restructure and mandate the electronic filing of the information required by Form D. Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation. It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. The rules we propose today would address deficiencies in the Form D data collection requirements. We believe the amendments, in general, would provide benefits by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process.

B. Benefits

The proposed amendments should benefit issuers, regulators and members of the public who choose to access Form D information. In particular, the proposed amendments should

- Ease filing burdens;
- Result in better public availability of Form D information;
- Enhance the utility of Form D as a means to promote federal and state uniformity and coordination; and
- Improve collection of data for Commission enforcement and rulemaking efforts.

The proposed amendments should ease filing burdens because filers would find it easier to respond to the revised

[106] 5 U.S.C. 552. The Commission's regulations that implement that statute are at 17 CFR 200.80 *et seq.*

[107] 17 CFR 239.63, 249.446, 269.7 and 274.402.

[108] We estimate the burden of Form D to be 4.0 hours per response of which one hour is borne internally and three hours are borne externally.

[109] We arrived at our estimate that an additional 18,600 respondents would file a Form ID each year based on the following information and analysis. In 2006, 16,829 companies made 25,239 Form D filings. Of these companies, 15,914 (94.6%) did not report under the Exchange Act and 915 (5.4%) did report under the Exchange Act. The annual number of Forms D filings rose from 17,390 in 2002 to 25,239 in 2006 for an average increase of approximately 2000 Form D filings per year. Assuming the number of Form D filings continues to increase by 2000 filings per year for each of the next three years, the average number of Form D filings in each of the next three years would be about 29,300. Assuming that the ratio of the number of companies that make a Form D filing to the number of Form D filings in 2006 remains constant over the next three years, an average of about 19,600 companies would make Form D filings in each of the next three years. Assuming also that the ratio between the number of non-reporting and reporting companies under the Exchange Act that made Form D filings in 2006 remains constant over the next three years, an average of about 18,600 non-reporting and 1000 reporting companies would make Form D filings in each of the next three years. Assuming further that all non-reporting companies that would make a Form D filing would not already have EDGAR access codes and, as a result, would be required to file a Form ID, the number of companies that would need to file a Form ID as a result of the proposed amendments would on average be about 18,600 per year over the next three years. Because each Form ID filing is estimated to require .15 hours, the total additional burden would, on average, be about 2790 hours per year over the next three years (18,600 Forms ID × .15 hours per Form ID). We consider the average number of Form ID filings expected to be made per year over the next three years because the PRA requires that our estimates represent the average yearly burden over a three-year period.

information requirements of Form D and easier to file the responsive information.[110] It should be easier to respond to the revised information requirements of Form D because they would be clarified, simplified and updated. It should be easier to file the responsive information because issuers could use efficient modern methods of information transfer through electronic filing. Issuers would provide the information in data fields by responding to a series of discrete requests for information. It is expected that the fields would be checked automatically for appropriate characters and consistency with other fields and the questions would be accompanied by easily accessible links to clear instructions and other helpful information. It is intended that these system features, among others, would help to facilitate a relatively easy-to-use filing process that would deliver accurate information quickly, reliably, and securely.

Requiring the electronic filing of Form D data would result in increased public availability of Form D information because it would make the information filed more readily available to regulators and members of the public who choose to access it. The information would be available on our Web site and, because the Form D filing system would automatically capture and tag data items, the data would be interactive and easily searchable. The filing system would enable users to view the information in an easy-to-read format, download the information into an existing application, or create an application to use the information. Unlike information filed with us electronically, paper filings are available from us only in person in our Public Reference Room or by means of a mail request. We charge a nominal fee for copies of Form D filings. Some Form D filings are available at higher cost through private vendors over the Internet and through telephone requests.

The required electronic filing of Form D information could enhance the utility of Form D as a means to promote federal and state uniformity and coordination. For over 20 years, Form D has served as a means to promote federal and state uniformity in securities regulation by providing a uniform notification form that can be filed with the Commission and with state securities regulators. The electronic filing system would include an electronic database that could be more easily searched for information needed by both federal and state securities regulators to monitor the exempt securities transaction markets. The system also would permit improved coordination among federal and state regulators, which is essential to efficient and effective capital formation through exempt transactions, especially by smaller companies, and to investor protection. State securities regulators would be able to access the information on our Web site to learn if new Form D information of interest to them has been filed. It is our hope that state securities regulators would permit ''one-stop'' filing with the Commission and rely on Commission filings as satisfying state law filing requirements for offerings covered by a federal Form D filing. This would reduce significantly the costs and burdens of preparing and filing Form D information with the Commission and with state securities regulators. This could represent a substantial savings for small businesses and others filing Form D information.

The proposed conversion to electronic filing of Form D information in an interactive data format should improve collection of data for Commission enforcement and rulemaking efforts. We expect that electronic filing would result in creation of a database and allow us and others to better aggregate data on the private securities markets and the use of the various Regulation D exemptions. Further, the software we intend to use for the Form D electronic filings would require that filers address each required data field in the form, thus reducing incomplete filings. Because of these and other features, the Form D electronic filing system should assist in our enforcement efforts and ease our ability to make use of filed Form D information. The Form D information database would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection. The evaluation could lead to improvements that would result in significant benefits to companies that rely on the Regulation D exemptions, especially smaller companies, as well as benefits to investors.

C. Costs

We expect that, if adopted, the proposed amendments would result in some initial and ongoing costs to issuers. We also expect, however, that many issuers would not bear the full range of costs that would result from the amendments for the reasons described below.

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information.[111] In order to file a Form ID, an issuer would need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[112] Similarly, in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer would need to learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent filing of Form D information.

We expect that the vast majority of issuers would need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of issuers already would have access to a computer and the Internet.[113]

[110] Although we believe it would be easier to respond to the revised information requirements of Form D, as discussed in Part V regarding the PRA, we believe the overall collection of information burden of Form D would remain approximately the same as it is today.

[111] Issuers that already have EDGAR access codes would not need to file a Form ID. As further discussed in Part V, however, we assume that about 95% of Form D filers would not already have the codes.

[112] As discussed in Part V regarding the PRA , the Commission estimates that approximately 196,800 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent, for a total annual burden of 29,520 hours. As also discussed in Part V, we expect that, if adopted, the proposed amendments would cause an additional 18,600 respondents to file a Form ID each year and, as a result, cause an additional annual burden of 2790 hours. Assuming a cost of $175 per hour for in-house professional staff, we estimate the current Form ID burden cost at $5,166,000 per year (29,520 hours per year × $175 per hour), the additional Form ID burden cost that would result from adoption of the proposed amendments at $488,250 per year (2790 hours per year × $175 per hour) and the total Form ID burden cost that would result from adding the estimated additional Form ID burden cost to the estimated current Form ID burden cost would be $5,654,250 per year ((29,520 hours per year + 2790 hours per year) = 32,310 hours per year; 32,310 hours per year × $175 per hour = $5,654,250 per year).

[113] A person from an issuer that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

D. Requests for Comments

We request comment on all aspects of the cost-benefit analysis, including identification of any additional costs or benefits of, or suggested alternatives to, the proposed amendments. We also request that those submitting comments provide empirical data and other factual support for their views to the extent possible.

VII. Consideration of Impact on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act [114] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, Section 2(b) of the Securities Act,[115] Section 3(f) of the Exchange Act,[116] and Section 2(c) of the Investment Company Act [117] require us, when engaged 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.

The proposed amendments, if adopted, would restructure and mandate the electronic filing of the information required by Form D. We believe the amendments, in general, would provide benefits by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process. In particular, as discussed in further detail above, the proposed amendments should:

- Ease filing burdens;
- Result in better public availability of Form D information;
- Enhance the utility of Form D as a means to promote federal and state uniformity and coordination; and
- Improve collection of data for Commission enforcement and rulemaking efforts.

We understand that private sector businesses currently make Form D information available to the public for a fee. Although the ready accessibility of this information at no cost would affect these businesses, we believe that the interactive online system that would be used for Form D information would not discourage the development by private sector businesses of additional features that the new online system would not provide. Consequently, we believe that the proposed amendments would not have a burden on competition that is not necessary or appropriate and might promote competition in providing Form D information through additional features including those related to the tagged data aspect of the system.

Eased filing burdens and better public availability of information resulting from the proposed amendments would promote efficiency. For example, the expected online system would enable issuers to provide Form D information with modern, rapid and accurate methods and would enable users of the system to access Form D information more quickly and easily than through a review of paper documents.

Improved collection of data for Commission enforcement and rulemaking efforts resulting from the proposed amendments would create a Form D information database that would allow us to evaluate our exemptive schemes on a continuing basis in order to facilitate capital formation in a manner consistent with investor protection and the evaluation could lead to improvements that would promote our capital markets. Similarly, the enhanced utility of Form D as a means to promote federal and state uniformity and coordination resulting from the proposed amendments could lead to improved coordination which would promote capital formation.

We request comment on whether the proposed amendments, if adopted, would impose a burden on competition. We also request comment on whether the proposed amendments, if adopted, would promote efficiency, competition and capital formation. Finally, we request commenters to provide empirical data and other factual support for their views if possible.

VIII. Initial Regulatory Flexibility Act Analysis

This Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603. It relates to proposed amendments regarding the content and mandated electronic filing of information required by Form D.

A. Reasons for, and Objectives of, the Proposed Action

The main purpose of the proposed amendments is to address deficiencies in the Form D data collection process. Currently, much of the information required by Form D appears to be useful and justified in the interests of investor protection and capital formation. It also appears that some useful information that could be required by Form D currently is not required. On the other hand, Form D currently requires some information that may no longer be useful. Our staff receives many inquiries from market participants suggesting that Form D could be clarified and simplified. Moreover, the absence of an electronic system for filing Form D information prevents issuers from filing through efficient modern methods and limits the usefulness of the information collected on Form D. We believe the amendments, in general, would address the deficiencies in the Form D data collection process by clarifying, simplifying and updating the information requirements of Form D and modernizing the related information capture process.

B. Legal Basis

We are proposing the amendments under the authority in Sections 2(a), 3(b), 4(2), 19(a), 19(d) and 28 of the Securities Act,[118] Sections 3(b), 23(a) and 35A of the Exchange Act,[119] Section 319(a) of the Trust Indenture Act,[120] and Section 38 of the Investment Company Act.[121]

C. Small Entities Subject to the Proposed Rules

The proposed amendments would affect issuers that are small entities. Exchange Act Rule 0–10(a) [122] defines an issuer, other than an investment company, to be a ''small business'' or ''small organization'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year.[123] Investment Company Act Rule 0–10(a) defines an investment company as a ''small business'' or ''small organization'' for purposes of the

[114] 15 U.S.C. 78w(a)(2).

[115] 15 U.S.C. 77b(b).

[116] 15 U.S.C. 78c(f).

[117] 15 U.S.C. 80a–2(c).

[118] 15 U.S.C. 77b(a), 77c(b), 77d(2), 77s(a), 77s(d) and 77z–3.

[119] 15 U.S.C. 78c(b), 78w(a) and 78*ll*.

[120] 15 U.S.C. 77sss(a).

[121] 15 U.S.C. 80a–37.

[122] 17 CFR 240.0–10(a).

[123] Securities Act Rule 157(a) [17 CFR 230.157(a)] generally defines an issuer, other than an investment company, to be a ''small business'' or ''small entity'' for purposes of the Regulatory Flexibility Act if it had total assets of $5 million or less on the last day of its most recent fiscal year and it is conducting or proposing to conduct a securities offering of $5 million or less. For purposes of our analysis of issuers other than investment companies in this Part VIII of the release, however, we use the Exchange Act definition of ''small business'' or ''small entity'' because that definition includes more issuers than does the Securities Act definition and, as a result, assures that the definition we use would not itself lead to an understatement of the impact of the proposed amendments on small entities.

Regulatory Flexibility Act if it, together with other investment companies in the same group of related investment companies, had net assets of $50 million or less as of the end of its most recent fiscal year.[124] The proposed amendments would apply to all issuers that file Form D.

As previously noted, in 2006, 16,829 issuers filed a Form D. We believe that many of these issuers are small entities but we currently we do not collect information on total assets to determine if they are small entities for purposes of this analysis.[125]

D. Reporting, Recordkeeping and Other Compliance Requirements

Currently, issuers must file Form D information in paper. The proposed amendments would require all issuers, including small entities, to submit somewhat different Form D information online using the Internet. These issuers also would need to file a Form ID electronically to obtain the access codes needed to use the Form D filing system if they did not already have the codes.[126] The only additional professional skills required would be those required to file electronically.[127]

We expect that filing electronically would increase initial and ongoing costs incurred by some small entities. We also expect, however, that many small entities would not bear the full range of costs that would result from the amendments for the reasons described below.

Initial costs are those associated with filing a Form ID in order to obtain the access codes needed to file Form D information electronically and otherwise preparing to make an initial filing of Form D information. In order to file a Form ID, an issuer would need to learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document.[128] Similarly, in order otherwise to prepare to make an initial electronic filing of Form D information, an issuer would need to learn about the revised Form D information content and electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Form D filing system and respond to Form D's information requirements.

Ongoing costs are those associated with maintaining the framework developed through the initial costs (for example, updating information required by Form ID) and additional costs arising from each subsequent filing of Form D information.

We expect that the vast majority of small entities would need to incur few, if any, additional costs related to obtaining computer and Internet access. We believe that the vast majority of small entities already would have access to a computer and the Internet.[129]

E. Duplicative, Overlapping or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, or overlap or conflict with, other federal rules.

F. Significant Alternatives

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered several alternatives, including the following:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Further clarifying, consolidating or simplifying the proposed requirements;
- Using performance rather than design standards; and
- Providing an exemption from the proposed requirements, or any part of them, for small entities.

We believe that, as to small entities, differing compliance, reporting or timetable requirements, a partial or complete exemption from the proposed requirements or the use of performance rather than design standards would be inappropriate because these approaches would detract from the completeness and uniformity of the Form D database and, as a result, reduce the expected benefits of better public availability of Form D information, enhanced utility of Form D as a means to promote federal and state uniformity and improved collection of data for Commission enforcement and rulemaking efforts. Further, we believe the proposed Form D filing system would be relatively easy to use.[130] We solicit comment, however, on whether differing compliance, reporting or timetable requirements, a partial or complete exemption, or the use of performance rather than design standards would be consistent with our described main goal of addressing deficiencies in the Form D data collection process.[131]

We considered further clarifying, consolidating or simplifying the proposed Form D information and electronic filing requirements. During 2003, the Commission's Office of Small Business Policy (''OSBP'') reviewed the types of errors, omissions, and misstatements more commonly found in Form D filings, as well as the types of questions typically received through phone calls from the public associated with the form. We also have considered the electronic filing requirements related to Exchange Act Forms 3, 4 and 5, the manner in which their online filing system has operated and the suitability of that system as a model for the expected online system for Form D information. Based in part on OSBP's review and our consideration of the electronic filing of Forms 3, 4 and 5, we believe that the proposed Form D information and electronic filing requirements are clear and straightforward (although, we seek comment on this).

G. Solicitation of Comment

We encourage comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposed amendments;
- The existence or nature of the potential impact of the proposed amendments on small entities as discussed in this analysis; and

[124] 17 CFR 270.0–10(a).

[125] We do, however, solicit comment in Part II on whether proposed Form D should require an issuer to disclose whether the value of its total assets was $5 million or less on the last day of its most recently ended fiscal year.

[126] As further discussed in Part V, however, we assume that about 95% of Form D filers would not already have the codes.

[127] Although we believe it would be easier to respond to the revised information requirements of Form D, as discussed in Part V, we believe the overall collection of information burden of the form would remain approximately the same.

[128] As discussed in Part V, the Commission has estimated the collection of information burden of Form ID as .15 hours per response, all of which is borne internally by the respondent.

[129] A person from a small entity that did not already own a computer with Internet access could, for example, go to a public library to use its computer and obtain Internet access.

[130] As discussed in Part III.C, we are considering a period during which we would permit voluntary electronic filing of Form D information using the new electronic filing system and form to enable issuers to become familiar with them. Small entities would be able to take advantage of any such period.

[131] In this regard, in Part III of this release, we solicit comment on the availability of technology to complete Form D online and whether public companies should be phased in to mandated electronic Form D filing sooner than private companies (presumably, many of the small entities that would file Form D would be private companies).

• How to quantify the impact of the proposed amendments.

We ask those submitting comments to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and will be placed in the same public file as comments on the proposed amendments themselves.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[132] a rule is ''major'' if it has resulted, or is likely to result in:

• An annual effect on the 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.

In connection with this analysis, we solicit comment and empirical data on:

• The potential effect of the proposals on the U.S. economy on an annual basis;

• Any potential increase in costs or prices for consumers or individual industries resulting from the proposals; and

• Any potential effect of the proposals on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing the amendments to Rules 100, 101, 104, 201, and 202 of Regulation S–T, Securities Act Rules 502 and 503 and the description and content of Securities Act Form D under the authority in sections 2(a), 3(b), 4(2), 19(a), 19(d), and 28 of the Securities Act,[133] sections 3(b), 23(a), and 35A of the Exchange Act,[134] section 319(a) of the Trust Indenture Act,[135] and section 38 of the Investment Company Act.[136]

List of Subjects in 17 CFR Parts 230, 232 and 239

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

For the reasons set out in the preamble, we propose to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

[132] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[133] 15 U.S.C. 77b(a), 77c(b), 77d(2), 77s(a), 77s(d), and 77z–3.

[134] 15 U.S.C. 78c(b), 78w(a), and 78*ll.*

[135] 15 U.S.C. 77sss(a).

[136] 15 U.S.C. 80a–37.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The general authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.502 by revising paragraph (c) to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising; *Provided, however,* that publication by an issuer of a notice in accordance with § 230.135c or filing with the Commission by an issuer of a notice of sales on Form D (17 CFR 239.500) in which the issuer has made a good faith and reasonable attempt to comply with the requirements of such form, shall not be deemed to constitute general solicitation or general advertising for purposes of this section; *Provided further,* that, if the requirements of § 230.135e are satisfied, providing any journalist with access to press conferences held outside of the United States, to meetings with issuer or selling security holder representatives conducted outside of the United States, or to written press-related materials released outside the United States, at or in which a present or proposed offering of securities is discussed, will not be deemed to constitute general solicitation or general advertising for purposes of this section.

* * * * *

3. Revise § 230.503 to read as follows:

§ 230.503 Filing of notice of sales.

(a) *When notice of sales on Form D must be filed.* (1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 must file with the Commission a notice of sales on Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a mistake of fact in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs in the following only:

(A) An issuer's revenues,

(B) The amount of securities sold in the offering,

(C) The total offering amount, if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%,

(D) The number of accredited investors who have invested in the offering,

(E) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or

(F) In offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

(iii) In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the notice of sales on Form D or the most recent amendment to the notice of sales on Form D.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

4. The general authority citation for Part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll(d), 80a–8, 80a–29, 80a–30, and 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

5. Amend § 232.100 by revising paragraph (a) to read as follows:

§ 232.100 Persons and entities subject to mandated electronic filing.

(a) Registrants and other entities whose filings are subject to review by the Division of Corporation Finance;

* * * * *

6. Amend § 232.101 by:

a. Removing the word ''and'' at the end of paragraph (a)(1)(xi);

b. Removing the period and adding ''and'' at the end of paragraph (a)(1)(xii);

c. Adding paragraph (a)(1)(xiii); and

d. Removing '', Regulation D (§§ 230.501–230.506 of this chapter)'' from paragraph (c)(6).

The addition reads as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(xiii) Form D (§ 239.500 of this chapter).

* * * * *

7. Amend § 232.104 by revising paragraph (a) to read as follows:

§ 232.104 Unofficial PDF copies included in an electronic submission.

(a) An electronic submission, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter) or a Form D (§ 239.500 of this chapter), may include one unofficial PDF copy of each electronic document contained within that submission, tagged in the format required by the EDGAR Filer Manual.

* * * * *

8. Amend § 232.201 by revising paragraph (a) introductory text to read as follows:

§ 232.201 Temporary hardship exemption.

(a) If an electronic filer experiences unanticipated technical difficulties preventing the timely preparation and submission of an electronic filing, other than a Form 3 (§ 249.103 of this chapter), a Form 4 (§ 249.104 of this chapter), a Form 5 (§ 249.105 of this chapter), a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter), a Form TA–1 (§ 249.100 of this chapter), a Form TA–2 (§ 249.102 of this chapter), a Form TA–W (§ 249.101 of this chapter) or a Form D (§ 239.500 of this chapter), the electronic filer may file the subject filing, under cover of Form TH (§§ 239.65, 249.447, 269.10 and 274.404 of this chapter), in paper format no later than one business day after the date on which the filing was to be made.

* * * * *

9. Amend § 232.202 by revising paragraph (a) introductory text to read as follows:

§ 232.202 Continuing hardship exemption.

(a) An electronic filer may apply in writing for a continuing hardship exemption if all or part of a filing or group of filings, other than a Form ID (§§ 239.63, 249.446, 269.7 and 274.402 of this chapter) or a Form D (§ 239.500 of this chapter), otherwise to be filed in electronic format cannot be so filed without undue burden or expense. Such written application shall be made at least ten business days prior to the required due date of the filing(s) or the proposed filing date, as appropriate, or within such shorter period as may be permitted. The written application shall contain the information set forth in paragraph (b) of this section.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

10. The general authority citation for Part 239 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78j, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 78mm, 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.

* * * * *

11. Revise § 239.500 to read as follows:

§ 239.500 Form D, notice of sales of securities under Regulation D and section 4(6) of the Securities Act of 1933.

(a) *When notice of sales on Form D must be filed.* (1) An issuer offering or selling securities in reliance on § 230.504, § 230.505, or § 230.506 of this chapter or section 4(6) of the Securities Act of 1933 must file with the Commission a notice of sales on Form D (17 CFR 239.500) for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering.

(2) An issuer may file an amendment to a previously filed notice of sales on Form D at any time.

(3) An issuer must file an amendment to a previously filed notice of sales on Form D for an offering:

(i) To correct a mistake of fact in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake;

(ii) To reflect a change in the information provided in the previously filed notice of sales on Form D, as soon as practicable after the change, except that no amendment is required to reflect a change that occurs after the offering terminates or a change that occurs in the following only:

(A) An issuer's revenues,

(B) The amount of securities sold in the offering,

(C) The total offering amount, if the change, together with all other changes in that amount since the previously filed notice of sales on Form D, does not result in an increase of more than 10%,

(D) The number of accredited investors who have invested in the offering,

(E) The number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or

(F) In offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position; and

(iii) In offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination date since the later of the filing of the notice of sales on Form D or the most recent amendment to the notice of sales on Form D.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

(b) *How notice of sales on Form D must be filed and signed.* (1) A notice of sales on Form D must be filed with the Commission in electronic format by means of the Commission's Electronic Data Gathering Analysis and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S–T (17 CFR Part 232).

(2) Every notice of sales on Form D must be signed by a person duly authorized by the issuer.

12. Revise Form D (referenced in § 239.500) to read as follows:

Note. The text of Form D does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8010–01–P

Form D Notice of Exempt Offering of Securities

Form D

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM D

NOTICE OF EXEMPT OFFERING OF SECURITIES

Intentional misstatements or omissions of fact constitute federal criminal violations. See 18 U.S.C. 1001.

You must follow the accompanying instructions in submitting this notice.

---

1. Issuer's Identity

Name of Issuer _____

Previous Name(s) _____ ☐ None

Jurisdiction of Incorporation/Organization (dropdown)

Entity Type (dropdown)

Year of Incorporation/Organization (dropdown giving last five years and "Before 2002")

SEC File No. _____ ☐ None

Add Issuer
(for each additional issuer, a signature block will appear)

2. Principal Place of Business and Contact Information

Street Address _____

City _____ **State/Province** __ (dropdown)

Zip/Postal Code _____ **Country** ☐ **U.S.** ☐ **Canada** ☐ **Other**
(dropdown of countries if answer is "Other" than U.S. or Canada) _____

Telephone Number _____

3. Related Persons

Full Name	Relationship	Address
_____	[ ] Executive Officer [ ] Director [ ] Promoter	_____

Add Related Person

4. **Industry Group (dropdown)**

5. **Revenue Range**
[ ] No Revenues
[ ] $1 - $1,000,000
[ ] $1,000,001 - $5,000,000
[ ] $5,000,001 - $25,000,000
[ ] $25,000,001 - $100,000,000
[ ] Over $100,000,000
[ ] Decline to Disclose
[ ] Not Applicable

6. **Federal Exemption(s) and Exclusion(s) Claimed (select all that apply)**
[ ] Rule 504(b)(1) (not (i), (ii) or (iii))
[ ] Rule 504(b)(1)(i)
[ ] Rule 504(b)(1)(ii)
[ ] Rule 504(b)(1)(iii)
[ ] Rule 505
[ ] Rule 506
[ ] Rule 507
[ ] Securities Act Section 4(6)
[ ] Investment Company Act Section 3(c)[1]

7. **Type of Filing/Notice Recipient(s)**
[ ] New Notice Directed to [Insert dropdown checkbox list allowing filers to select "SEC," "All States" or any number of individual States, with any selected item resulting in another dropdown requiring filer to provide "Date of First Sale" or select "First Sale Yet to Occur"]
[ ] Amendment Directed to [Insert dropdown checkbox list allowing filer to select "SEC," "All States" or any number of individual States]

8. **Duration of Offering**
Does the issuer intend this offering to last more than one year? ☐ Yes ☐ No

9. **Type(s) of Securities Offered (select all that apply)**
[ ] Equity
[ ] Debt
[ ] Option, Warrant or Other Right to Acquire Another Security
[ ] Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security

[1] If the filer selects the Investment Company Act Section 3(c) checkbox, a pop-up will require the filer to select all claimed exclusions from the definition of "investment company" from among checkboxes labeled Section 3(c)(1) through Section 3(c)(14) (except for Section 3(c)(8)).

[ ] Pooled Investment Fund Interests
[ ] Tenant-in-Common Securities
[ ] Mineral Property Securities
[ ] Other (Describe: _____)

10. Business Combination Transaction

Is this offering being made in connection with a business combination transaction, such as a merger, acquisition or exchange offer? ☐ Yes ☐ No

11. Minimum Investment

Minimum investment accepted from any investor $_____

12. Sales Compensation

Individual Recipient	CRD Number	Associated Broker or Dealer	Street Address	State(s) of Solicitation
				(dropdown)

Add Recipient

13. Offering and Sales Amounts

Total Offering Amount $_____ or [ ] Indefinite
Total Amount Sold $_____
Total Remaining to be Sold $[auto subtract]_____ or [ ] Indefinite

14. Investors

[ ] Select if securities in the offering have been or may be sold to persons who do not qualify as accredited investors and enter the number of such non-accredited investors who already have invested in the offering: _____[2]

Enter the number of accredited investors who already have invested: _____

Signature and Submission

Terms of Submission: Please verify the information you have entered and review the Terms of Submission below before signing and clicking SUBMIT below to file this notice.

Printable Version

[Material in this box will be placed in scrollbox online.]
In submitting this notice, each issuer named above is :

- Notifying the SEC and/or each State in which this notice is filed of the offering of securities described and undertaking to furnish them, upon written request, the information furnished to offerees.

[2] If the filer selects Rule 505 or Rule 506 in Item 6 above and enters a number above 35 in this field, a pop-up will warn that only 35 non-accredited investors are permitted in this type of offering and require the filer to select "OK" before proceeding.

- Irrevocably appointing each of the Secretary of the SEC and, the Securities Administrator or other legally designated officer of the State in which the issuer maintains its principal place of business and any State in which this notice is filed, as its agents for service of process, and agreeing that these persons may accept service on its behalf, of any notice, process or pleading, and further agreeing that such service may be made by registered or certified mail, in any Federal or state action, administrative proceeding, or arbitration brought against it in any place subject to the jurisdiction of the United States, if the action, proceeding or arbitration (a) arises out of any activity in connection with the offering of securities that is the subject of this notice, and (b) is founded, directly or indirectly, upon the provisions of: (i) the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, or the Investment Advisers Act of 1940, or any rule or regulation under any of these statutes, or (ii) the laws of the State in which the issuer maintains its principal place of business or any State in which this notice is filed.
- Certifying that the issuer is not disqualified from relying on any Regulation D exemption it has identified in Item 6 above for one of the reasons stated in Rule 502(e).

Each issuer identified above has read this notice, knows the contents to be true, and has duly caused this notice to be signed on its behalf by the undersigned duly authorized person.

Signature

Signature: _____ Title: _____ Date:_____

By clicking on SUBMIT below, you are agreeing to the Terms of Submission above.

SUBMIT

OMB Approval
OMB No. 3235-0076
Expires:_____ __, 20
Estimated Average Burden Hours per Response: 4.00

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Instructions for Submitting Notice

General Instructions

- **Who must file:**
  - Each issuer of securities that sells its securities in reliance on an exemption provided in Regulation D or Section 4(6) of the Securities Act of 1933 must file this notice containing the information requested with the U.S. Securities and Exchange Commission (SEC) and with the state(s) requiring it. If more than one issuer has sold its securities in the same transaction, all issuers should be identified in one filing with the SEC, but some states may require a separate filing for each issuer or security sold.
- **When to file:**
  - An issuer must file a new notice with the SEC for each new offering of securities no later than 15 calendar days after the first sale of securities in the offering. An issuer may file the notice at any time before that if it has determined to make the offering. An issuer must file a new notice with each state that requires it at the time set by the state. For state filing requirements, go to www.NASAA.org. A mandatory capital commitment call does not constitute a new offering, but is made under the original offering, so no new Form D filing is required.
  - An issuer may file an amendment to a previously filed notice at any time.
  - An issuer must file an amendment to a previously filed notice for an offering:
    - to correct a mistake of fact in the previously filed notice, as soon as practicable after discovery of the mistake;
    - to reflect a change in the information provided in the previously filed notice, except as provided below, as soon as practicable after the change; and
    - in offerings that last more than a year, annually, between January 1 and February 14, to reflect information about the offering on or before its termination since the later of the filing of the Form D or the latest amendment to the Form D.
- **When filing is not required:** An issuer is not required to file an amendment to a previously filed notice to reflect a change in an offering that occurs after the offering terminates or a change that occurs in the following only:
  - an issuer's revenues,
  - the amount of securities sold in the offering,
  - the total offering amount, if the change, together with all other changes in that amount since the previously filed notice, does not result in an increase of more than 10%,
  - the number of accredited investors who have invested in the offering,
  - the number of non-accredited investors who have invested in the offering, as long as the change does not increase the number to more than 35, or
  - in offerings that last more than a year, information on related persons if the change was due solely to the filling of a vacant position upon the death or departure in the ordinary course of business of the previous occupant of the position.

- **Amendment Content:** An issuer that files an amendment to a previously filed Form D must provide current information in response to all items of Form D regardless of why the amendment is filed.
- **How to File:** Issuers must file this notice with the SEC using the process made available at [insert linked Web address for filing]. For state filing requirements, go to www.NASAA.org.
- **Filing Fee:** There is no federal filing fee. For information on state filing fees, go to www.NASAA.org .
- **Confirmation of Filing:** The SEC will send an e-mail message confirming receipt of this notice to the e-mail address associated with the password used to submit the notice.
- **Definitions of Terms:** Terms used but not defined in this form that are defined in Regulation D or Rule 405 under the Securities Act of 1933, 17 C.F.R. §§ 230.501 et seq. and 230.405, have the meanings given to them in Regulation D and Rule 405.

Item-by-Item Instructions

1. **Issuer's Identity.** Identify each legal entity issuing any securities being reported as being offered by entering its full name, any previous name used within the past five years, its jurisdiction and year of incorporation or other organization, its type of legal entity, and its SEC file number if a reporting company under the Securities Exchange Act of 1934. If more than one entity is issuing the securities, identify a primary issuer in the fields shown and add additional issuers by clicking on "Add Issuer."

2. **Principal Place of Business and Contact Information.** Enter a full street address of the issuer's principal place of business. Post office box numbers and "In care of" addresses are not acceptable. Enter a contact telephone number for the issuer. Where more than one issuer is named, enter information only for one primary issuer.

3. **Related Persons.** Enter the full name and address of each person having the specified relationships with any issuer and identify each relationship:
   - Each executive officer and director of the issuer and person performing similar functions for the issuer, such as general and managing partners of partnerships and managing members of limited liability companies; and
   - Each person who has functioned as a promoter of the issuer within the past five years of the later of the first sale of securities or the date upon which the Form D filing was required to be made.

4. **Industry Group.** Select the issuer's industry group. If the issuer or issuers can be categorized in more than one industry group, select the industry group that most accurately reflects the use of the bulk of the proceeds of the offering. For purposes of this filing, use the ordinary dictionary and commonly understood meanings of the terms identifying the industry group.

5. **Revenue Range.** Enter the revenue range of the issuer or of all the issuers for the most recently completed fiscal year available, or, if not in existence for a fiscal year, revenue range to date. Domestic SEC reporting companies should state revenues in accordance with Regulation S-X under the Securities Exchange Act of 1934. Domestic non-

reporting companies should state revenues in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Foreign issuers should calculate revenues in U.S. dollars and state them in accordance with U.S. Generally Accepted Accounting Principles, home country GAAP or International Financial Reporting Standards. If the issuer(s) declines to disclose its revenue range, enter "Decline to Disclose." If the business is intended to produce revenue but did not, enter "No Revenues." If the business is not intended to produce revenue (for example, the business seeks asset appreciation), enter "Not Applicable."

6. **Federal Exemption(s) and Exclusion(s) Claimed.** Select the appropriate checkbox(es) to designate the provision(s) being claimed to exempt the offering and resulting sales from the federal registration requirements under the Securities Act of 1933 and, if applicable, to exclude the issuer from the definition of "investment company" under the Investment Company Act of 1940. Select "Rule 504(b)(1) (not (i), (ii) or (iii))" only if the issuer is relying on the exemption in the introductory sentence of Rule 504 for offers and sales that satisfy all the terms and conditions of Rules 501 and 502(a), (c) and (d).

7. **Type of Filing/Choosing Notice Recipient**. Indicate whether the issuer is filing a new notice and/or an amendment to a notice that was filed previously. Also select the appropriate checkbox(es) to choose whether you are directing the notice to the SEC only or to the SEC and the State(s) you select. If this is a new notice to the SEC or any recipient State, enter the date of the first sale of securities in the offering with respect to that recipient or indicate that the first sale has "Yet to Occur" in the pop-up checkbox(es) that appear. The person submitting this notice is responsible for confirming State requirements [link to NASAA Web site] to determine whether choosing to direct this notice to a State by selecting a checkbox in this item satisfies any applicable filing requirements of that State and whether a separate State filing or payment of a State filing fee is required.

8. **Duration of Offering.** Indicate whether the issuer intends the offering to last for more than one year.

9. **Type(s) of Securities Offered.** Select the appropriate checkbox(es) for each of the types of securities offered the offering of which is the subject of one or more exemptions specified in Item 6 and as to which this Form D is filed (if, however, such a security is debt convertible into another security, the issuer should check the box(es) for "Debt" and any other appropriate types of securities except for "Equity"). If, for example, an issuer specified an exemption in Item 6 and filed this Form D as to the offering of both immediately exercisable options and their underlying common stock, the issuer should check the boxes for "Option, Warrant or Other Right to Acquire Another Security" and "Security to be Acquired Upon Exercise of Option, Warrant or Other Right to Acquire Security." If, however, the issuer specified an exemption in Item 6 and filed this Form D as to the offering of options exercisable over a year after purchase but not the offering of the underlying common stock, the issuer should check only the box for "Option, Warrant or Other Right to Acquire Another Security." For purposes of this filing, use the ordinary dictionary and commonly understood meanings of these categories. For instance, equity securities would be securities that represent proportional ownership in an issuer, such as ordinary common and preferred stock of corporations and partnership and limited

liability company interests; debt securities would be securities representing money loaned to an issuer that must be repaid to the investor at a later date; pooled investment fund interests would be securities that represent ownership interests in a pooled or collective investment vehicle; tenant-in-common securities would be securities that include an undivided fractional interest in real property other than a mineral property; and mineral property securities would be securities that include an undivided interest in an oil, gas or other mineral property.

10. **Business Combination Transaction.** Indicate whether or not the offering is being made in connection with a business combination, such as a merger, acquisition, exchange offer or other transaction of the type described in paragraph (a)(1), (2) or (3) of Rule 145 under the Securities Act of 1933. Do not include an exchange (tender) offer for a class of the issuer's own securities.

11. **Minimum Investment.** Enter the minimum dollar amount of investment that will be accepted from any investor. If the offering provides a minimum investment amount that can be waived, provide the lowest amount below which a waiver will not be granted for any person. If there is no minimum investment amount, enter "0."

12. **Sales Compensation.** Enter the requested information for each individual who has been or will be paid directly or indirectly any commission or other similar compensation in connection with sales of securities in the offering, including finders. In addition, in the last column, enter the State(s) in which the individual has solicited or intends to solicit investors. If more than five individuals to be listed are associated persons of the same broker or dealer, enter only the name of the broker or dealer, its street address, and the State(s) in which its associated persons have solicited or intend to solicit investors.

13. **Offering and Sales Amounts**. Enter the dollar amount of securities being offered under a claim of federal exemption identified in Item 6 above. Also enter the dollar amount of securities sold in the offering as of the filing date. Select the "Indefinite" box if the amount being offered is undetermined or cannot be calculated at the present time, such as if the offering includes securities to be acquired upon the exercise or exchange of other securities or property and the exercise price or exchange value is not currently known or knowable. If an amount is definite but difficult to calculate without unreasonable effort or expense, provide a good faith estimate. The total offering and sold amounts should include all cash and other consideration to be received for the securities, including cash to be paid in the future under mandatory capital commitments. In offerings for consideration other than cash, the amounts entered should be based on the issuer's good faith valuation of the consideration.

14. **Investors.** Indicate whether securities in the offering have been or may be sold to persons who do not qualify as accredited investors as defined in Rule 501(a) and provide the number of such investors who have already invested in the offering and the number of accredited investors who have already invested.

Signature and Submission. An individual who is a duly authorized representative of each issuer identified must sign, date and submit this notice for the issuer. The capacity in which the individual signed should be set forth in the "Title" space.

Entity Type (for Item 1)

[ ] Corporation
[ ] Limited Partnership
[ ] Limited Liability Company
[ ] General Partnership
[ ] Business Trust
[ ] Other (Specify)

Industry Groups (for Item 4)

[ ] Agriculture

Banking & Financial Services

[ ] Commercial Banking
[ ] Insurance
[ ] Investing
[ ] Investment Banking
[ ] Pooled Investment Fund*
  [ ] Hedge Fund
  [ ] Private Equity Fund
  [ ] Venture Capital Fund
  [ ] Other Investment Fund
[ ] Other

Business Services

[ ] Accounting & Consulting
[ ] Advertising
[ ] Employee Benefits & Compensation
[ ] Environmental Services
[ ] Human Resources
[ ] Legal Services
[ ] Marketing
[ ] Public Relations
[ ] Other

Energy

[ ] Electric Utilities
[ ] Energy Conservation
[ ] Oil & Gas
[ ] Other

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* If the Pooled Investment Fund checkbox is selected, pop-ups also will require the filer to select one of the lower level checkboxes designating a specific type of investment fund and select a "yes" or "no" checkbox as to whether the filer is registered as an investment company under the Investment Company Act of 1940.

Health Care

[ ] Biotechnology
[ ] Health Insurance
[ ] Hospitals & Physicians
[ ] Pharmaceuticals
[ ] Other

[ ] Manufacturing

Real Estate

[ ] Commercial
[ ] Construction
[ ] REITS & Finance
[ ] Residential
[ ] Other

[ ] Retailing

[ ] Restaurants

Technology

[ ] Computers
[ ] Telecommunications
[ ] Other

Travel

[ ] Airlines & Airports
[ ] Lodging & Conventions
[ ] Tourism & Travel Services
[ ] Other

[ ] Other

Dated: June 29, 2007.

By the Commission.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–13018 Filed 7–6–07; 8:45 am]

BILLING CODE 8010–01–C

Federal Register

Monday,
July 9, 2007

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 070703226–7226–01; I.D. 062206A]

RIN 0648–AT80

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the U.S. Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received a request from the U.S. Navy for an authorization under the Marine Mammal Protection Act (MMPA) to take marine mammals, by harassment, incidental to conducting operations of Surveillance Towed Array Sensor System (SURTASS) Low Frequency Active (LFA) sonar from August 16, 2007, through August 15, 2012. By this document, NMFS is proposing regulations to govern that take. In order to issue Letters of Authorization (LOAs) and final regulations governing the take, NMFS must determine that the taking will have a negligible impact on the affected species or stocks of marine mammals. NMFS regulations must set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat. NMFS invites comment on the proposed regulations and findings.

DATES: Comments and information must be received by July 24, 2007.

ADDRESSES: You may submit comments on the application and proposed rule, using the identifier 062206A, by any of the following methods:

- E-mail: *PR1.062306A@noaa.gov*.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments should be addressed to: P. Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225.

A copy of the application, containing a list of references used in this document, and other documents cited herein, may be obtained by writing to the above address, by telephoning one of the contacts listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*.

A copy of the Navy's Final Supplemental Environmental Impact Statement (Final SEIS) and the Final Environmental Impact Statement (Final EIS) can be downloaded at: *http://www.surtass-lfa-eis.com*. Documents cited in this proposed rule may also be viewed, by appointment, during regular business hours at this address.

FOR FURTHER INFORMATION CONTACT: Kenneth Hollingshead, NMFS, at 301–713–2289, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a military readiness activity if certain findings are made and regulations are issued.

An authorization may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the affected species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for certain subsistence uses. The Secretary must also issue regulations setting forth the permissible methods of taking and other means of effecting the least practicable adverse impact, including a consideration of personnel safety, the practicality of implementation of any mitigation, and the impact on the effectiveness of the subject military readiness activity, and the requirements pertaining to the monitoring and reporting of such taking. NMFS authorizes the incidental take through ''letters of authorization'' (LOAs) (50 CFR 216.106)

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' For the purposes of ''military readiness activities'' harassment is defined as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].

The term ''military readiness activity'' is defined in Public Law 107–314 (16 U.S.C. 703 note) to include all training and operations of the Armed Forces that relate to combat; and the adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use. The term expressly does not include the routine operation of installation operating support functions, such as military offices, military exchanges, commissaries, water treatment facilities, storage facilities, schools, housing, motor pools, laundries, morale, welfare and recreation activities, shops, and mess halls; the operation of industrial activities; or the construction or demolition of facilities used for a military readiness activity.

Summary of Request

On May 12, 2006, NMFS received an application from the U.S. Navy requesting an authorization under section 101(a)(5)(A) of the MMPA for the taking of marine mammals incidental to deploying the SURTASS LFA sonar system for military readiness activities to include training, testing and routine military operations within the world's oceans (except for Arctic and Antarctic waters, coastal regions as specified in this proposed rule, and offshore biologically important areas (OBIAs)) for a period of time not to exceed 5 years. According to the Navy application, SURTASS LFA sonar would operate a maximum of 4 ship systems in areas of the Pacific, Atlantic, and Indian oceans and the Mediterranean Sea in which SURTASS LFA sonar could potentially operate.

The purpose of SURTASS LFA sonar is to provide the Navy with a reliable and dependable system for long-range detection of quieter, harder-to-find submarines. Low-frequency (LF) sound travels in seawater for greater distances than higher frequency sound used by most other active sonars. According to the Navy, the SURTASS LFA sonar system would meet the Navy's need for improved detection and tracking of new-generation submarines at a longer range. This would maximize the opportunity for U.S. armed forces to safely react to, and defend against, potential submarine threats while remaining a safe distance beyond a submarine's effective weapons range.

NMFS and the Navy have determined that the Navy's SURTASS LFA sonar

testing and training operations constitute a military readiness activity because those activities constitute ''training and operations of the Armed Forces that relate to combat'' and constitute ''adequate and realistic testing of military equipment, vehicles, weapons and sensors for proper operation and suitability for combat use.''

NMFS' current regulations governing takings incidental to SURTASS LFA sonar activities and the current LOA expire on August 16, 2007.

On September 28, 2006 (71 FR 56965), NMFS published a Notice of Receipt of Application on the U.S. Navy application and invited interested persons to submit comments, information, and suggestions concerning the application and the structure and contents of regulations. These comments were considered in the development of this proposed rule.

Prior Litigation, Involving LFA Sonar

On August 7, 2002, the Natural Resources Defense Council, the U.S. Humane Society and four other plaintiffs filed suit against the Navy and NMFS over SURTASS LFA sonar use and permitting. The U.S. District Court for the Northern District of California (Court) issued its Opinion and Order on the parties' motions for summary judgment in the SURTASS LFA litigation on August 26, 2003. The Court found deficiencies in Navy and NMFS compliance with the MMPA, Endangered Species Act (ESA), and National Environmental Policy Act (NEPA). The Court determined that an injunction was warranted but did not order a complete ban on the use of SURTASS LFA sonar. Specifically, the Court found that a total ban on the employment of SURTASS LFA would interfere with the Navy's ability to ensure military readiness and to protect those serving in the military against the threat posed by hostile submarines. The Court directed the parties to meet and confer on the scope of a tailored permanent injunction, which would allow for continued operation of the system with additional mitigation measures. This mediation session occurred on September 25, 2003 in San Francisco. On October 14, 2003, the Court issued a Stipulation Regarding Permanent Injunction for the operations of SURTASS LFA sonar from both *R/V Cory Chouest* and USNS IMPECCABLE (T-AGOS 23) in stipulated portions of the Northwest Pacific/Philippine Sea, Sea of Japan, East China Sea, and South China Sea with certain year-round and seasonal restrictions. On July 7, 2005, the Court amended the injunction at Navy's request to expand the potential areas of operation based on real-world contingencies. The Navy's Final SEIS was prepared in response to the Court's ruling on the motion for preliminary injunction, addressing the concerns identified by the Court, to provide additional information regarding the environment that could potentially be affected by the SURTASS LFA sonar systems, and to provide additional information related to mitigation.

A detailed description of the operations is contained in the Navy's application (DON, 2006) and the Final SEIS (DON, 2007) which are available upon request (see ADDRESSES).

Description of the Activity

The SURTASS LFA sonar system is a long-range, LF sonar (between 100 and 500 Hertz (Hz)) that has both active and passive components. It does not have to rely on detection of noise generated by the target. The active component of the system is a set of up to 18 LF acoustic transmitting source elements (called projectors) suspended from a cable underneath a ship. The projectors are devices that transform electrical energy to mechanical energy by setting up vibrations, or pressure disturbances, with the water to produce the pulse or ping. The SURTASS LFA sonar acoustic transmission is an omnidirectional (full 360 degrees) beam in the horizontal. A narrow vertical beamwidth can be steered above or below the horizontal. The source level (SL) of an individual projector in the SURTASS LFA sonar array is approximately 215 decibels (dB), and because of the physics involved in beam forming and transmission loss processes, the array can never have a sound pressure level (SPL) higher than the SPL of an individual projector. The expected water depth at the center of the array is 400 ft (122 m) and the expected minimum water depth at which the SURTASS LFA vessel will operate is 200 m (656.2 ft).

The typical SURTASS LFA sonar signal is not a constant tone, but rather a transmission of various signal types that vary in frequency and duration (including continuous wave (CW) and frequency-modulated (FM) signals). A complete sequence of sound transmissions is referred to by the Navy as a ''ping'' and can last as short as 6 seconds (sec) to as long as 100 sec, normally with no more than 10 sec at any single frequency. The time between pings is typically from 6 to 15 minutes. Average duty cycle (ratio of sound ''on'' time to total time) is less than 20 percent; however, the duty cycle, based on historical operating parameters, is normally 7.5 percent.

The passive, or listening, component of the system is SURTASS, which detects returning echoes from submerged objects, such as submarines, through the use of hydrophones. The hydrophones are mounted on a horizontal array that is towed behind the ship. The SURTASS LFA sonar ship maintains a minimum speed of 3.0 knots (5.6 km/hr; 3.4 mi/hr) in order to keep the array deployed.

Because of uncertainties in the world's political climate, a detailed account of future operating locations and conditions cannot be predicted. However, for analytical purposes, a nominal annual deployment schedule and operational concept have been developed, based on current LFA operations since January 2003 and projected Fleet requirements. The Navy anticipates that a normal SURTASS LFA sonar deployment schedule for a single vessel would involve about 294 days/year at sea. A normal at-sea mission would occur over a 49–day period, with 40 days of operations and 9 days transit. Based on a 7.5–percent duty cycle, the system would actually be transmitting for a maximum of 72 hours per 49–day mission and 432 hours per year for each SURTASS LFA sonar system in operation. (In actuality however, the combined number of transmission hours for LFA sonar did not exceed 174 hours between August 16, 2002, and August 15, 2006 (Table 4 in the Navy's Comprehensive Report)).

Annually, each vessel will be expected to spend approximately 54 days in transit and 240 days performing active operations. Between missions, an estimated 71 days will be spent in port for upkeep and repair. The nominal SURTASS LFA Sonar annual and 49–day deployment schedule for a single ship can be seen in Table 2–1 of the Final SEIS.

The two existing operational LFA systems are installed on two SURTASS vessels: *R/V Cory Chouest* and USNS IMPECCABLE (T-AGOS 23). To meet future undersea warfare requirements, the Navy is working to develop and introduce a compact active system deployable from existing, smaller SURTASS Swath-P ships. This smaller system is known as Compact LFA, or CLFA. CLFA consists of smaller, lighter-weight source elements than the current LFA system, and will be compact enough to be installed on the existing SURTASS platforms, VICTORIOUS Class (T-AGOS 19) vessels. The Navy indicates that the operational characteristics of the compact system are comparable to the existing LFA

systems as presented in Subchapter 2.1 of the Final EIS and Final SEIS. Consequently, the potential impacts from CLFA will be similar to the effects from the existing SURTASS LFA systems. Three additional CLFA systems are planned for installation on T-AGOS 20, 21, and 22. With the *R/V Cory Chouest* retiring in FY 2008, the Navy estimates that there will be two systems in FY 2008 and FY 2009, 3 in FY 2010 and 4 systems in FY 2011 and FY 20012. At no point are there expected to be more than four systems in use, and thus this proposed rule analyzes the impacts on marine mammals due to the deployment of up to three LFA sonar systems through FY 2010 and four systems in FY 2011 and FY 2012.

The SURTASS LFA sonar vessel will operate independently of, or in conjunction with, other naval air, surface or submarine assets. The vessel will generally travel in straight lines or racetrack patterns depending on the operational scenario.

Description of Acoustic Propagation

The following is a very basic and generic description of the propagation of LFA sonar signals in the ocean and is provided to facilitate understanding of this action. However, because the actual physics governing the propagation of SURTASS LFA sound signals is extremely complex and dependent on numerous in-situ environmental factors, the following is for illustrative purposes only.

In actual SURTASS LFA sonar operations, the crew of the SURTASS LFA sonar platform will measure oceanic conditions (such as sea water temperature and salinity versus depth) prior to and during transmissions and at least every 12 hours, but more frequently when meteorological or oceanographic conditions change. These technicians will then use U.S. Navy sonar propagation models to predict and/or update sound propagation characteristics. The short time periods between actual environmental observations and the subsequent model runs further enhance the accuracy of these predictions. Fundamentally, these models are used to determine what path the LF signal will take as it travels through the ocean and how strong the sound signal will be at given ranges along a particular transmission path.

Accurately determining the speed at which sound travels through the water is critical to predicting the path that sound will take. The speed of sound in seawater varies directly with depth, temperature, and salinity. Thus, an increase in depth or temperature or, to a lesser degree, salinity, will increase the speed of sound in seawater. However, the oceans are not homogeneous, and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine sound speed change with depth, and in the case of temperature and salinity, season, geographic location, and locally, with time of day. After accurately measuring these factors, mathematical formulas or models can be used to generate a plot of sound speed versus water depth. This type of plot is generally referred to as a sound speed profile (SSP).

Near the surface (variable within the top 1000 ft (305 m)), ocean near-surface water mixing results in a fairly constant temperature and salinity. Below the mixed layer, sea temperature drops rapidly in an area referred to as the thermocline. In this region, temperature influences the SSP, and speed decreases with depth because of the large decrease in temperature (sound speed decreases with decreasing temperature). Finally, beneath the thermocline, the temperature becomes fairly uniform and increasing pressure causes the SSP to increase with depth.

One way to envision sound traveling though the sea is to think of the sound as ''rays.'' As these rays travel though the sea, their direction of travel changes as a result of speed changes, bending, or refracting, toward areas of lower speed and away from areas of higher speed. Depending on environmental conditions, refraction can either be toward or away from the surface. Additionally, the rays can be reflected or absorbed when they encounter the surface or the bottom. For example, under certain environmental conditions, near-surface sound rays can repeatedly be refracted upward and reflected off the surface and thus become trapped in a duct.

Some of the more prevalent acoustic propagation paths in the ocean include: acoustic ducting; convergence zone (CZ); bottom interaction; and shallow-water propagation.

Acoustic Ducting

There are two types of acoustic ducting: surface ducts and sound channels.

Surface Ducts

As previously discussed, the top layer of the ocean is normally well mixed and has relatively constant temperature and salinity. Because of the effect of depth (pressure), surface layers exhibit a slightly positive sound speed gradient (that is, sound speed increases with depth). Thus, sound transmitted within this layer is refracted upward toward the surface. If sufficient energy is subsequently reflected downward from the surface, the sound can become ''trapped'' by a series of repeated upward refractions and downward reflections. Under these conditions, a surface duct, or surface channel, is said to exist. Sound trapped in a surface duct can travel for relatively long distances with its maximum range of propagation dependent on the specifics of the SSP, the frequency of the sound, and the reflective characteristics of the surface. As a general rule, surface duct propagation will improve as the temperature uniformity and depth of the layer increase. For example, transmission is improved when cloudy, windy conditions create a well-mixed surface layer or in high-latitude midwinter conditions where the mixed layer extends to several hundred feet deep.

Sound Channels

Variation of sound speed, or velocity, with depth causes sound to travel in curved paths. A sound channel is a region in the water column where sound speed first decreases with depth to a minimum value, and then increases. Above the depth of minimum value, sound is refracted downward; below the depth of minimum value, sound is refracted upward. Thus, much of the sound starting in the channel is trapped, and any sound entering the channel from outside its boundaries is also trapped. This mode of propagation is called sound channel propagation. This propagation mode experiences the least transmission loss along the path, thus resulting in long-range transmission.

At low and middle latitudes, the deep sound channel axis varies from 1,970 to 3,940 ft (600 to 1,200 m) below the surface. It is deepest in the subtropics and comes to the surface in the high latitudes, where sound propagates in the surface layer. Because propagating sound waves do not interact with either the sea surface or seafloor, sound propagation in sound channels does not attenuate as rapidly as bottom- or surface-interacting paths. The most common sound channels used by SURTASS LFA sonar are convergence zones (CZs).

Convergence Zones

CZs are special cases of the sound-channel effect. When the surface layer is narrow or when sound rays are refracted downward, regions are created at or near the ocean surface where sound rays are focused, resulting in concentrated levels of high sounds. The existence of CZs depends on the SSP and the depth

of the water. Due to downward refraction at shorter ranges, sound rays leaving the near-surface region are refracted back to the surface because of the positive sound speed gradient produced by the greater pressure at deep ocean depths. These deep-refracted rays often become concentrated at or near the surface at some distance from the sound source through the combined effects of downward and upward refraction, thus causing a CZ. CZs may exist whenever the sound speed at the ocean bottom, or at a specific depth, exceeds the sound speed at the source depth. Depth excess, also called sound speed excess, is the difference between the bottom depth and the limiting, or critical depth.

CZs vary in range from approximately 18 to 36 nautical miles (nm) (33 to 67 km), depending upon the SSP. The width of the CZ is a result of complex interrelationships and cannot be correlated with any specific factor. In practice, however, the width of the CZ is usually on the order of 5 to 10 percent of the range. For optimum tactical performance, CZ propagation of SURTASS LFA signals is desired and expected in deep open ocean conditions.

Bottom Interaction

Reflections from the ocean bottom and refraction within the bottom can extend propagation ranges. For mid- to high-level frequency sonars (greater than 1,000 Hz), only minimal energy enters into the bottom; thus reflection is the predominant mechanism for energy return. However, at low frequencies, such as those used by the SURTASS LFA sonar source, significant sound energy can penetrate the ocean floor, and refraction within the seafloor, not reflection, dominates the energy return. Regardless of the actual transmission mode (reflection from the bottom or refraction within the bottom), this interaction is generally referred to as ''bottom-bounce'' transmission.

Major factors affecting bottom-bounce transmission include the sound frequency, water depth, angle of incidence, bottom composition, and bottom roughness. A flat ocean bottom produces the greatest accuracy in estimating range and bearing in the bottom-bounce mode.

For SURTASS LFA sonar transmissions between 100 and 500 Hz, bottom interaction would generally occur in areas of the ocean where depths are between approximately 200 m (660 ft) (average minimum water depth for SURTASS LFA sonar deployment) and 2,000 m (6,600 ft).

Shallow Water Propagation

In shallow water, propagation is usually characterized by multiple reflection paths off the sea floor and sea surface. Thus, most of the water column tends to become ensonified by these overlapping reflection paths. As LFA signals approach the shoreline, they will be affected by shoaling, experiencing high transmission losses through bottom and surface interactions. Therefore, LFA sonar would be less effective in shallow, coastal waters.

In summary, for the SURTASS LFA sonar signal in low- and mid-latitudes, the dominant propagation paths for LFA signals are CZ and bottom interaction (at depths <2000 m (6,600 ft)). In high-latitudes, surface ducting provides the best propagation. In most open ocean water, CZ propagation will be most prominent. The SURTASS LFA sonar signals will interact with the bottom, but due to high bottom and surface losses, SURTASS LFA sonar signals will not penetrate coastal waters with appreciable signal strengths.

Affected Marine Mammal Species

In its Final SEIS and Final EIS and application, the Navy excluded from incidental take consideration marine mammal species that do not inhabit the areas in which SURTASS LFA sonar would operate. Where data were not available or were insufficient for one species, comparable data for a related species were used. Because all species of baleen whales produce LF sounds, and anatomical evidence strongly suggests their inner ears are well adapted for LF hearing, all balaenopterid species are considered sensitive to LF sound and, therefore, at risk of harassment or injury from exposure to LF sounds. The twelve species of baleen whales that may be affected by SURTASS LFA sonar are blue, fin, minke, Bryde's, sei, humpback, North Atlantic right, North Pacific right, southern right, pygmy right, bowhead, and gray whales.

The odontocetes (toothed whales) that may be affected because they inhabit the deeper, offshore waters where SURTASS LFA sonar might operate include both the pelagic (oceanic) whales and dolphins and those coastal species that also occur in deep water including harbor porpoise, spectacled porpoise, beluga, *Stenella* spp., Risso's dolphin, rough-toothed dolphin, Fraser's dolphin, northern right-whale dolphin, southern right whale dolphin, short-beaked common dolphin, long-beaked common dolphin, very long-beaked common dolphin, *Lagenorhynchus* spp., *Cephalorhynchus* spp., bottlenose dolphin, Dall's porpoise, melon-headed whale, beaked whales (*Berardius* spp., *Hyperoodon* spp., *Mesoplodon* spp., Cuvier's beaked whale, Shepard's beaked whale, Longman's beaked whale), killer whale, false killer whale, pygmy killer whale , sperm whale, dwarf and pygmy sperm whales, and short-finned and long-finned pilot whales.

Potentially affected pinnipeds include hooded seal, harbor seal, spotted seal, ribbon seal, gray seal, elephant seal, Hawaiian monk seal, Mediterranean monk seal, northern fur seal, southern fur seal (*Arctocephalus* spp.), harp seal, Galapagos sea lion, Japanese sea lion, Steller sea lion, California sea lion, Australian sea lion, New Zealand sea lion, and South American sea lion.

A description of affected marine mammal species, their biology, and the criteria used to determine those species that have the potential for being taken by incidental harassment are provided and explained in detail in the Navy application and Final SEIS and, although not repeated here, are considered part of the NMFS' administrative record for this action. Additional information is available at the following URL: *http://www.nmfs.noaa.gov/pr/sars/*. Please refer to these documents for specific information on marine mammal species.

Effects on Marine Mammals

To understand the effects of LF noise on marine mammals, one must understand the fundamentals of underwater sound and how the SURTASS LFA sonar operates in the marine environment. This description was provided earlier in this document and also by the Navy in Appendix B to the Final EIS.

The effects of underwater noise on marine mammals are highly variable, and have been categorized by Richardson *et al.* (1995) as follows: (1) The noise may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the noise may be audible but not strong enough to elicit any overt behavioral response; (3) the noise may elicit behavioral reactions of variable conspicuousness and variable relevance to the well-being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (called habituation), or disturbance effects may persist (most likely with sounds that are

highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any human-made noise that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics, echolocation sounds of odontocetes, and environmental sounds such as surf noise; and (6) very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity, also known as threshold shift. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. As described later in this document, received sound levels must be even higher for there to be risk of permanent hearing impairment, or permanent threshold shift (PTS). Finally, intense acoustic or explosive events (not relevant for this activity) may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage. Severe hemorrhage could lead to death.

The original analysis of potential impacts on marine mammals from SURTASS LFA sonar was developed by the Navy based on the results of a literature review; the Navy's Low Frequency Sound Scientific Research Program (LFS SRP) (described later in this document); and a complex, comprehensive program of underwater acoustical modeling.

To assess the potential impacts on marine mammals by the SURTASS LFA sonar source operating at a given site, it was necessary for the Navy to predict the sound field that a given marine mammal species could be exposed to over time. This is a multi-part process involving (1) the ability to measure or estimate an animal's location in space and time, (2) the ability to measure or estimate the three-dimensional sound field at these times and locations, (3) the integration of these two data sets into the Acoustic Integration Model (AIM) to estimate the total acoustic exposure for each animal in the modeled population, (4) beginning the post-AIM analysis, converting the resultant cumulative exposures for a modeled population into an estimate of the risk from a significant disturbance of a biologically important behavior, and (5) using a risk continuum to convert these estimates of behavioral risk into an assessment of risk in terms of the level of potential biological removal.

In the post-AIM analysis, as mentioned in numbers (4) and (5) above, a relationship was developed for converting the resultant cumulative exposures for a modeled population into an estimate of the risk to the entire population of a significant disruption of a biologically important behavior and of injury. This process assessed risk in relation to received level (RL) and repeated exposure. The resultant risk continuum is based on the assumption that the threshold of risk is variable and occurs over a range of conditions rather than at a single threshold. Taken together, the LFS SRP results, the acoustic propagation modeling, and the risk assessment provide an estimate of potential environmental impacts to marine mammals. The results of 4 years of monitoring (2002–2006) onboard the two SURTASS LFA sonar vessels support the use of this methodology.

The acoustic propagation modeling was accomplished using the Navy's standard acoustical performance prediction transmission loss model-Parabolic Equation (PE) version 3.4. The results of this model are the primary input to the AIM. AIM was used to estimate marine mammal sound exposures. It integrates simulated movements (including dive patterns) of marine mammals, a schedule of SURTASS LFA sonar transmissions, and the predicted sound field for each transmission to estimate acoustic exposure during a hypothetical SURTASS LFA sonar operation. Description of the PE and AIM models, including AIM input parameters for animal movement, diving behavior, and marine mammal distribution, abundance, and density, are described in detail in the original Navy application and the Final EIS (see box, page 4.2–11) and are not discussed further in this document.

The same analytical methodology utilized in the application for the first 5–year rule and LOAs was utilized to provide reasonable and realistic estimates of the potential effects to marine mammals specific to the potential mission areas as presented in the application. Information on how the density and stock/abundance estimates are derived for the selected mission sites is in the Navy's application. These data are derived from current, published source documentation, and provide general area information for each mission area with species-specific information on the animals that could occur in that area, including estimates for their stock abundance and density.

Although this proposed rule uses the same analysis that was used for the 2002–2007 rule, AIM is continuously updated with new marine mammal biological data (behavior, distribution, abundance and density) whenever new information becomes available. It was recently independently reviewed by a panel of experts in mathematics, modeling, acoustics, and marine mammalogy convened by NMFS' Center for Independent Experts (CIE). The task of the Panel was to evaluate whether AIM correctly implements the models and data on which it is based; whether animal movements are correctly implemented; and whether AIM meets the Council for Regulatory Environmental Monitoring (CREM) guidelines. As stated in their Report on AIM, the CIE Panel agreed that: (1) AIM appears to be correctly implemented; (2) the animal movement appears to be appropriately modeled; and (3) the principles of credible science had been addressed during the development of AIM and that AIM is a useful and credible tool for developing application models. A copy of the CIE report is available (see **ADDRESSES**).

During the analytical process in the Final EIS, the Navy developed 31 acoustic modeling scenarios for the major ocean regions. Locations were selected by the Navy to represent the greatest potential effects for each of the three major ocean acoustic regimes where SURTASS LFA sonar could potentially be used. These acoustic regimes were: (1) deep-water convergence zone propagation, (2) near surface duct propagation, and (3) shallow water bottom interaction propagation. These sites were selected to model the greatest potential for effects from the use of SURTASS LFA sonar incorporating the following factors: (1) closest plausible proximity to land (from SURTASS LFA sonar operations standpoint), and/or offshore biologically important areas (OBIAs) where biological densities are higher, particularly for animals most likely to be affected; (2) acoustic propagation conditions that allow minimum propagation loss, or transmission loss (TL) (i.e., longest acoustic transmission ranges); and (3) time of year selected for maximum animal abundance. These sites represent the upper bound of impacts (both in terms of possible acoustic propagation conditions, and in terms of marine mammal population and density) that can be expected from operation of the SURTASS LFA sonar system. Thus, if SURTASS LFA sonar operations are conducted in an area that was not acoustically modeled in the

Final EIS, the potential effects would most likely be less than those analyzed for the most similar site in the analyses. The assumptions of the Final EIS are still valid and there are no new data to contradict the conclusions made in the Potential Impacts on Marine Mammals (Chapter 4) in the Final EIS. The chapter on impacts to marine mammals was incorporated by reference into the Navy's Final SEIS.

LFS SRP

The goal of the 1997–1998 LFS SRP was to demonstrate the avoidance reaction of sensitive marine mammal species during critical biologically important behavior to the low frequency underwater sound produced by the LFA system. Testing was conducted in three phases as summarized here from Clark *et al.* (1999).

Phase I was conducted in September through October 1997. The objective of Phase I was to determine whether exposure to low frequency sounds elicited disturbance reactions from feeding blue and fin whales. The goal was to characterize how whale reactions to the sounds vary, depending on: (1) the received level of the sound; (2) changes in the received level; and (3) whether the system was operating at a relatively constant distance or approaching the whale. Full and reduced LFA source power transmissions were used. The highest received levels at the animals were estimated to be 148 to 155 dB. In 19 focal animal observations (4 blue and 15 fin whales), no overt behavioral responses were observed. No changes in whale distribution could be related to LFA sonar operations, and whale the distributions correlated with the distribution of food.

Phase II was conducted in January 1998. The objectives were to quantify responses of migrating gray whales to low frequency sound signals, compare whale responses to different RLs, determine whether whales respond more strongly to RL, sound gradient, or distance from the source, and to compare whale avoidance responses to an LF source in the center of the migration corridor versus in the offshore portion of the migration corridor. A single source was used to broadcast LFA sonar sounds up to 200 dB. Whales showed some avoidance responses when the source was moored 1 mi (1.8 km) offshore, in the migration path, but returned to their migration path when they were a few kilometers from the source. When the source was moored 2 mi (3.7 km) offshore, responses were much less, even when the source level was increased to 200 dB, to achieve the same RL for most whales in the middle of the migration corridor. Also, offshore whales did not seem to avoid the louder offshore source.

Phase III was conducted from February to March 1998. The objectives were to assess the potential effects of LFA sonar signals on behavior, vocalization and movement of humpback whales off the Kona coast in Hawaii. The maximum exposure levels in this phase were as high as 152 dB. Approximately half of the whales observed visually ceased their song during the transmissions, but many of them did so while joining a group of whales, which is the time that singing whales usually stop their songs naturally. All singers who interrupted their songs were observed to resume singing within tens of minutes. The analysis of one data set showed that whales increased their song lengths during LFA sonar transmissions, but a second analysis indicated that song length changes were more complicated and depended on the portion of the song that was overlapped by LFA transmissions. Overall patterns of singer and cow-calf abundance were the same throughout the experiments as they had been during several years of prior study.

Risk Analysis

To determine the potential impacts that exposure to LF sound from SURTASS LFA sonar operations could have on marine mammals, biological risk standards were defined by the Navy with associated measurement parameters. Based on the MMPA, the potential for biological risk was defined as the probability for injury (Level A) or behavioral (Level B) harassment of marine mammals. In this analysis, behavioral (Level B) harassment is defined as a significant disturbance in a biologically important behavior (also referred to as a biologically significant response). NMFS believes that this is equivalent to the MMPA definition of Level B harassment for military readiness activities. The potential for biological risk is a function of an animal's exposure to a sound that would potentially cause hearing, behavioral, psychological or physiological effects. The measurement parameters for determining exposure were RLs in dB, the pulse repetition interval (time between pings), and the number of pings received.

Before the biological risk standards could be applied to realistic SURTASS LFA sonar operational scenarios, two factors had to be considered by the Navy: (1) how does risk vary with repeated sound exposure? and (2) how does risk vary with RL? The Navy addressed these questions by developing a function that translates the history of repeated exposures (as calculated in the AIM) into an equivalent RL for a single exposure with a comparable risk. This dual-question method is similar to those adopted by previous studies of risk to human hearing (Richardson *et al.*, 1995; Crocker, 1997).

It is intuitive to assume that effects on marine mammals would be greater with repeated exposures than for a single ping. However, no published data on repeated exposures of LF sound on marine mammals exist. Based on discussions in Richardson *et al.* (1995) and consistent with Crocker (1997), the Navy determined that the best scientific information available is based on the potential for effects of repeated exposure on human models.

The formula L + 5 log10(N) (where L = ping level in dB and N is the number of pings) defines the single ping equivalent (SPE). This formula is considered appropriate for assessing the risk to a marine mammal of a significant disturbance of a biologically important behavior from LF sound like SURTASS LFA sonar transmissions.

Behavioral Harassment

For reasons explained in detail in the Final EIS (Section 4.2.5), the Navy interpreted the results of the LFS SRP support use of unlimited exposure to 119 dB during an LFA sonar mission as the lowest value for risk. Below this level, the risk of a biologically significant behavioral response from marine mammals approaches zero. It is important to note that risk varies with both received level and number of exposures.

Because the LFS SRP did not document a biologically significant response at maximum RLs up to 150 dB, the Navy determined there was a 2.5–percent risk of an animal incurring a disruption of biologically important behavior at a SPL of 150 dB, a 50–percent risk at 165 dB, and a 95–percent risk at 180 dB. For more detailed information, see Chapter 4.2.5 of the Final EIS and Navy's Technical Report #1 (Navy, 2001). The Navy used this risk continuum analysis as an alternative to an all-or-nothing use of standard thresholds for the onset of behavioral change or injury. NMFS has reviewed and agrees with this approach. The subsequent discussion of risk function emphasizes the advantages of using a smoothly varying model of biological risk in relation to sound exposure. These results are analogous to dose-response curves that are accepted as the best practice in disciplines such as

epidemiology, toxicology, and pharmacology.

Changes in Hearing Sensitivity

In the previous (2002–2007) rule, NMFS and the Navy based their estimate of take by injury or the significant potential for such take (Level A harassment) based on the criterion of 180 dB. NMFS continues to believe this is a scientifically supportable value for preventing auditory injury or the significant potential for such injury (Level A harassment) as it represents a value less than where the potential onset of a minor TTS in hearing might occur based on Schlundt *et al.* (2000) research (see Navy Final Comprehensive Report Tables 5 through 8). Also, an SPL of 180 dB is considered a scientifically supportable level for preventing auditory injury because there is general scientific agreement with NMFS' position that TTS is not an injury (i.e., does not result in tissue damage), but is temporary impairment to hearing (i.e., results in an increased elevation or decreased sensitivity in hearing) that may last for a few minutes to a few days, depending upon the level and duration of exposure. In addition, there is no evidence that TTS would occur in marine mammals at an SPL of 180 dB. In fact, Schlundt *et al.* (2000) indicates that onset TTS for at least some species occurs at significantly higher SPLs.

Schlundt *et al.*'s (2000) measurement with bottlenose dolphins and belugas at 1–second signal duration implies that the TTS threshold for a 100–second signal would be approximately 184 dB (Table 1–4, Final EIS). For the 400–Hz signal, Schlundt *et al.* found no TTS at 193 dB, the highest level of exposure. Therefore, NMFS believes that establishing onset TTS as the upper bound of Level B harassment, but using 180 dB as the beginning of the zone for establishing mitigation measures to prevent auditory injury, is warranted by the science.

With three levels of mitigation monitoring for detecting marine mammals (described later in this document), NMFS and the Navy believe it is unlikely that any marine mammal would be exposed to received levels of 180 dB before being detected and the SURTASS LFA sonar shut down. However, because the probability is not zero, the Navy has included Level A harassment in its authorization request.

Unlike with behavioral responses, an ''injury continuum'' is not necessary because of the very low numbers of individual marine mammals that could potentially experience high received sound levels, and the high level of effectiveness of the monitoring and shutdown protocols. For this action, all marine mammals exposed to an SPL of 180 dB or above are considered to be injured even though, the best scientific data available indicate a marine mammal would need to receive an SPL significantly higher than 180 dB to be injured.

When SURTASS LFA sonar transmits, there is a boundary that encloses a volume of water where received levels equal or exceed 180 dB, and a volume of water outside this boundary where received levels are below 180 dB. In this analysis, the 180–dB SPL boundary is emphasized because it represents a single-ping RL that is a scientifically supportable estimate for the potential onset of injury. Therefore, the level of risk for marine mammals depends on their location in relation to SURTASS LFA sonar and under this proposed rule, a marine mammal would have to receive one ping greater than or equal to 180 dB to be considered to have been injured or have the potential to incur an injury.

Although TTS is not considered Level A harassment, PTS is considered Level A harassment. The onset of PTS for marine mammals may be 15–20 dB above TTS levels. However, mitigation measures, such as mitigation zones and shutdown protocols, are proposed where there is the potential for a marine mammal to incur TTS so as to prevent an animal from incurring a PTS.

Potential for Non-Auditory Injury

Since the release of the Final EIS, an investigation by Cudahy and Ellison (2002) hypothesized that the threshold for in vivo tissue damage (including lung damage and hemorrhaging) from LF sound can be on the order of 180 to 190 dB. Balance and equilibrium could be affected, but may not result in injury. These effects are based on studies of humans. Vestibular (balance and equilibrium) function was investigated by the Navy during the Diver's Study and the results reported in LFS SRP Technical Report 3. Measurable performance decrements in vestibular function were observed for guinea pigs using 160 dB SPL signals at lung resonance and 190 dB SPL signals at 500 Hz. Because guinea pigs are not aquatic species, like humans, they are not as robust to pressure changes as marine mammals and, therefore, are likely more susceptible to injury at lower SPLs than marine mammals.

Presently, there is controversy among researchers over whether marine mammals can suffer from decompression sickness. It is theorized that this may be caused by diving and then surfacing too quickly, forcing nitrogen bubbles to form in the bloodstream and tissues. Cox *et al.* (2006) stated that gas-bubble disease, induced in supersaturated tissues by a behavioral response to acoustic exposure, is a plausible pathologic mechanism for the morbidity and mortality seen in cetaceans associated with sonar exposure. The authors also stated that it is premature to judge acoustically mediated bubble growth as a potential mechanism and recommended further studies to investigate the possibility.

As stated in Crum and Mao (1996) and as discussed in the Final EIS (page 10–137) and the Final SEIS (page 4–31), researchers hypothesized that RLs would have to exceed 190 dB for there to be the possibility of non-auditory trauma due to supersaturation of gases in the blood. Such non-auditory traumas are not expected to occur from sound exposure below SPLs of 180 dB.

In light of the high detection rate of the proposed high-frequency marine mammal monitoring (HF/M3) sonar, ensuring required SURTASS LFA sonar shutdown when any marine mammal approaches or enters the 180–dB isopleth from LFA sonar, the risks of these traumas to a marine mammal approach zero.

Additional research published in a peer-reviewed journal (Ultrasound in Medicine and Biology), supports the 180–dB criterion for injury as being a scientifically supportable level for assessing potential non-auditory injury to marine mammals. Laurer *et al.* (2002) from the Department of Neurosurgery, University of Pennsylvania School of Medicine, exposed rats to 5 minutes of continuous high intensity, low frequency (underwater) sound (HI-LFS) either at 180 dB SPL re 1 μPa at 150 Hz or 194 dB SPL re 1 μPa at 250 Hz, and found no overt histological damage in brains of any group. Also, blood gases, heart rate, and main arterial blood pressure were not significantly influenced by HI-LFS, suggesting that there was no pulmonary dysfunction due to exposure. This published paper was based on work performed in support of Technical Report #3 of the SURTASS LFA Sonar Final EIS.

Strandings

Marine mammal strandings are not a rare occurrence in nature. The Cetacean Stranding Database (*http://www.strandings.net*) registered over one hundred strandings worldwide in 2004. However, mass strandings, particularly multi-species mass strandings, are relatively rare. Acoustic systems are becoming increasingly implicated in marine mammal strandings. In

particular, a number of mass strandings have been linked to mid-frequency sonars (see, e.g. Joint Interim Report on the Bahamas Marine Mammal Stranding Event of 15–16 March 2000, DOC and DON, 2001). Many theories exist as to why noise may be a factor in marine mammal strandings. It is theorized that marine mammals become disoriented, or that the sound forces them to surface too quickly, which may cause symptoms similar to decompression sickness, or that they are physically injured by the sound pressure. The biological mechanisms for effects that lead to strandings must be determined through scientific research.

There is no record of SURTASS LFA sonar ever being implicated in any stranding event since LFA sonar prototype systems were first operated in the late 1980s. Moreover, the system acoustic characteristics differ between LF and mid-frequency (MF) sonars: LFA sonars use frequencies generally below 1,000 Hz, with relatively long signals (pulses) on the order of 60 sec; while MF sonars use frequencies greater than 1,000 Hz, with relatively short signals on the order of 1 sec. Cox *et al.* (2006) provided a summary of common features shared by the strandings events in Greece (1996), Bahamas (2000), and Canary Islands (2002). These included deep water close to land (such as offshore canyons), presence of an acoustic waveguide (surface duct conditions), and periodic sequences of transient pulses (i.e., rapid onset and decay times) generated at depths less than 10 m (32.8 ft) by sound sources moving at speeds of 2.6 m/s (5.1 knots) or more during sonar operations (D'Spain *et al.*, 2006). These features do not relate to LFA operations. First, the SURTASS LFA vessel operates with a horizontal line array of 1,500 m (4,921 ft) length at depths below 150 m (492 ft) and a vertical line array (LFA sonar source) at depths greater than 100 m (328 ft). Second, operations are limited by mitigation protocols to at least 22 km (12 nm) offshore. For these reasons, SURTASS LFA sonar cannot be operated in deep water that is close to land. Also, the LFA sonar signal is transmitted at depths well below 10 m (32.8 ft), and the vessel has a slow speed of advance of 1.5 m/s (3 knots).

While there was a LF component in the Greek stranding in 1996, only mid-frequency components were present in the strandings in the Bahamas in 2000, Madeira 2000, and Canaries in 2002. This supports the conclusion that the LF component in the Greek stranding was not causative (ICES, 2005; Cox *et al.*, 2006). In its discussion of the Bahamas stranding, Cox *et al.* (2006) stated: ''The event raised the question of whether the mid-frequency component of the sonar in Greece in 1996 was implicated in the stranding, rather than the low-frequency component proposed by Frantzis (1998).'' The ICES in its ''Report of the Ad-Hoc Group on the Impacts of Sonar on Cetaceans and Fish'' raised the same issues as Cox *et al.*, stating that the consistent association of MF sonar in the Bahamas, Madeira, and Canary Islands strandings suggest that it was the MF component, not the LF component, in the NATO sonar that triggered the Greek stranding of 1996 (ICES, 2005). The ICES (2005) report concluded that no strandings, injury, or major behavioral change have been associated with the exclusive use of LF sonar.

Beaked whales have been the subject of particular concern in connection with strandings. Like most odontocetes, they have relatively sharply deceasing hearing sensitivity below 2 kHz (Cook *et al.* (2006), Richardson *et al.* (1995) and Finneran *et al.* (2002)). The SURTASS LFA sonar source frequency is below 500 Hz. If a cetacean cannot hear a sound or hears it poorly, the sound is unlikely to have a significant behavioral impact (Ketten, 2001). Therefore, it is unlikely that LF transmissions from LFA sonar would induce behavioral reactions from animals that have poor LF hearing. Though highly unlikely, the sounds could damage tissues even if the animal does not hear the sound, but this would have to be within 1,000 m (3.280 ft) of the array, where detection would be very likely, triggering shutdown.

Estimates of Potential Effects on Marine Mammals

The effects on marine mammals from operation of SURTASS LFA sonar will not be the lethal removal of animals. In addition, while possible, Level A harassment, if it occurs at all, is expected to be so minimal as to have no effect on rates of reproduction and survival of affected marine mammal species. Based on AIM modeling results, the primary effects would be the potential for Level B harassment. The Final SEIS Subchapter 4.4 provides the risk assessment methodology applied to SURTASS LFA sonar operations for the annual LOA applications for proposed operational areas.

Tables 4.4–2 through 4.4–10 in the Final SEIS provide, through a case study based on the results of the Navy's 4th LOA, estimates of the percentage of stocks potentially affected for SURTASS LFA sonar operations and are based on reasonable and realistic estimates of the potential effects to marine mammals stocks specific to the potential mission areas. Also, Tables 5 through 8 in the Navy's Final Comprehensive Report for the 2002–2007 rule provides annual total estimates of percentages of marine mammal stocks potentially affected annually during the four years of LFA sonar operations, based on actual operations during the period of the LOAs.

The scenarios chosen by the Navy are not the only possible combinations of areas where the SURTASS LFA sonar will operate. The potential effects from other scenarios can be estimated by making a best prediction of the areas in which the Navy would conduct SURTASS LFA sonar operations annually in each oceanic basin area, determining from Tables 4.4–2 through 4.4–10 in the Final SEIS the percentage of each stock that may potentially be affected, and adding those percentages together for each affected stock. Tables 5–8 in the Navy's Comprehensive Report indicate that annually Level B harassment may affect 0–6 percent for most marine mammal stocks, rising to just over 11 percent annually for other species (e.g., common dolphins (6.4 percent), Risso's dolphins (6–8 percent), short-finned pilot whales (6–9 percent), false killer whales (5–10 percent), Pacific white-sided dolphins (6–11 percent) and melon-headed whales (11.2 percent)).

Also, using updated modeling where appropriate, the Navy will rerun AIM when planning missions and, if necessary, modify annual LOA requests with an analysis of take estimates prior to any mission in a new/different area. For this proposed rule, NMFS is preliminarily adopting the Navy estimates shown in Final SEIS (Tables 4.4–2 through 4.4–10) as the best scientific information currently available.

Proposed Mitigation for Marine Mammals

NMFS proposes to require the same visual, passive acoustic, and active acoustic monitoring of the area surrounding the SURTASS LFA sonar array, as required for the current 2002–2007 rule and LOAs, to prevent the incidental injury of marine mammals that might enter the 180–dB isopleth from the SURTASS LFA sonar. These three monitoring systems are described in the next section of this document. NMFS also proposes the same protocols as in the 2002–2007 rule. Prior to each active sonar exercise, the distance from the SURTASS LFA sonar source to the 180–dB isopleth will be determined. If, through monitoring, a marine mammal is detected within the 180–dB isopleth, the Navy proposes to shut down or

immediately suspend SURTASS LFA sonar transmissions. Transmissions may commence/resume 15 minutes after the marine mammal has left the area of the 180–dB isopleth or there is no further detection of the animal within the 180–dB isopleth. The protocol established by the Navy for implementing this temporary shut-down is described in the application. As an added safety measure, NMFS again proposes to require a ''buffer zone'' extending an additional 1 km (0.54 nm) beyond the 180–dB isopleth. This coincides with the detection range of the HF/M3 sonar. This 180- dB plus 1 km (0.54 nm) distance will be the established mitigation zone for that exercise. Therefore, if a marine mammal is detected by the HF/M3 sonar, the SURTASS LFA sonar will be either turned off or not turned on. This is a effective mitigation measure since testing of the HF/M3 sonar indicates effective levels of detection up to 2 km (1.1 nm). At 2 km (1.1 nm), the SPL from the SURTASS LFA sonar will be approximately 173 dB, significantly below the 180 dB threshold for estimating onset of injury. SURTASS LFA sonar operators would be required to estimate SPLs before and during each operation to provide the information necessary to modify the operation, including delay or suspension of transmissions, so as not to exceed the mitigation sound field criteria.

In addition to establishing a mitigation zone at 180 dB plus 1 km (0.54 nm) to protect marine mammals, the Navy has established a mitigation zone for human divers at 145 dB re 1 microPa(rms) around all known human commercial and recreational diving sites. Although this geographic restriction is intended to protect human divers, it will also reduce the LF sound levels received by marine mammals located in the vicinity of known dive sites.

The Navy also recommended establishing OBIAs for marine mammal protection in its Final EIS and SEIS. The Navy evaluated nine sites in its Final EIS and SEIS and concluded that marine animals of concern (marine animals listed under the ESA and other marine mammals) congregate in these areas to carry out biologically important activities.

Based on the Navy's evaluation, NMFS proposes to designate these nine sites as OBIAs for LFA sonar. The nine areas are: (1) the North American East Coast between 28° N. and 50° N. from west of 40° W. to the 200–m (656–ft) isobath year-round; (2) the Antarctic Convergence Zone, from 30° E. to 80° E. to 45° S., from 80° E. to 150° E. to 55° S., from 150° E. to 50° W. to 60° S., from 50° W to 30° E. to 55° S. from October through March; (3) the Costa Rica Dome, centered at 9° N. and 88° W., year-round; (4) Hawaiian Islands Humpback Whale National Marine Sanctuary-Penguin Bank, centered at 21° N. and 157° 30′ W. from November 1 through May 1; (5) Cordell Bank National Marine Sanctuary, boundaries in accordance 15 CFR 922.110 year-round; (6) Gulf of the Farallones National Marine Sanctuary, boundaries in accordance 15 CFR 922.80 year-round; (7) Monterey Bay National Marine Sanctuary, boundaries in accordance with 15 CFR 922.30 year-round; (8) Olympic Coast National Marine Sanctuary, boundaries within 23 nm of the coast from 47°07′ N. to 48°30′ N. latitude in December, January, March, and May; and (9) Flower Garden Banks National Marine Sanctuary, boundaries in accordance with 15 CFR 922.120 year-round.

NMFS also proposes to designate an additional OBIA that was recommended by several commenters on the Draft SEIS: The Gully with boundaries at 44° 13′ N., 59° 06′ W. to 43° 47′ N., 58° 35′ W. to 43° 35′ N., 58° 35′ W. to 43° 35′ N., 59° 08′ W. to 44° 06′ N., 59° 20′ W., year round. NMFS believes this area is biologically important for marine mammals, based on its importance as habitat for several species of marine mammals, particularly the northern bottlenose whale, and its designation as a Canadian marine protected area.

NMFS is also evaluating whether to designate certain areas in the Northwestern Hawaiian Islands as OBIAs and solicits public comments and information on marine mammal distribution, densities, and the specific biologically important activities that take place in these areas. Any additional OBIA designations would be made through a separate rulemaking process. NMFS proposes to continue the system established in the 2002–2007 rule for expanding the number of OBIAs, as described later in this document. While retaining the requirement to provide notice and an opportunity to comment, the current proposal would eliminate the specific length of time for public comment on proposed OBIAs.

OBIAs are not intended to apply to other Navy activities and sonar operations, but rather as a mitigation measure to reduce incidental takings by SURTASS LFA sonar. The regulations propose, as in the 2002–2007 rule, that the holder of a LOA would not operate the SURTASS LFA sonar within any OBIA such that the SURTASS LFA sonar field exceeds 180 dB (re 1 microPa(rms)).

Proposed Marine Mammal Monitoring

In order to minimize risks to marine mammals that may be present in waters surrounding SURTASS LFA sonar, the Navy will: (1) conduct visual monitoring from the ship's bridge during daylight hours, (2) use passive SURTASS sonar to listen for vocalizing marine mammals; and (3) use high frequency active sonar (i.e., similar to a commercial fish finder) to monitor/locate/track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

Through observation, acoustic tracking and implementation of shut-down criteria, the Navy will ensure, to the greatest extent practicable, that no marine mammals approach the SURTASS LFA sonar source close enough to be subjected to potentially injurious sound levels (inside the 180–dB sound field; approximately 1 km (0.54 nm) from the source). In the Navy's Final EIS, as reanalyzed in the Final Comprehensive Report for SURTASS LFA sonar, the Navy assessed mitigation effectiveness. The overall effectiveness of detecting a marine mammal approaching the 180–dB sound field of the source array by at least one of these monitoring methods is above 95 percent. This value is supported by analyses of field data in a sampling of 6 missions between June 2004 and February 2006 (see the Navy's Comprehensive Report for LFA sonar).

The results of the visual, passive, and active monitoring for each LOA are discussed in the Annual Reports (most recently, Annual Report 5, 2007, Chapter 4). Mitigation effectiveness is described in Chapter 4 for the Final Comprehensive Report (2007) and in the Annual Reports.

Visual monitoring consists of daylight observations for marine mammals from the vessel. Daylight is defined as 30 minutes before sunrise until 30 minutes after sunset. Visual monitoring would begin 30 minutes before sunrise or 30 minutes before the SURTASS LFA sonar is deployed. Monitoring would continue until 30 minutes after sunset or until the SURTASS LFA sonar is recovered. Observations will be made by personnel trained in detecting and identifying marine mammals. Marine mammal biologists qualified in conducting at-sea marine mammal visual monitoring from surface vessels train and qualify designated ship personnel to conduct at-sea visual monitoring. The objective of these observations is to maintain a track of marine mammals observed and to ensure that none approach the source close enough to enter the LFA sonar

mitigation zone (including the buffer zone).

These personnel would maintain a topside watch and marine mammal observation log during operations that employ SURTASS LFA sonar in the active mode. The numbers and identification of marine mammals sighted, as well as any unusual behavior, will be entered into the log. A designated ship's officer will monitor the conduct of the visual watches and periodically review the log entries. There are two potential visual monitoring scenarios.

First, if a marine mammal is sighted outside of the LFA sonar mitigation zone, the observer will notify the Officer-in-Charge (OIC). The OIC then notifies the HF/M3 sonar operator to determine the range and projected track of the animal. If it is determined the animal will enter the LFA sonar mitigation zone, the OIC will order the delay or suspension of SURTASS LFA sonar transmissions when the animal enters the LFA sonar mitigation zone. If the animal is visually observed within the mitigation zone, the OIC will order the immediate delay or suspension of SURTASS LFA sonar transmissions. The observer will continue visual monitoring/recording until the animal is no longer seen.

Second, if the animal is sighted anywhere within the LFA mitigation zone, the observer will notify the OIC who will promptly order the immediate delay or suspension of SURTASS LFA sonar transmissions.

Passive acoustic monitoring is conducted when SURTASS is deployed, using the SURTASS towed horizontal line array to listen for vocalizing marine mammals as an indicator of their presence. If the sound is estimated to be from a marine mammal that may be in the SURTASS LFA sonar mitigation zone, the technician will notify the OIC who will alert the HF/M3 sonar operator and visual observers. If a marine mammal is detected within or approaching the mitigation zone prior to or during transmissions, the OIC will order the delay or suspension of SURTASS LFA sonar transmissions.

HF-active acoustic monitoring uses the HF/M3 sonar to detect, locate, and track marine mammals that could pass close enough to the SURTASS LFA sonar array to enter the LFA mitigation zone. HF acoustic monitoring will begin 30 minutes before the first SURTASS LFA sonar transmission of a given mission is scheduled to commence and continue until transmissions are terminated. Prior to full-power operations, the HF/M3 sonar power level is ramped up over a period of 5 min from 180 dB SL in 10–dB increments until full power (if required) is attained to ensure that there are no inadvertent exposures of local animals to RLs ≤ 180 dB from the HF/M3 sonar. There are two potential scenarios for mitigation via active acoustic monitoring.

First, if a ''contact'' is detected outside the LFA mitigation zone, the HF/M3 sonar operator determines the range and projected track of the animal. If it is determined that the animal will enter the LFA mitigation zone, the sonar operator notifies the OIC. The OIC then orders the delay or suspension of transmissions when the animal is predicted to enter the LFA mitigation zone. If a contact is detected by the HF/M3 sonar within the LFA mitigation zone, the observer notifies the OIC who promptly orders the immediate delay or suspension of transmissions.

All contacts will be recorded in the log and provided as part of the Long-Term Monitoring (LTM) Program to monitor for potential long-term environmental effects.

Research

The Navy spends approximately $10–14 million annually on marine mammal research programs. These research programs provide a means of learning about potential effects of anthropogenic underwater sound on marine mammals (including long-term) and ways to mitigate potential effects. As a result, the Navy is well positioned to have the most current scientific data on how marine mammals are affected by Navy sonar. During the first 4 years of LFA sonar operations, the Navy conducted research on several of these research areas. Table 9 in the Navy's Comprehensive Report for SURTASS LFA sonar provides the status of the research that is planned or underway.

NMFS proposes to require that the Navy continue researching the impacts of LF sounds on marine mammals to supplement its monitoring and increase knowledge of the species, and coordinate with others on additional research opportunities and activities. This would include cumulative impact analyses of the annual takes of marine mammals over the next 5 years and the continuation of scientific data collection during SURTASS LFA sonar operations.

NMFS recommends that the Navy conduct, or continue to conduct, the following research regarding SURTASS LFA sonar over the second 5–year authorization period:

1. Systematically observe SURTASS LFA sonar training exercises for injured or disabled marine mammals. Past correlations between military operations and the stranding of beaked whales call for closer observation of all sonar operations.

2. Compare the effectiveness of the three forms of mitigation (visual, passive acoustic, HF/M3 sonar).

3. Conduct research on the responses of deep-diving odontocete whales to LF-sonar signals. These species are believed to be less sensitive to LF-sonar sounds than the species studied prior to the LFS SRP. However, enough questions exist that these species should be studied further. The Navy has applied for a Scientific Research Permit under section 104 of the MMPA to conduct a behavioral response study on deep-diving cetacean species exposed to natural and artificial underwater sounds and quantify exposure conditions associated with various effects (72 FR 19181, April 17, 2007).

4. Conduct research on the habitat preferences of beaked whales.

5. Conduct passive acoustic monitoring using bottom-mounted hydrophones before, during, and after LF sonar operations for the possible silencing of calls of large whales.

6. Continue to evaluate the HF/M3 mitigation sonar. This is the primary means of mitigation, and its efficacy must continue to be demonstrated.

7. Continue to evaluate improvements in passive sonar capabilities.

Proposed Reporting

During routine operations of SURTASS LFA sonar, technical and environmental data would be collected and recorded, which, along with research, are part of the Navy's LTM Program. These would include data from visual and acoustic monitoring, ocean environmental measurements, and technical operational inputs.

First, a mission report would be provided to NMFS on a quarterly basis with the report including all active-mode missions completed 30 days or more prior to the date of the deadline for the report. Second, the Navy would submit an annual report no later than 45 days after expiration of an LOA. Third, the Navy would submit a Comprehensive Report at least 240 days prior to expiration of these regulations. These reports are summarized here.

Quarterly Report – On a quarterly basis, the Navy would provide NMFS with a classified report that includes all active-mode missions completed 30 days or more prior to the date of the deadline for the report. Specifically, these reports will include dates/times of exercises, location of vessel, LOA province (as set forth in Longhurst (1998)), location of the mitigation zone in relation to the LFA sonar array,

marine mammal observations, and records of any delays or suspensions of operations. Marine mammal observations would include animal type and/or species, number of animals sighted by species, date and time of observations, type of detection (visual, passive acoustic, HF/M3 sonar), the animal's bearing and range from vessel, behavior, and remarks/narrative (as necessary). The report would include the Navy's analysis of whether any Level A and/or Level B taking occurred within the SURTASS LFA sonar mitigation zone and, if so, estimates of the percentage of marine mammal stocks affected (both for the quarter and cumulatively (to date) for the year covered by the LOA) by SURTASS LFA sonar operations. This analysis would include estimates for both within and outside the mitigation zone, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics. In the event that no SURTASS LFA missions are completed during a quarter, a report of negative activity would be provided.

Annual Report – The annual report would provide NMFS with an unclassified summary of the year's quarterly reports and will include the Navy's analysis of whether any Level A and/or Level B taking occurred within the SURTASS LFA mitigation zones and, if so, estimates of the percentage of marine mammal stocks affected by SURTASS LFA sonar operations. This analysis would include estimates for both within and outside the mitigation zone, using predictive modeling based on operating locations, dates/times of operations, system characteristics, oceanographic environmental conditions, and animal demographics.

The annual report would also include: (1) analysis of the effectiveness of the mitigation measures with recommendations for improvements where applicable; (2) assessment of any long-term effects from SURTASS LFA sonar operations; and (3) any discernible or estimated cumulative impacts from SURTASS LFA sonar operations.

Comprehensive Report – NMFS proposes to require the Navy to provide NMFS and the public with a final comprehensive report analyzing the impacts of SURTASS LFA sonar on marine mammal species and stocks. This report, which is due at least 240 days prior to expiration of these regulations, would include an in-depth analysis of all monitoring and Navy-funded research pertinent to SURTASS LFA sonar conducted during the 5–year period of these regulations, a scientific assessment of cumulative impacts on marine mammal stocks, and an analysis on the advancement of alternative (passive) technologies as a replacement for LFA sonar. This report would be a key document for NMFS' review and assessment of impacts for any future rulemaking.

Annual reports and the Comprehensive Report would be posted on the NMFS homepage (see **ADDRESSES**).

Modification to Mitigation Measures

Any substantial modifications to NMFS' mitigation, monitoring, and reporting requirements will be proposed in the **Federal Register** with an opportunity for public comment prior to implementation (unless an emergency exists and modifications are necessary for the protection of marine mammals).

Designation of Offshore Biologically Important Areas for Marine Mammals

In addition to NMFS designating OBIAs independently, this proposed rule would continue a system for members of the public to petition NMFS to consider adding an area to the list of OBIAs for marine mammals. To qualify for designation, an area must be of particular importance for marine mammals as an area for feeding, breeding, calving, or migration, and not simply an area occupied by marine mammals. The proposed area should also not be within a previously designated OBIA or other 180–dB exclusion area. In order for NMFS to begin a rulemaking process for designating areas of biological importance for marine mammals, proponents must petition NMFS and submit the information described in 50 CFR 216.191(a). If NMFS makes a preliminary determination that the area is biologically important for marine mammals, NMFS will publish a **Federal Register** document proposing to add the recommended area as an OBIA. After review of public comments and information, NMFS will make a final decision on whether to designate the area as an OBIA and publish a **Federal Register** document of its decision. Proposals for designation of areas will not affect the status of LOAs while the rulemaking is in process.

Preliminary Determinations

Based on the scientific analyses detailed in the Navy application and further supported by information and data contained in the Navy's Final SEIS and Final EIS for SURTASS LFA sonar operations and summarized in this proposed rule, NMFS has preliminarily determined that the incidental taking of marine mammals resulting from SURTASS LFA sonar operations would have a negligible impact on the affected marine mammal species or stocks over the 5–year period of LFA sonar operations covered by these proposed regulations. That assessment is based on a number of factors: (1) the best information available indicates that effects from SPLs less than 180 dB will be limited to short-term Level B behavioral harassment averaging less than 10 percent annually for most affected species; (2) the proposed mitigation and monitoring is highly effective in preventing exposures of 180 dB or greater; (3) the results of monitoring as described in the Navy's Comprehensive Report supports the conclusion that takings will be limited to Level B harassment and not have more than a negligible impact on affected species or stocks of marine mammals; (4) the small number of SURTASS LFA sonar systems (two systems in FY 2008 and FY 2009 (totaling 864 hours of operation annually), 3 in FY 2010 (totaling 1296 hours of operation annually), and 4 systems in FY 2011 and FY 20012 (totaling 1728 hours of operation annually)) that would be operating world-wide; (5) that the LFA sonar vessel must be underway while transmitting (in order to keep the receiver array deployed), limiting the duration of exposure for marine mammals to those few minutes when the SURTASS LFA sound energy is moving through that part of the water column inhabited by marine mammals; (6) for convergence zone (CZ) propagation, the characteristics of the acoustic sound path, which deflect the sound below the water depth inhabited by marine mammals for much of the sound propagation (see illustration 67 FR page 46715 (July 16, 2002); (7) the findings of the SRP on LF sounds on marine mammals indicated no significant change in biologically important behavior from exposure to sound levels up to 155 dB; and (8) during the 40 LFA sonar missions between 2002 and 2006, there were only three visual observations of marine mammals and only 71 detections by the HF/M3 sonar, which all resulted in mitigation protocol suspensions in operations. These measures all indicate that while marine mammals will potentially be affected by the SURTASS LFA sonar sounds, these impacts will be short-term behavioral effects and are not likely to adversely affect marine mammal species or stocks through

effects on annual rates of reproduction or survival.

Finally, because SURTASS LFA sonar operations will not take place in Arctic waters, it would not have an unmitigable adverse impact on the availability of marine mammals for subsistence uses identified in MMPA section 101(a)(5)(A)(i), 16 USC 1371(a)(5)(A)(i).

NEPA

On November 10, 2005 (70 FR 68443), the Environmental Protection Agency (EPA) announced receipt of a Draft SEIS from the U.S. Navy on the deployment of SURTASS LFA sonar. This Final SEIS incorporated by reference the Navy's Final EIS on SURTASS LFA sonar deployment. The public comment period on the Draft SEIS ended on February 10, 2006. On May 4, 2007 (72 FR 25302), EPA announced receipt of a Final SEIS from the U.S. Navy on the deployment of SURTASS LFA sonar. NMFS is a cooperating agency, as defined by the Council on Environmental Quality (40 CFR 1501.6), in the preparation of these documents. NMFS is currently reviewing the Navy's Final SEIS and will either adopt it or prepare its own NEPA document before making a determination on the issuance of a final rule and LOAs thereunder. The Navy's Final SEIS is available at: *http://www.surtass-lfa-eis.com*

ESA

On October 4, 1999, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for its SURTASS LFA sonar activities. NMFS concluded consultation with the Navy on this action on May 30, 2002. The conclusion of that consultation was that operation of the SURTASS LFA sonar system for testing, training and military operations and the issuance by NMFS of incidental take authorizations for this activity are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS. Additional consultations were conducted prior to issuance of annual LOAs.

On June 9, 2006, the Navy submitted a Biological Assessment to NMFS to initiate consultation under section 7 of the ESA for the 2007–2012 SURTASS LFA sonar activities. The consultation, which will also include this proposed rule, will be concluded prior to issuance of a final rule.

Classification

This action has been determined to be significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this action would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. If implemented, this proposed rule would affect only the U.S. Navy which, by definition, is not a small business. Because of this certification, a regulatory flexibility analysis is not required.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: July 5, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Subpart Q is added to part 216 to read as follows:

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

Sec.

216.180 Specified activity.
216.181 Effective dates.
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216.191 Designation of Biologically Important Marine Mammal Areas.

Subpart Q—Taking of Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

§ 216.180 Specified activity.

Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by the U.S. Navy, Department of Defense, while engaged in the operation of no more than four SURTASS LFA sonar systems conducting active sonar operations, in areas specified in paragraph (a) of this section. The authorized activities, as specified in a Letter of Authorization issued under §§ 216.106 and 216.188, include the transmission of low frequency sounds from the SURTASS LFA sonar and the transmission of high frequency sounds from the mitigation sonar described in § 216.185 during training, testing, and routine military operations of SURTASS LFA sonar.

(a) With the exception of those areas specified in § 216.183(d), the incidental taking by harassment may be authorized in the areas (biomes, provinces, and subprovinces) described in Longhurst (1998), as specified in a Letter of Authorization.

(b) The incidental take, by Level A and Level B harassment, of marine mammals from the activity identified in this section is limited to the following species and species groups:

(1) Mysticete whales—blue (*Balaenoptera musculus*), fin (*Balaenoptera physalus*), minke (*Balaenoptera acutorostrata*), Bryde's (*Balaenoptera edeni*), sei (*Balaenoptera borealis*), humpback (*Megaptera novaeangliae*), North Atlantic right (*Eubalaena glacialis*), North Pacific right (*Eubalena japonica*) southern right (*Eubalaena australis*), pygmy right (*Capera marginata*), bowhead (*Balaena mysticetus*), and gray (*Eschrichtius robustus*) whales.

(2) Odontocete whales—harbor porpoise (*Phocoena phocoena*), spectacled porpoise (*Phocoena dioptrica*), beluga (*Dephinapterus leucas*), *Stenella* spp., Risso's dolphin (*Grampus griseus*), rough-toothed dolphin (*Steno bredanensis*), Fraser's dolphin (*Lagenodelphis hosei*), northern right-whale dolphin (*Lissodelphis borealis*), southern right whale dolphin (*Lissodelphis peronii*), short-beaked common dolphin (*Delphius delphis*), long-beaked common dolphin (*Delphinus capensis*), very long-beaked common dolphin (*Delphinus tropicalis*), *Lagenorhynchus* spp., *Cephalorhynchus* spp., bottlenose dolphin (*Tursiops truncatus*), Dall's porpoise

(*Phocoenoides dalli*), melon-headed whale (*Peponocephala* spp.), beaked whales (*Berardius* spp., *Hyperoodon* spp., *Mesoplodon* spp., Cuvier's beaked whale (*Ziphius cavirostris*), Shepard's beaked whale (*Tasmacetus shepherdi*), Longman's beaked whale (*Indopacetus pacificus*), killer whale (*Orcinus orca*), false killer whale (*Pseudorca crassidens*), pygmy killer whale (*Feresa attenuata*), sperm whale (*Physeter macrocephalus*), dwarf and pygmy sperm whales (*Kogia simus* and *K. breviceps*), and short-finned and long-finned pilot whales (*Globicephala macrorhynchus* and *G. melas*).

(3) Pinnipeds—hooded seal (*Cystophora cristata*), harbor seal (*Phoca vitulina*), spotted seal (*P. largha*), ribbon seal (*P. fasciata*), gray seal (*Halichoerus grypus*), elephant seal (*Mirounga angustirostris* and *M. leonina*), Hawaiian monk seal (*Monachus schauinslandi*), Mediterranean monk seal (*Monachus monachus*), northern fur seal (*Callorhinus ursinus*), southern fur seal (*Arctocephalus* spp.), harp seal (*Phoca groenlandica*), Galapagos sea lion (*Zalophus californianus wollebaeki*), Japanese sea lion (*Zalophus californianus japonicus*), Steller sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), Australian sea lion (*Neophoca cinerea*), New Zealand sea lion (*Phocarctos hookeri*), and South American sea lion (*Otaria flavescens*).

§ 216.181 Effective dates.

Regulations in this subpart are effective from August 16, 2007 through August 15, 2012.

§ 216.182 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.188, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals by Level A and Level B harassment within the areas described in § 216.180(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.180 must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

§ 216.183 Prohibitions.

No person in connection with the activities described in § 216.180 shall:

(a) Take any marine mammal not specified in § 216.180(b);

(b) Take any marine mammal specified in § 216.180(b) other than by incidental, unintentional Level A and Level B harassment;

(c) Take a marine mammal specified in § 216.180(b) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of the regulations in this subpart or any Letter of Authorization issued under §§ 216.106 and 216.188.

§ 216.184 Mitigation.

The activity identified in § 216.180(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.180, the mitigation measures described in this section and in any Letter of Authorization issued under §§ 216.106 and 216.188 must be implemented.

(a) Through monitoring described under § 216.185, the Holder of a Letter of Authorization must act to ensure, to the greatest extent practicable, that no marine mammal is subjected to a sound pressure level of 180 dB or greater.

(b) If a marine mammal is detected within or about to enter the mitigation zone (the area subjected to sound pressure levels of 180 dB or greater plus the 1 km (0.5 nm) buffer zone extending beyond the 180–dB zone), SURTASS LFA sonar transmissions will be immediately delayed or suspended. Transmissions will not resume earlier than 15 minutes after:

(1) All marine mammals have left the area of the mitigation and buffer zones; and

(2) There is no further detection of any marine mammal within the mitigation and buffer zones as determined by the visual and/or passive or active acoustic monitoring described in § 216.185.

(c) The high-frequency marine mammal monitoring sonar (HF/M3) described in § 216.185 will be ramped-up slowly to operating levels over a period of no less than 5 minutes:

(1) At least 30 minutes prior to any SURTASS LFA sonar transmissions;

(2) Prior to any SURTASS LFA sonar calibrations or testings that are not part of regular SURTASS LFA sonar transmissions described in paragraph (c)(1) of this section; and

(3) Anytime after the HF/M3 source has been powered down for more than 2 minutes.

(d) The HF/M3 sound pressure level will not be increased once a marine mammal is detected; ramp-up may resume once marine mammals are no longer detected.

(e) The Holder of a Letter of Authorization will not operate the SURTASS LFA sonar, such that the SURTASS LFA sonar sound field exceeds 180 dB (re 1 microPa(rms)):

(1) At a distance less than 12 nautical miles (nm) (22 kilometers (km)) from any coastline, including offshore islands;

(2) Within any offshore area that has been designated as biologically important for marine mammals under § 216.185(f), during the biologically important season for that particular area.

(f) The following areas have been designated by NMFS as Offshore Biologically Important Areas (OBIAs) for marine mammals (by season if appropriate):

Name of Area	Location of Area	Months of Importance
(1) 200-m isobath North American East Coast	From 28° N. to 50° N., west of 40° W.	Year round
(2) Antarctic Convergence Zone	30° E. to 80° E. to 45°; 80° E. to 150° E. to 55°; S.150° E. to 50° W. to 60° S.; 50° W. to 30° E. to 50° S.	October 1-March 31
(3) Costa Rica Dome	Centered at 9° N. and 88° W.	Year round
(4) Hawaiian Islands Humpback Whale National Marine Sanctuary Penguin Bank	Centered at 21° N. and 157° 30' W.	November 1 through May 1
(5) Cordell Bank National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.110	Year-round

Name of Area	Location of Area	Months of Importance
(6) Gulf of the Farallones National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.80	Year-round
(7) Monterey Bay National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.30	Year-round
(8) Olympic Coast National Marine Sanctuary	Boundaries within 23 nm of the coast from 47°07' N. to 48°30' N. latitude	December, January, March and May
(9) Flower Garden Banks National Marine Sanctuary	Boundaries in accordance with 15 CFR 922.120	Year-round
(10) The Gully	44° 13' N., 59° 06' W. to 43° 47' N.; 58° 35' W. to 43° 35' N.; 58° 35' W. to 43° 35' N.; 59° 08' W. to 44° 06' N.; 59° 20' W	Year-round

§ 216.185 Requirements for monitoring.

(a) In order to mitigate the taking of marine mammals by SURTASS LFA sonar to the greatest extent practicable, the Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 216.188 must:

(1) Conduct visual monitoring from the ship's bridge during all daylight hours (30 minutes before sunrise until 30 minutes after sunset);

(2) Use low frequency passive SURTASS sonar to listen for vocalizing marine mammals; and

(3) Use the HF/M3 (high frequency) sonar developed to locate and track marine mammals in relation to the SURTASS LFA sonar vessel and the sound field produced by the SURTASS LFA sonar source array.

(b) Monitoring under paragraph (a) of this section must:

(1) Commence at least 30 minutes before the first SURTASS LFA sonar transmission;

(2) Continue between transmission pings; and

(3) Continue either for at least 15 minutes after completion of the SURTASS LFA sonar transmission exercise, or, if marine mammals are exhibiting unusual changes in behavioral patterns, for a period of time until behavior patterns return to normal or conditions prevent continued observations;

(c) Holders of Letters of Authorization for activities described in § 216.180 are required to cooperate with the National Marine Fisheries Service and any other federal agency for monitoring the impacts of the activity on marine mammals.

(d) Holders of Letters of Authorization must designate qualified on-site individuals to conduct the mitigation, monitoring and reporting activities specified in the Letter of Authorization.

(e) Holders of Letters of Authorization must conduct all monitoring required under the Letter of Authorization.

§ 216.186 Requirements for reporting.

(a) The Holder of the Letter of Authorization must submit quarterly mission reports to the Director, Office of Protected Resources, NMFS, no later than 30 days after the end of each quarter beginning on the date of effectiveness of a Letter of Authorization or as specified in the appropriate Letter of Authorization. Each quarterly mission report will include all active-mode missions completed during that quarter. At a minimum, each classified mission report must contain the following information:

(1) Dates, times, and location of each vessel during each mission;

(2) Information on sonar transmissions during each mission;

(3) Results of the marine mammal monitoring program specified in the Letter of Authorization; and

(4) Estimates of the percentages of marine mammal species and stocks affected (both for the quarter and cumulatively for the year) covered by the Letter of Authorization.

(b) The Holder of a Letter of Authorization must submit an annual report to the Director, Office of Protected Resources, NMFS, no later than 45 days after the expiration of a Letter of Authorization. This report must contain all the information required by the Letter of Authorization.

(c) A final comprehensive report must be submitted to the Director, Office of Protected Resources, NMFS at least 240 days prior to expiration of these regulations. In addition to containing all the information required by any final year Letter of Authorization, this report must contain an unclassified analysis of new passive sonar technologies and an assessment of whether such a system is feasible as an alternative to SURTASS LFA sonar.

§ 216.187 Applications for Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, the U.S. Navy authority conducting the activity identified in § 216.180 must apply for and obtain a Letter of Authorization in accordance with § 216.106.

(b) The application for a Letter of Authorization must be submitted to the Director, Office of Protected Resources, NMFS, at least 60 days before the date that either the vessel is scheduled to begin conducting SURTASS LFA sonar operations or the previous Letter of Authorization is scheduled to expire.

(c) All applications for a Letter of Authorization must include the following information:

(1) The date(s), duration, and the area(s) where the vessel's activity will occur;

(2) The species and/or stock(s) of marine mammals likely to be found within each area;

(3) The type of incidental taking authorization requested (i.e., take by Level A and/or Level B harassment);

(4) The estimated percentage of marine mammal species/stocks potentially affected in each area for the 12–month period of effectiveness of the Letter of Authorization; and

(5) The means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on marine mammal populations.

(d) The National Marine Fisheries Service will review an application for a Letter of Authorization in accordance with § 216.104(b) and, if adequate and complete, issue a Letter of Authorization.

§ 216.188 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked will be valid for a period of time not to exceed one year,

but may be renewed annually subject to annual renewal conditions in § 216.189.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Authorized geographic areas for incidental takings;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking, their habitat, and the availability of the species for subsistence uses; and

(4) Requirements for monitoring and reporting incidental takes.

(c) Issuance of each Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity specified in § 216.180 as a whole will have no more than a negligible impact on the species or stocks of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) Notice of issuance or denial of an application for a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.189 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued for the activity identified in § 216.180 may be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.187 will be undertaken and that there will not be a substantial modification to the described activity, mitigation or monitoring undertaken during the upcoming season;

(2) Notification to NMFS of the information identified in § 216.187(c), including the planned geographic area(s), and anticipated duration of each SURTASS LFA sonar operation;

(3) Timely receipt of the monitoring reports required under § 216.185, which have been reviewed by NMFS and determined to be acceptable;

(4) A determination by NMFS that the mitigation, monitoring and reporting measures required under §§ 216.184 and 216.185 and the previous Letter of Authorization were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization; and

(5) A determination by NMFS that the number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and that the total taking will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(b) If a request for a renewal of a Letter of Authorization indicates that a substantial modification to the described work, mitigation or monitoring will occur, or if NMFS proposes a substantial modification to the Letter of Authorization, NMFS will provide a period of 30 days for public review and comment on the proposed modification. Amending the areas for upcoming SURTASS LFA sonar operations is not considered a substantial modification to the Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.190 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantial modification (including withdrawal or suspension) to a Letter of Authorization subject to the provisions of this subpart shall be made by NMFS until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization, without modification, except for the period of validity and a listing of planned operating areas, or for moving the authorized SURTASS LFA sonar system from one ship to another, is not considered a substantial modification.

(b) If the National Marine Fisheries Service determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.180(b), a Letter of Authorization may be substantially modified without prior notice and opportunity for public comment. Notification will be published in the **Federal Register** within 30 days of the action.

§ 216.191 Designation of Offshore Biologically Important Marine Mammal Areas.

(a) Offshore biologically important areas for marine mammals may be nominated under this paragraph by the National Marine Fisheries Service or by members of the public.

(b) Proponents must petition NMFS by requesting an area be added to the list of offshore biologically important areas in § 216.184(f) and submitting the following information:

(1) Geographic region proposed for consideration (including geographic boundaries);

(2) A list of marine mammal species or stocks within the proposed geographic region;

(3) Whether the proposal is for year-round designation or seasonal, and if seasonal, months of years for proposed designation;

(4) Detailed information on the biology of marine mammals within the area, including estimated population size, distribution, density, status, and the principal biological activity during the proposed period of designation sufficient for NMFS to make a preliminary determination that the area is biologically important for marine mammals; and

(5) Detailed information on the area with regard to its importance for feeding, breeding, or migration for those species of marine mammals that have the potential to be affected by low frequency sounds;

(c) Areas within 12 nm (22 km) of any coastline, including offshore islands, or within non-operating areas for SURTASS LFA sonar are not eligible for consideration.

(d) If a petition does not contain sufficient information for the National Marine Fisheries Service to proceed, NMFS will determine whether the nominated area warrants further study. If so, NMFS will begin a scientific review of the area.

(e)(1) If through a petition or independently, NMFS makes a preliminary determination that an offshore area is biologically important for marine mammals and is not located within a previously designated area, NMFS will publish a **Federal Register** notice proposing to add the area to § 216.184(f) and solicit public comment.

(2) The National Marine Fisheries Service will publish its final determination in the **Federal Register**.

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37	(869–060–00134–4)	58.00	July 1, 2006
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0–17	(869–060–00135–2)	60.00	July 1, 2006
18–End	(869–060–00136–1)	62.00	July 1, 2006
39	(869–060–00137–9)	42.00	July 1, 2006
40 Parts:			
1–49	(869–060–00138–7)	60.00	July 1, 2006
50–51	(869–060–00139–5)	45.00	July 1, 2006
52 (52.01–52.1018)	(869–060–00140–9)	60.00	July 1, 2006
52 (52.1019–End)	(869–060–00141–7)	61.00	July 1, 2006
53–59	(869–060–00142–5)	31.00	July 1, 2006
60 (60.1–End)	(869–060–00143–3)	58.00	July 1, 2006
60 (Apps)	(869–060–00144–7)	57.00	July 1, 2006
61–62	(869–060–00145–0)	45.00	July 1, 2006
63 (63.1–63.599)	(869–060–00146–8)	58.00	July 1, 2006
63 (63.600–63.1199)	(869–060–00147–6)	50.00	July 1, 2006
63 (63.1200–63.1439)	(869–060–00148–4)	50.00	July 1, 2006
63 (63.1440–63.6175)	(869–060–00149–2)	32.00	July 1, 2006
63 (63.6580–63.8830)	(869–060–00150–6)	32.00	July 1, 2006
63 (63.8980–End)	(869–060–00151–4)	35.00	July 1, 2006
64–71	(869–060–00152–2)	29.00	July 1, 2006
72–80	(869–060–00153–1)	62.00	July 1, 2006
81–85	(869–060–00154–9)	60.00	July 1, 2006
86 (86.1–86.599–99)	(869–060–00155–7)	58.00	July 1, 2006
86 (86.600–1–End)	(869–060–00156–5)	50.00	July 1, 2006
87–99	(869–060–00157–3)	60.00	July 1, 2006
100–135	(869–060–00158–1)	45.00	July 1, 2006
136–149	(869–060–00159–0)	61.00	July 1, 2006
150–189	(869–060–00160–3)	50.00	July 1, 2006
190–259	(869–060–00161–1)	39.00	July 1, 2006
260–265	(869–060–00162–0)	50.00	July 1, 2006
266–299	(869–060–00163–8)	50.00	July 1, 2006
300–399	(869–060–00164–6)	42.00	July 1, 2006
400–424	(869–060–00165–4)	56.00	July 1, 2006
425–699	(869–060–00166–2)	61.00	July 1, 2006
700–789	(869–060–00167–1)	61.00	July 1, 2006
790–End	(869–060–00168–9)	61.00	July 1, 2006
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–060–00169–7)	24.00	July 1, 2006
101	(869–060–00170–1)	21.00	[8] July 1, 2006
102–200	(869–060–00171–9)	56.00	July 1, 2006
201–End	(869–060–00172–7)	24.00	July 1, 2006
42 Parts:			
1–399	(869–060–00173–5)	61.00	Oct. 1, 2006
400–413	(869–060–00174–3)	32.00	Oct. 1, 2006
414–429	(869–060–00175–1)	32.00	Oct. 1, 2006
430–End	(869–060–00176–0)	64.00	Oct. 1, 2006
43 Parts:			
1–999	(869–060–00177–8)	56.00	Oct. 1, 2006
1000–end	(869–060–00178–6)	62.00	Oct. 1, 2006
44	(869–060–00179–4)	50.00	Oct. 1, 2006
45 Parts:			
1–199	(869–060–00180–8)	60.00	Oct. 1, 2006
200–499	(869–060–00181–6)	34.00	Oct. 1, 2006
500–1199	(869–060–00182–4)	56.00	Oct. 1, 2006
1200–End	(869–060–00183–2)	61.00	Oct. 1, 2006
46 Parts:			
1–40	(869–060–00184–1)	46.00	Oct. 1, 2006
41–69	(869–060–00185–9)	39.00	Oct. 1, 2006
70–89	(869–060–00186–7)	14.00	Oct. 1, 2006
90–139	(869–060–00187–5)	44.00	Oct. 1, 2006
140–155	(869–060–00188–3)	25.00	Oct. 1, 2006
156–165	(869–060–00189–1)	34.00	Oct. 1, 2006
166–199	(869–060–00190–5)	46.00	Oct. 1, 2006
200–499	(869–060–00191–3)	40.00	Oct. 1, 2006
500–End	(869–060–00192–1)	25.00	Oct. 1, 2006
47 Parts:			
0–19	(869–060–00193–0)	61.00	Oct. 1, 2006
20–39	(869–060–00194–8)	46.00	Oct. 1, 2006
40–69	(869–060–00195–6)	40.00	Oct. 1, 2006
70–79	(869–060–00196–4)	61.00	Oct. 1, 2006
80–End	(869–060–00197–2)	61.00	Oct. 1, 2006
48 Chapters:			
1 (Parts 1–51)	(869–060–00198–1)	63.00	Oct. 1, 2006
1 (Parts 52–99)	(869–060–00199–9)	49.00	Oct. 1, 2006
2 (Parts 201–299)	(869–060–00200–6)	50.00	Oct. 1, 2006
3–6	(869–060–00201–4)	34.00	Oct. 1, 2006
7–14	(869–060–00202–2)	56.00	Oct. 1, 2006

Title	Stock Number	Price	Revision Date
15–28	(869–060–00203–1)	47.00	Oct. 1, 2006
29–End	(869–060–00204–9)	47.00	Oct. 1, 2006
49 Parts:			
1–99	(869–060–00205–7)	60.00	Oct. 1, 2006
100–185	(869–060–00206–5)	63.00	Oct. 1, 2006
186–199	(869–060–00207–3)	23.00	Oct. 1, 2006
200–299	(869–060–00208–1)	32.00	Oct. 1, 2006
300–399	(869–060–00209–0)	32.00	Oct. 1, 2006
400–599	(869–060–00210–3)	64.00	Oct. 1, 2006
600–999	(869–060–00211–1)	19.00	Oct. 1, 2006
1000–1199	(869–060–00212–0)	28.00	Oct. 1, 2006
1200–End	(869–060–00213–8)	34.00	Oct. 1, 2006
50 Parts:			
1–16	(869–060–00214–6)	11.00	[9] Oct. 1, 2006
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17.95(c)–end	(869–060–00216–2)	32.00	Oct. 1, 2006
17.96–17.99(h)	(869–060–00217–1)	61.00	Oct. 1, 2006
17.99(i)–end and 17.100–end	(869–060–00218–9)	47.00	[9] Oct. 1, 2006
18–199	(869–060–00219–7)	50.00	Oct. 1, 2006
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2005, through January 1, 2006. The CFR volume issued as of January 1, 2005 should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 2006, through January 1, 2007. The CFR volume issued as of January 6, 2006 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2006. The CFR volume issued as of April 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 2006 through April 1, 2007. The CFR volume issued as of April 1, 2006 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2005, through July 1, 2006. The CFR volume issued as of July 1, 2005 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2005, through October 1, 2006. The CFR volume issued as of October 1, 2005 should be retained.