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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2007–0067]

Pine Shoot Beetle; Addition of Cumberland County, NJ, to the List of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the pine shoot beetle regulations by adding Cumberland County in New Jersey to the list of quarantined areas. We took that action following the detection of pine shoot beetle in the county. The interim rule was necessary to prevent the spread of pine shoot beetle, a pest of pine trees, into noninfested areas of the United States.

DATES: Effective on September 13, 2007, we are adopting as a final rule the interim rule that was published at 72 FR 34161–34163 on June 21, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1231; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 301.50 through 301.50–10 (referred to below as the regulations) restrict the interstate movement of certain regulated articles from quarantined areas in order to prevent the spread of pine shoot beetle into noninfested areas of the United States. Areas quarantined for pine shoot beetle are listed in § 301.50–3.

In an interim rule [1] effective and published in the **Federal Register** on June 21, 2007 (72 FR 34161–34163, Docket No. APHIS–2007–0067), we amended the regulations in § 301.50–3 by adding Cumberland County in New Jersey to the list of quarantined areas.

Comments on the interim rule were required to be received on or before August 20, 2007. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

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

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

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

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 72 FR 34161–34163 on June 21, 2007.

Done in Washington, DC, this 7th day of September 2007.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–18056 Filed 9–12–07; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the interim rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2007–0067.*

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–29153]

RIN 1625–AA87

Security Zone; Hawaii Superferry Arrival/Departure, Nawiliwili Harbor, Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: This document corrects the spelling of a shipping facility and vessel and corrects the point of contact in a temporary final rule entitled ''Security Zone; Hawaii Super Ferry Arrival/Departure, Nawiliwili Harbor, Kauai, Hawaii'' that was published September 5, 2007, in the **Federal Register**.

DATES: These corrections are effective September 13, 2007.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Jasmin Parker, U.S. Coast Guard Sector Honolulu at 808–842–2673.

SUPPLEMENTARY INFORMATION: On September 5, 2007, the Coast Guard published a temporary final rule entitled ''Security Zone; Hawaii Super Ferry Arrival/Departure, Nawiliwili Harbor, Kauai, Hawaii'' in the **Federal Register** (72 FR 50877). In that document the name of a shipping facility is misspelled, the term ''superferry'' is presented as two words rather than one, and the name of the person to contact about further information on the rule is incorrect. The correct spelling of the shipping facility is ''Matson'' and the name and phone number of the person to contact for further information is Lieutenant (Junior Grade) Jasmin Parker, 808–842–2673.

Correction Instructions

■ In rule FR Doc. 07–4357 published on September 5, 2007, (72 FR 50877) make the following corrections:

■ 1. On page 50877, in the first column, in lines 7, 24, 29 and 30, remove ''Super Ferry'' and add, in its place, ''Superferry''; in lines 60 and 61, remove the name ''Laura Springer'' and add, in its place, the name ''Jasmin Parker''; and in line 62 remove the

number ''2600'' and add, in its place, the number ''2673''.

■ 2. On page 50877, in the second column, in lines 7, 19, 48, and 49, remove ''Super Ferry'' and add, in its place, ''Superferry''; in line 61, remove ''Madsen'' and add, in its place, ''Matson''.

■ 3. On page 50877, in the third column, in lines 14, 26, 40, 49, 63, 65, and 66, remove ''Super Ferry'' and add, in its place, ''Superferry''.

■ 4. On page 50878, in the second column, in line 14, remove the name ''Laura Springer'' and add, in its place, the name ''Jasmin Parker''; and in line 16, remove the number ''2600'' and add, in its place, ''2673''.

§ 165.T14–160 [Corrected]

■ 5. On page 50879, in the second column, in § 165.T14–160, in paragraph (b), in the fourth, sixth and seventh lines, and in paragraph (c)(3), in the eleventh line, remove ''Super Ferry'' and add, in its place, ''Superferry''.

Dated: September 7, 2007.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E7–18024 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0650–200705(a); FRL–8464–2]

Approval and Promulgation of Implementation Plans, Kentucky Volatile Organic Compound Definition Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Kentucky State Implementation Plan (SIP) submitted by the Kentucky Environmental and Public Protection Cabinet (Cabinet) on December 14, 2006. The revisions include changes to the definitions section of Kentucky's Air Quality Regulations. The definition of volatile organic compounds (VOCs) was updated to be consistent with the federal definition.

DATES: This direct final rule is effective November 13, 2007 without further notice, unless EPA receives adverse comment by October 15, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2006–0650 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lesane.heidi@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2006–0650'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Heidi LeSane Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2006–0650.'' 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 through *www.regulations.gov* or e-mail information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Heidi LeSane Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Today's Action

On December 14, 2006, the Commonwealth of Kentucky, through the Cabinet, submitted seven amended air quality regulations for review and approval into the Kentucky SIP. All of the changes are related to the definition of VOCs, which was updated to be consistent with the federal definition found at 40 Code of Federal Regulations (CFR) 51.100(s). The following Air Quality Regulation citations address the definition of VOCs: 401 KAR 50:010, ''Definitions for 401 KAR Chapter 50;'' 401 KAR 51:001, ''Definitions for 401 KAR Chapter 51;'' 401 KAR 52:001, ''Definitions for 401 KAR Chapter 52;'' 401 KAR 59:001, ''Definitions for 401 KAR Chapter 59;'' 401 KAR 61:001, ''Definitions for 401 KAR Chapter 61;''

401 KAR 63.001, ''Definitions for 401 KAR Chapter 63;'' and 401 KAR 65:001, ''Definitions for 401 KAR Chapter 65.'' Changes to each of these regulations are included as part of the December 2006 SIP revision now being approved into the Kentucky SIP.

II. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA limits the amount of VOCs and NO_X that can be released into the atmosphere. VOCs are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides, or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (or organic compounds) have different levels of reactivity; they do not react at the same speed, or do not form ozone to the same extent.

Consistent with EPA policy, compounds of carbon with a negligible level of reactivity need not be regulated to reduce ozone (see, 42 FR 35314, July 8, 1977). EPA determines whether a given carbon compound has ''negligible'' reactivity by comparing the compound's reactivity to the reactivity of ethane. EPA lists these negligibly reactive compounds in its regulations at 40 CFR 51.100(s), and excludes them from the definition of VOCs. The chemicals on this list are often called ''negligibly reactive.'' EPA may periodically revise the list of negligibly reactive compounds to add to or delete compounds from the list.

On December 14, 2006, Kentucky submitted a SIP revision including changes to its regulations in response to changes made by EPA to the list of negligibly reactive compounds. Kentucky's SIP revision, including the changes to its definition of VOCs, is consistent with federal regulations and is approvable pursuant to section 110 of the Clean Air Act.

III. Final Action

EPA is approving revisions to the Kentucky SIP submitted by Kentucky on December 14, 2006, to include changes made to Kentucky's regulations regarding the definition of VOCs, which are part of the Commonwealth's strategy to attain and maintain the National Ambient Air Quality Standards. These changes are consistent with the Clean Air Act.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 13, 2007 without further notice unless the Agency receives adverse comments by October 15, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 13, 2007 and no further action will be taken on the proposed rule.

Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 27, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart S—Kentucky

■ 2. Section 52.920(c) Table 1 is amended by revising entries for ''401 KAR 50:010'', ''401 KAR 51:001'', ''401 KAR 52:001'', ''401 KAR 59:001'', ''401 KAR 61:001'', ''401 KAR 63:001'' and ''401 KAR 65:001'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Chapter 50 Division for Air Quality: General Administrative Procedures				
*	*	*	*	*
401 KAR 50:010	Definitions and abbreviations of terms used in Title 401 Chapters 50, 51, 53, 55, 57, 59, 61, 63, and 65.	11/8/06	9/13/07, [Insert citation of publication].	
*	*	*	*	*
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
401 KAR 51:001	Definitions for 401 KAR Chapter 51	11/8/06	9/13/07, [Insert citation of publication].	
*	*	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
401 KAR 52:001	Definitions for 401 KAR Chapter 52	11/18/06	9/13/07, [Insert citation of publication].	
*	*	*	*	*
Chapter 59 New Source Standards				
401 KAR 59:001	Definitions for abbreviations of terms used in the Title 401, Chapter 59.	11/18/06	9/13/07, [Insert citation of publication].	
*	*	*	*	*
Chapter 61 Existing Source Standards				
401 KAR 61:001	Definitions and abbreviations of terms used in the Title 401, Chapter 61.	11/18/06		
*	*	*	*	*
Chapter 63 General Standards of Performance				
401 KAR 63:001	Definitions and abbreviations of terms used in 401 KAR Chapter 63.	11/18/06	9/13/07, [Insert citation of publication].	
*	*	*	*	*
Chapter 65 Mobile Source-Related Emissions				
401 KAR 65:001	Definitions and abbreviations of terms used in 401 KAR Chapter 65.	11/18/06	9/13/07, [Insert citation of publication].	

EPA-APPROVED KENTUCKY REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*

[FR Doc. E7–17628 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0451; FRL–8465–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Control of VOC Emissions From Crude Oil Lightering Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Delaware. This SIP revision pertains to the control of volatile organic compound (VOC) emissions from crude oil lightering operations. EPA is approving this SIP revision in accordance with the Clean Air Act.

DATES: *Effective Date:* This final rule is effective on October 15, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–0451. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 3, 2007 (72 FR 36402), EPA published a notice of proposed rulemaking (NPR) for the State of Delaware. The NPR proposed approval of Delaware's regulation for crude oil lightering operations (Regulation No. 1124, Section 46). The formal SIP revision was submitted by the Delaware Department of Natural Resources and Environmental Control (DNREC) on May 2, 2007. Requirements of Delaware's regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving Regulation No. 1124, Section 46—Crude Oil Lightering Operations, as a revision to the Delaware SIP. This SIP revision was submitted on May 2, 2007.

III. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving Delaware's regulation for crude oil lightering operations, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart I—Delaware

■ 2. In § 52.420, the table in paragraph (c) is amended by revising the title for Regulation No. 24—Control of Volatile Organic Compound Emissions and adding Section 46 to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
Regulation No. 1124—Control of Volatile Organic Compound Emissions (Formerly Regulation No. 24)				
*	*	*	*	*
Section 46	Crude Oil Lightering Operations	05/11/07	09/13/07 [Insert page number where the document begins].	
*	*	*	*	*

* * * * *

[FR Doc. E7–17872 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0293; FRL–8464–4]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a March 30, 2007, request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills. This rule revision creates an industry-specific Best Available Control Technology (BACT) standard for new fuel grade ethanol production dry mills that replaces the otherwise required case-by-case SIP BACT determination for new facilities with the potential to emit 25 tons or more of VOC per year. The benefit of this rule is that establishing specific standards in place of a case-by-case analysis improves the clarity, predictability, and timeliness of certain State permit decisions.

DATES: This direct final rule will be effective November 13, 2007, unless EPA receives adverse comments by October 15, 2007. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0293, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–0293. 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 *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 a.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
A. When did the State submit the requested rule revision to EPA?
B. Did Indiana hold public hearings for this rule revision?
II. What are the revisions that the State requests be incorporated into the SIP?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. Background

A. When did the State submit the requested rule revision to EPA?

IDEM submitted the requested rule revision on March 30, 2007.

B. Did Indiana hold public hearings for this rule revision?

Indiana held public hearings for the requested rule revision on August 2, 2006, and December 6, 2006.

II. What are the revisions that the State requests be incorporated into the SIP?

IDEM is requesting revisions to the SIP in two areas: (1) To amend 326 IAC 8–5–1, Applicability of Rule, to identify a newly-affected industry, and (2) to add 326 IAC 8–5–6, Fuel Grade Ethanol Production at Dry Mills, to create an industry-specific BACT standard for new fuel grade ethanol production dry mills that have no wet milling operations. This standard would replace the case-by-case BACT determination currently required under 326 IAC 8–1–6 for facilities with the potential to emit 25 tons or more of VOC per year.

326 IAC 8–5–1 defines the applicability of the rule. The rule now covers fuel grade ethanol production discussed in Section 6 of 326 IAC 8–5–6.

Indiana's 326 IAC 8–1–6 is a state-wide BACT requirement that applies to sources that do not trigger Nonattainment New Source Review (NNSR) or Prevention of Significant Deterioration (PSD) requirements, but that emit 25 tons or more of VOC per year. Establishing the State BACT limits is a case-by-case determination based on the maximum reduction that is technically feasible, while taking into account energy, environmental and economic impact.

The changes to 326 IAC 8–5–6 apply to all fuel grade ethanol production plants constructed or modified after April 1, 2007 that are: (1) Dry mills and have no wet milling operations, (2) use fermentation, distillation, and dehydration to produce ethanol and dried distillers grain and solubles (DDGS), and (3) have combined potential VOC emissions of 22.7 megagrams (twenty five tons) or more per year from fermentation processes, DDGS dryer or dryers, and ethanol load-out operations.

The rule lists control measures consistent with those that Indiana would require under its case-by-case BACT determination. The rule requires the installation of a thermal oxidizer, wet scrubber, or enclosed flare with an overall control efficiency of not less than 98 percent, and further requires initial compliance to be achieved within 60 days of achieving maximum production levels, but no later than 180 days after startup. The rule also contains certain requirements related to the operation, maintenance, testing, and record-keeping of the operation of required control measures. In this case, establishing specific standards in place of a case-by-case analysis improves the clarity, predictability, and timeliness of permit decisions that are currently subject to 326 IAC 8–1–6.

III. What action is EPA taking?

We are approving revisions to the Indiana SIP in two areas: (1) To amend 326 IAC 8–5–1, Applicability of Rule; and (2) to add 326 IAC 8–5–6, Fuel Grade Ethanol Facilities. It should be noted that approval of this rule does not in any way affect the applicability of NNSR and/or PSD to subject sources.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective November 13, 2007 without further notice unless we receive relevant adverse written comments by October 15, 2007. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 13, 2007.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

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

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal Standard.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 24, 2007.

Richard C. Karl,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(182) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(182) On March 30, 2007, Indiana submitted final adopted revisions, which amend 326 IAC 8–5–1, concerning rule applicability, and add 326 IAC 8–5–6, fuel grade ethanol production at dry mills, to its VOC rules as a requested revision to the Indiana state implementation plan. EPA is approving these revisions, authorizing Indiana to establish an industry-specific State BACT standard for fuel grade ethanol production at dry mill facilities that emit 25 tons or more of VOC per year.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compound Rules, Rule 5: Miscellaneous

Operations, Section 1: Applicability of Rule. Indiana Administrative Code Title 326: Air Pollution Control Board, Article 8: Volatile Organic Compound Rules, Rule 5: Miscellaneous Operations, Section 6: Fuel Grade Ethanol Production at Dry Mills. Approved by the Attorney General February 16, 2007. Approved by the Governor February 16, 2007. Filed with the Publisher February 20, 2007. Published on the Indiana Register Web site March 21, 2007, Document Identification Number (DIN): 20070321–IR–326050197FRA. Effective March 22, 2007.

[FR Doc. E7–17881 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R03–OAR–2007–0448; FRL–8465–6]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP) submitted on June 8, 2007. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005 and subsequently revised on April 28, 2006 and December 13, 2006, and the CAIR Federal Implementation Plan (CAIR FIP) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for the State of West Virginia, promulgated on April 28, 2006 and subsequently revised on December 13, 2006. In this direct final action, EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note that approval. In accordance with the Clean Air Act, EPA is approving this West Virginia SIP revision as an abbreviated SIP revision which addresses the methodology to be used to allocate annual and ozone season NO_X allowances under the CAIR FIPs.

DATES: This rule is effective on November 13, 2007 without further notice, unless EPA receives adverse written comment by October 15, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0448 by one of the following methods:

A. Follow the on-line instructions for submitting comments.

B. E-mail: powers.marilyn@epa.gov.

C. *Mail:* EPA–R03–OAR–2007–0448, Marilyn Powers, Acting Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–0448. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The www.regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308 or by e-mail at *powers.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What Action is EPA Taking?

EPA is approving a revision to West Virginia's SIP, submitted on June 8, 2007 that will modify the application of certain provisions of the CAIR FIP concerning SO_2, NO_X annual and NO_X ozone season emissions. As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP. West Virginia is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain EGUs to participate in the EPA-administered Federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs.

The West Virginia SIP revision provides a methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs. The CAIR FIPs provide that this methodology, if approved as EPA is proposing, will be used to allocate NO_X allowances to sources in West Virginia, instead of the federal allocation methodology otherwise provided in the FIP. EPA is not proposing to make any changes to the CAIR FIP, but is proposing, to the extent EPA approves West Virginia's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

II. What is the Regulatory History of CAIR and the CAIR FIPs?

CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and/or interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particles ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1 to September 30). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting control measures.

Section 110(a)(2)(D) of the Clean Air Act requires that States prohibit emissions that contribute significantly to nonattainment of, or interfere with, maintenance of the NAAQS in downwind States. CAIR explains to subject States what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D).

The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a Federal Implementation Plan (FIP) to address the requirements of section 110(a)(2)(D). Under Clean Air Act section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone-season model trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the state), while the CAIR FIP remains in place for all other provisions. The CAIR FIP trading rules include appendices in which EPA intends to list each State for which EPA approves an abbreviated SIP revision. The appendices will indicate which provisions of the CAIR FIP are automatically replaced or supplemented by each approved, abbreviated SIP.

On April 28, 2006, EPA published two CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

III. What are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs or, (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs. With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call [1] trading programs in their CAIR NO_X ozone season trading programs.

IV. What is an Abbreviated CAIR SIP Revision?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the state submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, as the CAIR FIPs provide, will be used instead of, or in conjunction with, the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR

[1] EPA promulgated the NO_X SIP Call on October 27, 1998 (63 FR 57356) to address transported emissons of ozone in 22 States and the District of Columbia that significantly contributed to downwind nonattainment of the one-hour ozone standard. The NO_X SIP Call trading program applied to large EGUs and large industrial units.

in the CAIR FIP NO_X ozone season trading program;

2. Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator, and using a methodology chosen by the State;

3. Provide for allocation of NO_X annual allowances from the compliance supplement pool (CSP) by the State, rather than by the Administrator, and using the State's choice of allowed alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade program under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by that approved SIP revision. Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision.

As discussed below, West Virginia is requesting approval of only one of the four provisions for which a State may request an abbreviated SIP. The State is requesting that its allocation of NO_X annual and NO_X ozone season allowances for EGUs under the CAIR FIP be used instead of the corresponding provisions of the CAIR FIPs in effect in the State.

V. Analysis of West Virginia's Abbreviated CAIR SIP Submittal

On June 1, 2006, West Virginia submitted a full SIP revision to meet the requirements of CAIR as promulgated on May 12, 2005. The SIP revision is comprised of three regulations: 45CSR39, 45CSR40 and 45CSR41 for the NO_X annual trading program, the NO_X ozone season trading program, and the SO_2 annual trading program, respectively. The regulations adopted the part 96 model rules as set forth in the May 12, 2005 rulemaking, but, because revisions to part 96 were finalized after the State had started its rulemaking process, did not include the changes to the model rules that were made as part of the April 28, 2006 CAIR FIP. Consistent with the provisions of the CAIR FIP as discussed above, West Virginia submitted a letter on June 8, 2007, requesting that portions of its June 1, 2006 SIP revision be considered as an abbreviated SIP revision. The June 8, 2007 letter designated the NO_X allocation methodology provisions applicable to EGUs under the CAIR FIP and originally submitted as part of its June 1, 2006 CAIR SIP revision as replacing the corresponding provisions of the CAIR FIPs. Consistent with this request, EPA is treating the following provisions of West Virginia's CAIR rules an abbreviated SIP revision: sections 45–39–40, 45–39–41, and 45–39–42; and sections 45–40–40, 45–40–41, and 45–40–42, except for paragraphs 40.3, 42.2.c, 42.2.d, 42.2.e, 42.3.a.2, and 42.4.b.

The NO_X allowance allocation methodology in these provisions of West Virginia's June 1, 2006 SIP revision is consistent with the methodology in part 96 and the FIP, under which units that have operated for five years will receive allowances, based on heat input data from a three-year period adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. Based on this methodology, West Virginia determined NO_X allocations for EGUs in the State under the CAIR FIP, and submitted its allocations to EPA on October 30, 2006.

West Virginia's abbreviated SIP revision does not affect the CAIR budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. The abbreviated SIP revision only affects allocations of allowances under the established budgets. Information on how the budgets were developed may be found in the May 12, 2005 CAIR rulemaking (70 FR 25162).

EPA is today taking action only on this request for an abbreviated SIP revision and not the full CAIR SIP revision originally submitted, which will be the subject of a separate rulemaking action. In the June 8, 2007 letter, West Virginia states that it will revise and promulgate its CAIR rules 45CSR39, 45CSR40, and 45CSR41 to incorporate the revisions to part 96 and indicates that it plans to submit an amended CAIR SIP revision to EPA in 2008.

VI. Final Action

EPA is approving West Virginia's abbreviated CAIR SIP revision submitted on June 8, 2007, as discussed above. West Virginia is subject to the CAIR FIPs, which require participation in the EPA-administered SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. Under this abbreviated SIP revision and, consistent with the flexibility given to States in the FIPs, West Virgnia has adopted provisions for allocating allowances under the CAIR FIP NO_X annual and ozone season trading programs. As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in West Virginia. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_X annual and NO_X ozone season emissions. In this final action, EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices in the CAIR FIP trading rules simply to note approval of West Virginia's abbreviated CAIR SIP.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on November 13, 2007 without further notice unless EPA receives adverse comment by October 15, 2007. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

VII. Statutory and Executive Order Reviews

A. General Requirements

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

state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a State rule implementing a Federal standard.

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

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 2007. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve West Virginia's abbreviated CAIR SIP revision may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 97

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR parts 52 and 97 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for 40 CFR part 52 continues to read as follows:

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

Subpart XX—West Virginia

■ 2. In § 52.2520, the table in paragraph (c) is amended by adding entries for 45 CSR 39 and 40 at the end of the table. The table in paragraph (e) is amended by adding the entry for Article 3, Chapter 64 of the Code of West Virginia at the end of the table. The amendments read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
*	*	*	*	*
[45 CSR] Series 39	**Control of Annual Nitrogen Oxide Emissions to Mitigate Interstate Transport of Fine Particulate Matter and Nitrogen Ozides**			
Section 45–39–40	CAIR NO_X Annual Trading Budget	5/1/06	9/13/07 [Insert page number where the document begins].	Only Phase I (2009–2014).
Section 45–39–41	Timing Requirements for CAIR NO_X Annual Allowance Allocations.	5/1/06	9/13/07 [Insert page number where the document begins].	Only Phase I (2009–2014).

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP—Continued

State citation [Chapter 16–20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR § 52.2565
Section 45–39–42	CAIR NO_X Annual Allowance Allocations	5/1/06	9/13/07 [Insert page number where the document begins].	Only for Phase I (2009–2014).
[45 CSR] Series 40	**Control of Ozone Season Nitrogen Oxide Emissions to Mitigate Interstate Transport of Ozone and Nitrogen Ozides**			
Section 45–40–40	CAIR NO_X Ozone Season Trading Budget ...	5/1/06	9/13/07 [Insert page number where the document begins].	1. Except for subsection 40.3, and non-EGUs in subsection 40.1 table 2. Only Phase I (2009–2014).
Section 45–40–41	Timing Requirements for CAIR NO_X Ozone Season Allowance Allocations.	5/1/06	9/13/07 [Insert page number where the document begins].	Only Phase I (2009–2014).
Section 45–40–42	CAIR NO_X Ozone Season Allowance Allocations.	5/1/06	9/13/07 [Insert page number where the document begins].	1. Except for subsections 42.2.d, 42.2.e, 42.3.a.2, and 42.4.b. 2. Only Phase I (2009–2014).

* * * * * (e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Article 3, Chapter 64 of the Code of West Virginia, 1931.	Statewide	5/1/06	9/13/07 [Insert page number where the document begins].	Effective date of March 11, 2006.

PART 97—[AMENDED]

■ 3. The authority citation for 40 CFR part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to Subpart EE is amended by adding the entry for ''West Virginia'' in alphabetical order under paragraph 1 to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. * * *

West Virginia (for control periods 2009—2014)

* * * * *

■ 5. Appendix A to Subpart EEEE is amended by adding the entry for West Virginia in alphabetical order under paragraph 1 to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

* * * * *

West Virginia (for control periods 2009—2014)

* * * * *

[FR Doc. E7–17874 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 245, and 252

RIN 0750–AF24

Defense Federal Acquisition Regulation Supplement; Reports of Government Property (DFARS Case 2005–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to revise requirements for reporting of Government property in the possession of DoD contractors. The rule replaces existing DD Form 1662 reporting requirements with requirements for DoD contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data applicable to the Government property in the contractor's possession. This will result in more efficient and accurate reporting of Government property in the possession of contractors.

DATES: *Effective date:* September 13, 2007.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 13, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D015, using any of the following methods:

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

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2005–D015 in the subject line of the message.

○ *Fax:* (703) 602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, (703) 602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.245–7001 requires contractors to submit an annual report for all DoD property for which the contractor is accountable. The report must be prepared in accordance with the requirements of DD Form 1662 or an approved substitute. DD Form 1662 provides for reporting of only summary level totals for each of the various types of Government property (e.g., special test equipment, industrial plant equipment), and does not consider capitalization requirements or useful lives, nor can it be used for existence, completeness, or valuation purposes. The limited data produced through use of DD Form 1662 is considered to be insufficient for complete visibility and control of DoD property.

This interim rule replaces DD Form 1662 reporting with requirements for contractors to electronically submit, to the Item Unique Identification (IUID) Registry, the IUID data for DoD tangible personal property in the possession of the contractor. Policy is added at DFARS 211.274–4, with a corresponding contract clause at 252.211–7007, to specify IUID requirements for reporting of Government property. This data will be used to populate DoD information systems for more effective and efficient accountability and control of DoD property.

In accordance with the convention at FAR 1.108(d), the IUID reporting requirements will apply to contracts resulting from solicitations issued on or after the effective date of this interim rule. However, DoD contractors with existing contracts containing DD Form 1662 reporting requirements are encouraged to request contract modifications to designate use of the procedures specified in this interim rule as the approved substitute for DD Form 1662, as permitted by the clause at DFARS 252.245–7001. The rule does not apply to: Property under any statutory leasing authority; property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments; software and intellectual property; or real property.

DoD published a proposed rule at 71 FR 14151 on March 21, 2006. Seventeen sources submitted comments on the proposed rule. As a result of these comments, the interim rule contains additional changes that: Clarify the definition of ''equipment'' and the types of property that must be reported in the IUID Registry; exclude items under $5,000 from reporting unless otherwise specified in the contract; and provide more specific procedures regarding data submission. In addition, the clause prescription has been moved to DFARS Part 211, to permit collocation of item identification and valuation requirements applicable to Government property and delivered items. A discussion of the public comments is provided below.

1. *Comment:* Five respondents requested that issuance of this rule be postponed until publication of the final rule amending the Government property requirements of FAR Part 45 (FAR Case 2004–0025), to ensure the definitions in both rules are consistent (e.g., equipment, personal property, material).

DoD Response: The final rule revising FAR Part 45 was published on May 15, 2007 (72 FR 27364). The definitions in this DFARS rule have been revised, where appropriate, to align with the FAR Part 45 definitions.

2. *Comment:* One respondent requested definition of ''reasonable inventory adjustments'' as the term is used in 252.245–7001(c)(2).

DoD Response: This interim rule does not use the term ''reasonable inventory adjustments.'' Therefore, the term is not defined in the rule. However, ''inventory adjustments'' are changes made to the official accountability record when physical counts and official records do not agree. All such changes require specific approval and documentation to support the adjustment, normally to include results of reconciliation efforts to determine and resolve the cause of such disagreement.

3. *Comment:* One respondent requested that the rule include definitions of ''real property'' and ''reportable property'' with regard to property in the possession of the contractor (PIPC).

DoD Response: PIPC does not include real property, and real property is excluded from IUID reporting requirements. PIPC includes only tangible ''personal'' property in the custody of the contractor. Further, the level of reporting varies for different classes of PIPC and, therefore, a single definition for ''reportable property'' might be misleading. PIPC is meant to distinguish tangible personal property in the custody of contractors from all Government property that is owned or leased by the Government.

4. *Comment:* One respondent commented that, under various FAR 52.245 clauses, contractors are the custodians of Government property in their possession and fiduciary owners of the associated property records, and that requiring contractors to transmit detailed back-up data on the Government property in their possession changes this relationship and imposes new financial reporting requirements on organizational groups better suited to maintaining the accountability of property.

DoD Response: The Government-furnished property IUID requirements do not alter the underlying principle of the FAR clauses, that the contractor remains the custodian or ''steward'' of the Government's property. Also, the IUID reporting requirements do not impose any financial reporting or accounting activities of Government assets on contractors. Fiduciary responsibility is always with the Government.

5. *Comment:* Three respondents expressed concern that the rule places a financial burden on both Government agencies and contractors without providing a plan for funding to agencies to implement the rule, including implementation costs for Government property already in the possession of contractors. In addition, it was stated that the provisions do not address the engineering and technical aspects of marking the items, yet there may be substantial inventories of items at certain contractors' facilities, and changing the technical data for all the items may take more time and money.

DoD Response: The provisions of this rule are not retroactive and, therefore, will not be applicable to property already in the possession of contractors. Existing contracts containing DD Form 1662 reporting requirements are not subject to the requirements of this rule unless the contractor voluntarily elects to transition to IUID reporting requirements.

6. *Comment:* Two respondents recommended that the prescription for the clause acknowledge that contracts in place prior to this clause revision are not subject to the reporting change.

DoD Response: In accordance with the convention at FAR 1.108(d), FAR and DFARS changes apply to solicitations issued on or after the effective date of the change unless otherwise specified. Therefore, no additional language regarding applicability is needed for this rule to address existing contracts.

7. *Comment:* One respondent commented that the rule has some serious deficiencies in content and clarity that need to be resolved to allow DoD to achieve a new level of fiduciary accounting accuracy, and recommended postponing the issuance of this rule until the FAR Part 45 rewrite is issued,

as this rule is a subset of the larger and more comprehensive Part 45 rewrite.

DoD Response: DoD cannot achieve greater fiscal accountability unless it implements a solution that captures additional data for Government property in the possession of contractors. As stated in the DoD response to Comment 1 above, the FAR Part 45 final rule was published on May 15, 2007 (72 FR 27364).

8. *Comment:* Several respondents requested that a dollar threshold be established for reporting that does not require recording of low-value items in the IUID Registry. In addition, it was suggested that contractor-acquired property be excluded from the reporting requirement to be consistent with various DoD instructions and guidance previously provided to contractors.

DoD Response: DoD has revised the rule to exclude items valued below $5,000 from the IUID Registry, unless otherwise specified in the contract clause at 252.211–7007. The rule also clarifies that contractor-acquired property is excluded from reporting requirements.

9. *Comment:* One respondent requested clarification as to whether DD Form 1662 reporting will be required for Government property that has not been marked.

DoD Response: DD Form 1662 reporting will not be required. The reporting (annually via DD Form 1662 or otherwise) of non-UID items and material will no longer be required, unless otherwise specified in the contract.

10. *Comment:* One respondent requested that the reporting requirement be kept the same as the data currently required by the clause at DFARS 252.211–7003, Item Identification and Valuation, to ease the administration for contractors, since that data is the same as the data that is already required for deliverables and other financial reporting.

DoD Response: The master data is the same. However, many of the additional data elements are optional. For example, mark data is an optional data element that was added to accommodate virtual unique item identifiers (UIIs) if the compliant 2D data matrix is not permanently marked with the UII data on the item.

11. *Comment:* Three respondents requested that the requirement to update PIPC records in the IUID Registry when PIPC is ''consumed or expended'' be deleted, with the rationale being that ''consumed'' material is not part of PIPC. The comments further suggested that Government-furnished material would not be uniquely identified.

DoD Response: As items with a UII go through the excess process, the IUID Registry must be updated to record the disposition. These items will include equipment, as well as DoD serially managed, controlled, or mission essential items, whether equipment or material.

12. *Comment:* One respondent requested clarification as to whether the Government or the contractor is responsible for marking Government property furnished under new contracts.

DoD Response: The contractor is responsible for marking any unmarked Government property furnished under a contract. Marking unmarked items is included in the requirement to provide IUID data electronically into the IUID Registry, and must be done prior to the items leaving the contractor's stewardship, possession, or control.

13. *Comment:* One respondent requested that the requirement to report PIPC that has not been marked by the Government be waived, because it will be burdensome for contractors to obtain the information from the requirements office that is needed to register the item, e.g., acquisition cost, contract under which the item was manufactured, purchase date. Further, if the property is a depot rebuilt item, the respondent indicated there may not be a way to determine the original manufacturer, acquisition cost, or contract under which the item was originally delivered to the Government.

DoD Response: The required data to be reported for the items that will require IUID is not significantly different from the detailed data currently maintained in the contractor's stewardship accountability records. There are several optional data fields. For example, the manufacturer and original acquisition contract information for a depot rebuilt item is requested, if known, but it is not mandatory.

14. *Comment:* One respondent stated that the rule should address who is responsible for researching and correcting errors in the IUID Registry, for errors made by a transferring contractor.

DoD Response: The transfer of property from one accountable contractor to another is a transaction that is typically initiated by the program office directing the shipment of the property and validated by the losing and gaining contractors. If the data in the IUID Registry is not consistent with the contract for the accountable contractor of record, an error will be generated and the record cannot be registered until the discrepancy is corrected. The initial responsibility for correcting errors is with the submitter of the data. It should also be noted that contractors are still required to maintain stewardship accountability records and implement the proper controls for Government property in their custody, and they are still subject to audits and inspections.

15. *Comment:* One respondent asked whether UIIs that include contractor-unique Commercial and Government Entity (CAGE) codes or Data Universal Numbering System (DUNS) numbers should be revised when the property is transferred to another contractor.

DoD Response: UIIs with contractor-unique CAGE codes or DUNS numbers are not revised when the property is transferred to another contractor. The contractor that originally assigns the UII guarantees its uniqueness, and the UII for an item, once assigned, is never changed.

16. *Comment:* One respondent requested that the requirement to update PIPC records in the IUID Registry for PIPC ''delivered or shipped from a contractor's plant'' be revised to PIPC ''physically delivered (shipped from the contractor's plant),'' to eliminate non-value marking of ship-in-place items.

DoD Response: While contractor-acquired property is not recorded in the IUID Registry, contractor-acquired property that transitions to a follow-on contract becomes Government-furnished property under the subsequent contract and, therefore, requires that a UII be assigned and recorded in the IUID Registry. This may include ship-in-place items.

17. *Comment:* One respondent noted that the title of the guidebook and the related link referenced in the rule need to be updated.

DoD Response: DoD has included this change in the interim rule.

18. *Comment:* Two respondents requested that the IUID data submission requirements be included in the contract clause, instead of referring to a guide for the data submission requirements, as the Government could change the guide without requesting public comment.

DoD Response: DoD has revised the contract clause as recommended, to include additional IUID data submission requirements. The guidebook link is included in the clause as a reference to the procedures for providing the IUID data electronically into the IUID Registry. Any changes to the IUID data submission requirements in the clause will be vetted through the normal public comment process.

19. *Comment:* One respondent stated that requiring contractors to update the

registry to reconcile contractor and Government records was a violation of the ''one record database'' concept.

DoD Response: The IUID Registry will be used for reporting of PIPC, and replaces the annual reporting requirement only. It does not replace the contractor's stewardship accountability recordkeeping requirements.

20. *Comment:* Two respondents disagreed with the statement in the preamble that the requirements of the rule are not expected to significantly change the burden hours approved by the Office of Management and Budget (OMB), indicating that the administrative burden and paperwork required to meet the requirements of the rule will greatly expand the burden hours previously approved by OMB. One respondent further requested that only one yearly reconciliation be required, to limit the burden on contractors.

DoD Response: Under this rule, contractors are only required to report a portion of the property presently reported on DD Form 1662. For example, contractors will not report low-value items (under $5,000) unless otherwise specified in the contract. In addition, contractors will not report contractor-acquired property. The data that will be reported is not significantly different from the detailed data currently maintained in the contractor's stewardship accountability records. Like the contractor's stewardship accountability records, updates are only required when there are significant changes or updates as defined in the rule. If a contractor updates the IUID Registry on a transaction basis, the contractor will not need to again update the IUID Registry semi-annually. If the contractor does not update the IUID Registry on a transaction basis, semi-annual updates will be required only to synchronize the contractor's data with the IUID Registry. Annual summary reporting is no longer required. The decrease in scope and size, from an annual roll-up of 100 percent of the Government property in a contractor's custody, to maintenance of only the portion of PIPC requiring IUID more than offsets the burden hours.

21. *Comment:* One respondent requested elimination of the requirement for contractors to maintain real property records in the owning military department's real property inventory system, and that the owning agency maintain the records, because contractors are normally granted ''use rights'' and the Government retains accountability.

DoD Response: The requirement for contractors to maintain real property records in the owning military department's real property inventory system has been excluded from the interim rule.

22. *Comment:* One respondent requested clarification as to whether the prime contractor or the subcontractor is responsible for marking and registering the UII and item level master data for PIPC, if the PIPC is received without an existing UII.

DoD Response: The prime contractor is responsible for ensuring that the requirement is met for all DoD property in the custody of its subcontractors. Registration of items in the IUID Registry should also be controlled by the prime contractor, whose contract is the accountable contract on record in the IUID Registry for PIPC. Prime contractors also have the clause at DFARS 252.211–7003, Item Identification and Valuation, in the contract and are required to flow the IUID requirements down to their subcontractors. This may be done by including the clause at DFARS 252.211–7003 in all subcontracts, so that items received from suppliers meet the requirement, or by establishing alternative marking agreements with subcontractors. When registering an embedded item, a parent item must be registered prior to registering any embedded components, subassemblies, or parts within that parent item.

23. *Comment:* One respondent requested that the phrase ''furnished to the contractor by the Government'' be deleted from paragraphs III.A.1 and 3 of the guidebook, because Government-furnished property has already been defined, making the terminology redundant.

DoD Response: The content of the guidebook is beyond the scope of this DFARS rule. However, the IUID Program Office agrees the terminology is redundant and is revising the guidebook accordingly.

24. *Comment:* One respondent recommend that ''unique item identifier (UII)'' be defined, since the term is used in the rule.

DoD Response: The definition of ''UII'' and other key definitions from the clause at DFARS 252.211–7003, Item Identification and Valuation, have been added to the clause at DFARS 252.211–7007.

25. *Comment:* One respondent suggested that the terminology in the definition of ''property in the possession of the contractor'' be changed to refer to ''organizational property'' instead of ''personal property,'' because ''personal property'' is generally understood to mean all property other than real property.

DoD Response: The definition of ''property in the possession of the contractor'' is meant to distinguish tangible personal property in the custody of contractors from all Government property that is owned or leased by the Government. It does not include real property.

26. *Comment:* Two respondents requested clarification of the on-line guidebook as to whether ''controlled'' or ''public'' access is the correct access level for contractors, and whether ''contractor access'' is the same as ''controlled access.''

DoD Response: The content of the guidebook is beyond the scope of this DFARS rule. However, there are two levels of access, ''controlled'' and ''public,'' and the levels are the same for both contractor and Government users. Controlled access requires validation of authority to access the data, and is limited depending on the role assigned. Controlled access is further distributed to access for Government roles such as Program Manager or Legacy Submitter and Contractor roles. Public access is a limited view that only returns a unique item identifier and is available without pre-registration or a user id and password. The user guide for the IUID Registry available at *https://www.bpn.gov/iuid/* provides greater detail regarding access to the IUID Registry.

27. *Comment:* Two respondents requested clarification as to who pays the cost of ''marking'' the items, when the Government provides the UII to the contractor but requires the contractor to mark any unmarked items, indicating that contractors who do not manufacture items that require marking would have to contract to ''mark'' these items.

DoD Response: If a contractor receives PIPC that has not been registered or marked, the contractor is required to assign the UII, register the IUID data, and mark the item, or mark the item and update the IUID Registry, if the UII has been provided but the item has not been marked. The cost for IUID is generally an allowable cost, and contractors submitting offers on requirements that include IUID should include the costs in accordance with Cost Accounting Standard and FAR requirements. In addition, there is a memorandum available on the UID Web site at *http://www.acq.osd.mil/dpap/UID/policy.htm* that discusses pricing and accounting for costs associated with IUID.

28. *Comment:* One respondent indicated that Paragraphs 12 and 13 of the guidebook were repetitive and confusing.

DoD Response: The content of the guidebook is beyond the scope of this DFARS rule. However, the IUID Program Office is revising the format of the guidebook to clarify the referenced requirements. Paragraph 12 addresses the requirement for contractors to assign a UII to an embedded item that does not have an existing UII, whenever the embedded item is removed from its parent while in the contractor's custody. Paragraph 13 addresses the requirement to maintain the data in the IUID Registry for embedded items that have an existing UII assigned prior to it being provided to the contractor as PIPC.

29. *Comment:* Two respondents recommended that the rule be revised to make the Government, not the contractor, responsible for establishing the UII.

DoD Response: The Government will provide the UII if it already exists, or if it is created and the item is marked under a legacy IUID implementation strategy before providing the item to the contractor as PIPC. In addition, all contracts awarded under solicitations issued after January 1, 2004, should have the clause at DFARS 252.211–7003, Item Identification and Valuation, and any items delivered that are subsequently provided to contractors as PIPC will already have a UII established. However, if a contractor receives PIPC that has not been registered or marked, the contractor is required to assign the UII, register the IUID data, and mark the item.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This interim rule amends the DFARS to require DoD contractors to electronically submit, to the IUID Registry, the IUID data for DoD property in the contractor's possession. The existing requirements for contractor reporting of Government property rely on a paper-based administrative infrastructure, and do not provide DoD with sufficient information to validate the existence, completeness, or valuation of Government property in the possession of contractors. This rule will facilitate DoD compliance with the Chief Financial Officers Act of 1990 (Pub. L. 101–576) and the financial reporting requirements imposed by the Federal Accounting Standards Advisory Board.

The rule generally will apply to DoD contractors with Government-furnished property valued at $5,000 or more. The objective of the rule is to improve the accountability and control of DoD assets. Use of the IUID Registry will enable DoD to maintain accurate records of its property inventories. The Chief Financial Officers Act of 1990 requires the production of complete, reliable, timely, and consistent financial information with regard to Federal programs.

The clause at DFARS 252.245–7001 requires contractors to maintain records of DoD property in their possession and to submit an annual report using DD Form 1662 or an approved substitute. The interim rule replaces DD Form 1662 reporting with requirements for use of the IUID Registry as an electronic means of recording and reporting DoD property in the contractor's possession. This will improve the accuracy and efficiency of the existing reporting and recordkeeping requirements.

DoD considers the approach described in the interim rule to be the most practical and beneficial for both Government and industry. Continued reliance on the current reporting process would not permit the level of accountability that DoD needs to comply with statutory and regulatory requirements related to the management of Government property. DoD already has adopted the use of IUID technology as the standard marking approach for all items in DoD's inventory system. Therefore, it logically follows that DoD property in the possession of contractors should also be recorded and reported using IUID technology.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D015.

C. Paperwork Reduction Act

The information collection requirements associated with contractor reporting of Government property have been approved by the Office of Management and Budget, under Clearance Number 0704–0246, for use through April 30, 2009. The requirements of this interim rule are not expected to significantly change the burden hours approved under Clearance Number 0704–0246.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. DoD published a proposed rule on March 21, 2006, addressing requirements for use of the IUID Registry for reporting of Government property in the possession of contractors, to replace the DD Form 1662 reporting system. The vast majority of comments received on the proposed rule were accepted and incorporated into this interim rule. Because of the additional changes in this rule, DoD believes it is necessary to solicit further public comments. Numerous DoD contractors have already voluntarily transitioned to the use of the IUID Registry for reporting of Government property. Immediate implementation of this DFARS rule is needed to clearly establish policy for IUID reporting of Government property, in recognition of the burdens associated with supporting dual reporting systems. DoD considers the IUID Registry to be the most practical and beneficial reporting method for both Government and industry. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 211, 245, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 211, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

■ 2. Section 211.274 is revised to read as follows:

211.274 Item identification and valuation requirements.

■ 3. Section 211.274–4 is revised to read as follows:

211.274–4 Policy for item unique identification of Government property.

(a) It is DoD policy that DoD item unique identification, or a DoD-recognized unique identification equivalent, is required for tangible

personal property in accordance with 211.274–2, for items—

(1) In the possession of the Government and furnished to a contractor for the performance of a contract; or

(2) Directly acquired by the Government and subsequently furnished to a contractor for the performance of a contract.

(b) The policy in paragraph (a) of this subsection does not apply to—

(1) Property under any statutory leasing authority;

(2) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;

(3) Software and intellectual property; or

(4) Real property.

■ 4. Section 211.274–5 is added to read as follows:

211.274–5 Contract clauses.

(a)(1) Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts that—

(i) Require item identification or valuation, or both, in accordance with 211.274–2 and 211.274–3; or

(ii) Contain the clause at 252.211–7007.

(2) Complete paragraph (c)(1)(ii) of the clause with the contract line, subline, or exhibit line item number and description of any item(s) below $5,000 in unit acquisition cost for which DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(2) or (3).

(3) Complete paragraph (c)(1)(iii) of the clause with the applicable attachment number, when DoD unique item identification or a DoD recognized unique identification equivalent is required in accordance with 211.274–2(a)(4) for DoD serially managed subassemblies, components, or parts embedded within deliverable items.

(4) Use the clause with its Alternate I if—

(i) An exception in 211.274–2(b) applies; or

(ii) Items are to be delivered to the Government and none of the criteria for placing a unique item identification mark applies.

(b)(1) Use the clause at 252.211–7007, Item Unique Identification of Government Property, in solicitations and contracts that contain the clause at—

(i) FAR 52.245–1, Government Property; or

(ii) FAR 52.245–2, Government Property Installation Operation Services.

(2) Complete paragraph (b)(2)(ii) of the clause as applicable.

PART 245—GOVERNMENT PROPERTY

245.505–14 [Removed]

■ 5. Section 245.505–14 is removed.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7003 [Amended]

■ 6. Section 252.211–7003 is amended in the introductory text by removing ''211.274–4'' and adding in its place ''211.274–5(a)''.

■ 7. Section 252.211–7007 is added to read as follows:

252.211–7007 Item unique identification of Government property.

As prescribed in 211.274–5(b), use the following clause:

ITEM UNIQUE IDENTIFICATION OF GOVERNMENT PROPERTY (SEP 2007)

(a) *Definitions.* As used in this clause—

2D data matrix symbol means the 2-dimensional Data Matrix ECC 200 as specified by International Standards Organization/International Electrotechnical Commission (ISO/IEC) Standard 16022: Information Technology—International Symbology Specification—Data Matrix.

Acquisition cost, for Government-furnished property in the possession of the Contractor (PIPC), means the amount identified in the contract, or in the absence of such identification, the fair market value. For property acquired or fabricated by the Contractor as Contractor-acquired PIPC, and subsequently transferred or delivered as Government-furnished PIPC, it is the original acquisition cost.

Concatenated unique item identifier means—

(1) For items that are serialized within the enterprise identifier, the linking together of the unique identifier data elements in order of the issuing agency code, enterprise identifier, and unique serial number within the enterprise identifier; or

(2) For items that are serialized within the original part, lot, or batch number, the linking together of the unique identifier data elements in order of the issuing agency code; enterprise identifier; original part, lot, or batch number; and serial number within the original part, lot, or batch number.

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/dpap/UID/equivalents.html.*

Equipment means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use.

Item unique identification (IUID) means a system of assigning, reporting, and marking DoD property in the possession of the Contractor with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

IUID Registry means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property, including property in the possession of the Contractor.

Material means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, or special test equipment.

Parent item means the item assembly, intermediate component, or subassembly that has an embedded item with a unique item identifier or DoD recognized unique identification equivalent.

Property in the possession of the Contractor (PIPC) means tangible personal property, to which the Government has title, that is in the stewardship or possession of, or is controlled by, the Contractor for the performance of a contract. PIPC consists of both tangible Government-furnished property and Contractor-acquired property and includes equipment and material.

Unique item identifier (UII) means a set of data elements marked on items that is globally unique and unambiguous.

Virtual UII means the data elements for an item that have been captured in the IUID Registry, but have not yet been physically marked on an item with a DoD compliant 2D data matrix symbol.

(b) *Procedures for assigning and registering.*

(1) The Contractor shall provide IUID data for the IUID Registry for all Government-furnished PIPC requiring DoD unique identification under this contract, including Government-furnished PIPC located at subcontractor and alternate locations.

(2) Unless the Government provides the UII, the Contractor shall establish a concatenated UII or a DoD recognized unique identification equivalent for—

(i) Government-furnished PIPC with a unit acquisition cost of $5,000 or more; and

(ii) The following items of Government-furnished PIPC for which the unit acquisition cost is less than $5,000:

Contract line, subline, or exhibit line item number (if applicable)	Item description

(3) Virtual UIIs may be assigned by the Contractor for existing Government-furnished PIPC requiring item unique identification, if the property can be accurately and uniquely

identified using existing innate serialized identity until an event occurs requiring physical marking with the DoD compliant 2D data matrix.

(4) The Contractor shall assign and register a UII and the master item data for any subassembly, component, or part that does not have an existing UII when it is removed from a parent item and remains with the Contractor as a stand-alone item.

(5) Contractor-acquired PIPC is excluded from the IUID Registry. The Contractor shall report to the IUID Registry as Government-furnished PIPC any Contractor-acquired PIPC that—

(i) Is delivered to the Government; or

(ii) Is transferred by contract modification or other contract provision/requirement to another contract (including items that are transferred in place).

(6) If the initial transfer of Contractor-acquired PIPC is a delivery to DoD, the requirements of the Item Identification and Valuation clause of this contract (DFARS 252.211–7003) shall be applied when determining the requirement for item unique identification.

(7) The Contractor shall submit the UII and the master item data into the IUID Registry in accordance with the data submission procedures in the Item Unique Identification of Government Property Guidebook at *http://www.acq.osd.mil/dpap/UID/guides.htm.*

(i) The following data is required for Government-furnished PIPC items received without a UII:

(A) UII type.

(B) Concatenated UII.

(C) Item description.

(D) Foreign currency code.

(E) Unit of measure.

(F) Acquisition cost.

(G) Mark information.

(1) Bagged or tagged code.

(2) Contents.

(3) Effective date.

(4) Added or removed flag.

(5) Marker code.

(6) Marker identifier.

(7) Medium code.

(8) Value.

(H) Custody information.

(1) Prime contractor identifier.

(2) Accountable contract number.

(3) Category code.

(4) Received date.

(5) Status code.

(ii) The following data is required only for Government-furnished PIPC items received without a UII for specific ''UII types,'' as specified in the Item Unique Identification of Government Property Guidebook:

(A) Issuing agency code.

(B) Enterprise identifier.

(C) Original part number.

(D) Batch/lot number.

(E) Serial number.

(iii) The following data is optional for Government-furnished PIPC items received without a UII:

(A) Acquisition contract number.

(B) Contract line item number/subline item number/exhibit line item number.

(C) Commercial and Government Entity (CAGE) code or Data Universal Numbering System (DUNS) number in the acquisition contract.

(D) Current part number.

(E) Current part number effective date (required if current part number is provided).

(F) Acceptance location.

(G) Acceptance date.

(H) Ship-to code.

(I) Sent date.

(J) Manufacturer identifier.

(K) Manufacturer code (required if manufacturer identifier is provided).

(L) Parent UII (for embedded items).

(c) *Procedures for updating.* (1) The Contractor shall update the IUID Registry for changes in status, mark, custody, or disposition of Government-furnished PIPC under this contract, for PIPC–

(i) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;

(ii) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;

(iii) Disposed of; or

(iv) Transferred to a follow-on or other contract.

(2) The Contractor shall update the IUID Registry for changes to the mark information to add or remove other serialized identification marks and to update a virtual UII to a fully compliant UII when the 2D data matrix symbol is added to the item.

(3) The Contractor shall update the IUID Registry for any changes to the current part number or the current part number effective date.

(4) The Contractor shall update the IUID Registry for any changes to the parent item of a DoD serially managed embedded subassembly, component, or part.

(5) The Contractor shall update the IUID Registry for all Government-furnished PIPC under this contract, so that the IUID Registry reflects the same information that is recorded in the Contractor's property records for Government-furnished PIPC as transactions occur, or at least semi-annually by March 31 and September 30 of each year.

(d) *Procedures for marking.* (1) When an event occurs that requires the physical marking of the item with the 2D data matrix symbol, the Contractor shall use the previously assigned virtual UII as the permanent UII.

(2) The Contractor shall use MIL–STD–130M (or later version) when physically marking existing PIPC with the compliant 2D data matrix symbol. The Contractor that has possession of the PIPC shall use due diligence to maintain the integrity of the UII and shall replace a damaged, destroyed, or lost mark with a replacement mark that contains the same UII data elements, as necessary. The Contractor shall apply the required 2D data matrix symbol to an identification plate, band, tag, or label securely fastened to the item, or directly to the surface of the item to be compliant.

(3) When an item cannot be physically marked or tagged due to a lack of available space to mark identifying information or because marking or tagging would have a deleterious effect, the Contractor shall—

(i) Attach to the item a tag that has the identifying information marked on the tag;

(ii) Place the item in a supplemental bag or other package that encloses the item and has a tag attached to the bag or package that has the identifying information marked on the tag; or

(iii) Apply the identifying information to the unit pack in addition to, or in combination with, the identification marking information specified in MIL–STD–129. When combining marking requirements for a unit pack, the Contractor shall follow the manner, method, form, and format of MIL–STD–129 and shall fulfill the informational requirements of that standard.

(4) When the item has the tag removed or the item is removed from the bag to be installed as an embedded item in a parent item, the Contractor shall—

(i) Assign a UII or a virtual UII to the parent item if a UII does not already exist;

(ii) Mark the parent item with the DoD compliant 2D data matrix symbol, if feasible; and

(iii) Update the IUID Registry to indicate that the tagged or bagged UII item has become an embedded item within the parent item.

(5) In the event a previously tagged or bagged embedded item is subsequently removed from use, the Contractor shall tag or bag and mark the item again with the original UII.

(End of clause)

252.245–7001 [Removed]

■ 8. Section 252.245–7001 is removed.

[FR Doc. E7–18039 Filed 9–12–07; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XC46

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2007 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 10, 2007,

through 1200 hrs, A.l.t., October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2007 TAC of pollock in Statistical Area 620 of the GOA is 2,304 metric tons (mt) as established by the 2007 and 2008 harvest specifications for groundfish of the GOA (72 FR 9676, March 5, 2007). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby decreases the C season pollock allowance by 849 mt, the amount of the B season allowance of the pollock TAC that was exceeded in Statistical Area 620. Therefore, the revised C season allowance of the pollock TAC in Statistical Area 620 is 1,455 mt (2,304 mt minus 849 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2007 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,435 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 7, 2007.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 2007.

Emily H. Menashes,

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

[FR Doc. 07–4498 Filed 9–10–07; 1:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 177
Thursday, September 13, 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 652

RIN 3052–AC36

Federal Agricultural Mortgage Corporation Funding and Fiscal Affairs; Risk-Based Capital Requirements

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, Agency, us, or we) adopts a proposed rule that would amend regulations governing the Federal Agricultural Mortgage Corporation (Farmer Mac or the Corporation). We propose to update the model in response to recent additions to Farmer Mac's program operations that are not addressed in the current version of the model. We propose to amend the current model's assumption regarding the carrying cost of nonperforming loans to better reflect Farmer Mac's actual business practices. We further propose to add a new component to the model to recognize counterparty risk on nonprogram investments through application of discounts or ''haircuts'' to the yields of those investments and to make technical amendments to the layout of the model's Credit Loss Module. The effect of the rule is to update the model so that it continues to appropriately reflect risk in a manner consistent with statutory requirements for calculating Farmer Mac's regulatory minimum capital level.

DATES: You may send us comments by October 29, 2007.

ADDRESSES: We offer several methods for the public to submit comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the Agency's Web site or the Federal eRulemaking Portal. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov*.
- *Agency Web site: http://www.fca.gov.* Select ''Legal Info,'' then ''Pending Regulations and Notices.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Robert Coleman, Director, Office of Secondary Market Oversight, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.
- *FAX:* (703) 883–4477. Posting and processing of faxes may be delayed, as faxes are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act. Please consider another means to comment, if possible.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Legal Info,'' and then select ''Public Comments.'' We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT: Joseph T. Connor, Associate Director for Policy and Analysis, Office of Secondary Market Oversight, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4280, TTY (703) 883–4434; or Rebecca Orlich, Senior Counsel, Office of the General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4420, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Purpose

It is the Agency's objective that the risk-based capital stress test (RBCST) continue to determine regulatory capital requirements consistent with statutory requirements and constraints. The purpose of this proposed rule is to revise the risk-based capital (RBC) regulations that apply to Farmer Mac to more accurately reflect changes in Farmer Mac's operations or business practices. The substantive issues addressed in this proposed rule are treatment of program loan volume with certain credit enhancement features (*e.g.*, Off-Balance Sheet AgVantage volume, subordinated interests, and program loan collateral pledged in excess of Farmer Mac's guarantee obligation (hereafter, ''overcollateral'')), counterparty risk on nonprogram investments, and the resolution timing for nonperforming loans and associated carrying costs. We also propose minor formatting changes to the structure of the Credit Loss Module that are in the nature of technical changes.

II. Background and Summary of Revisions

In 2006, Farmer Mac initiated a program to guarantee timely repayment of principal and interest on notes that are collateralized by Farmer Mac-eligible agricultural real estate mortgage assets and are also secured by an obligation of the mortgage lender. We will refer to this product as Off-Balance Sheet AgVantage. The first such transaction was a guarantee of $500 million in guaranteed notes announced by Farmer Mac on January 23, 2006. Subsequently, Farmer Mac announced similarly structured transactions for $1 billion each on July 13, 2006, and April 11, 2007. The current version of the RBCST lacks a component to recognize the credit enhancement provided by the lender's obligation and, consequently, this volume is excluded from the modeled loan portfolio. We propose to begin including this product in the RBCST model. Further, in the event that Farmer Mac introduces products that include a subordinated interest retained by the primary lender, we propose a modeling treatment of such structures.

We proposed revisions to the treatment of nonprogram investments and the carrying cost of nonperforming loans in our rule published in November 2005.[1] We did not adopt those proposed revisions in the final rule that amended other parts of the model.[2] We now propose revisions to these two components that differ somewhat from those proposed in November 2005. We propose to account for counterparty risk on nonprogram investments by applying a discount (or ''haircut'') to the yields of nonprogram investments scaled according to credit ratings, with a 10-year phase-in. We propose a method of calculating the

[1] 70 FR 69692 (November 17, 2005).
[2] 71 FR 77247 (December 26, 2006).

carrying cost of nonperforming loans over a period we refer to as the Loan Loss Resolution Time period, or ''LLRT'', that will include a quarterly update of the LLRT estimate.

Finally, we propose other technical changes to improve formatting and clarity of labeling in certain cells of the Credit Loss Module worksheets.

III. Issues, Options Considered, and Proposed Revisions

A. Treatment of Off-Balance Sheet AgVantage Program Volume

In 2006, Farmer Mac initiated a program to guarantee the timely repayment of principal and interest on notes that, in addition to being collateralized by Farmer Mac-eligible agricultural real estate mortgages, are also secured by an obligation of the primary lender of those mortgages. The current version of the model lacks a component to recognize the credit enhancement provided by the issuer's general obligation and any contractually required loan collateral in excess of the face value of the guaranteed notes.

We propose to revise the model to include this program volume by modeling all loans in guaranteed note portfolios in the same manner as all other program volume, with two differences. The first difference would recognize the risk mitigation provided by the general obligation by reducing the age-adjusted dollar losses estimated on the subject loans by an adjustment factor derived from historical default rates by the whole letter credit ratings of corporate bond issuers as reported by a nationally recognized statistical rating organization (NRSRO). The second difference would address the risk-reducing effects of contractually required overcollaterization of the subject portfolio, if any.

The derivation and application of the general obligation adjustment factor would be as follows. We would define five levels of credit ratings from ''AAA'' to ''below BBB and unrated.'' We would assign each of the NRSRO-rating categories to one of the five general whole-letter rating categories we define. The adjustment factors applied would be equal to the average cumulative issuer-weighted, 10-year corporate default rates from 1920 through the most recent year as published by Moody's Investor Services.[3] For issuers that are rated below BBB or are unrated, the model would apply a factor equal to the 10-year corporate default rates on Speculative-Grade bonds published in the same report. This rate would then be further adjusted to obtain an estimated loss rate related only to a general obligation of the corporate issuer/Off-Balance Sheet AgVantage counterparty with a given credit rating by considering the loss-severity rate as implied by recovery rates published in the same annual Moody's report (i.e., 1 minus recovery rate). In this case, because recovery rates are not published by whole-letter credit rating categories in the Moody's report, we would apply a loss severity implied by Moody's average Defaulted Bond Recovery Rates by Lien Position for as long a period as the Moody's report provides. Moody's 2006 report includes a table of data on recovery rates from 1982 to 2006. We propose to adopt a severity rate adjustment to historical corporate default rates based on the published long-term recovery rate for senior unsecured bonds. We considered using the recovery rates of the ''All Bonds'' category to calculate implied loss-severity rate factors but rejected that approach because we believe that the senior unsecured category is likely to reflect a more accurate analog of a general obligation than a ''catch-all'' category like ''All Bonds'' that would include senior secured bond and subordinated bond categories in addition to the senior unsecured category. We believe that neither of these bond lien position categories reflects the nature of a general obligation as accurately as the senior unsecured category.

We considered whether the senior secured category might be more applicable, given the mortgage loans that collateralize this obligation. However, we believe our proposed application is justified because, in the RBCST's Credit Loss Module, we target an estimate of the ultimate loss rate associated with the occurrence of what are assumed to be independent events (a corporate default and agricultural mortgage loan pool defaults). For example, suppose that a counterparty utilizing Farmer Mac's Off-Balance Sheet AgVantage product goes bankrupt. We assume that the default event is uncorrelated with the occurrence of worst-case stress in the agricultural lending sector. Therefore, we treat the estimated loss rate calculation on the general obligation separately from the estimated loss rate calculation on the program loan collateral. Thus, we believe the estimation of a counterparty default/severity rate should be done separately from and without regard to the loan collateral and, therefore, that the senior unsecured severity rate is most appropriate.

The following table sets forth the proposed credit loss adjustment factors and their components (Adjustment Factor = Default Rate × Severity Rate).[4]

Whole letter rating	Default rate (percent)	Severity rate (percent)	General obligation adjustment factor (percent)
AAA	0.89	55	0.49
AA	2.31	55	1.26
A	2.90	55	1.58
BBB	7.29	55	3.98
Below BBB and Unrated	27.39	55	15.16

The adjustment factors would be updated quarterly as the updated Moody's report on Default and Recovery Rates of Corporate Bond Issuers becomes available. In the event that there is an interruption of Moody's publication of this annual report, or FCA informs Farmer Mac it has determined that the report has changed so much that it prevents or calls into question the identification of suitable updated factors, the prior year's factors would remain in effect until FCA revises the process through rulemaking.

In addition, the loan portfolio collateral underlying Off-Balance Sheet AgVantage volume may contain loan collateralization in excess of the face

[3] Hamilton, D., Ou S., Kim R., Cantor R., ''Corporate Default and Recovery Rates, 1920—2006,'' published by Moody's Investors Service, February 2007—the most recent edition as of April 2007.

[4] Ibid; Default Rates, page 22, Recovery Rates (Severity Rate = 1 minus Senior Unsecured Average Recovery Rate) page 18.

value of the note. This overcollateral may be contractually required or it may be provided by the issuer of the guaranteed note to reduce administrative expense associated with monitoring the eligibility of the collateral, or both. We view overcollateral in excess of contractually required amounts as solely an administrative convenience for the lender in question. When there is excess overcollateral, any loan in the overcollateral can automatically be deemed to replace a loan that might become ineligible under the AgVantage contract without the need for additional action on the part of either party. However, when it is discretionary and not contractually required, the amount of excess overcollateral provided by Farmer Mac's counterparty is subject to change at any time. Therefore, we believe that overcollateral that is required by contract and is not simply an administrative convenience should be recognized in the model for the risk mitigation it provides, but that the additional collateral provided solely for administrative convenience should not.

Whenever overcollateral exists, we model a portfolio that is larger than the dollar amount of Farmer Mac's guarantee obligation because there is no direct means to segregate a specific set of loans in the total collateral portfolio that could be considered to comprise 100 percent of the face value of the guaranteed notes. We then need an adjustment to reduce the amount of submitted loan collateral for purposes of estimating credit losses in the Credit Loss Module (CLM) in order to avoid the model's recognition of the credit risk on loan volume that is in excess of the contractually required volume.

Given the above considerations, we propose the following treatment. The Off-Balance Sheet AgVantage volume will be modeled using separate worksheets of the CLM with added features to:

(1) Scale the estimated losses to be commensurate with losses associated with the contractually required minimum collateral. To achieve this, we multiply the estimated dollar losses of each loan after age adjustment by the ratio of the guaranteed amount to total submitted loan collateral; and

(2) Recognize the risk mitigation provided by the contractually required overcollateralization. To do so, expected losses after the adjustment in ''(1)'' above are compared to the dollar amount of contractually required overcollateral, and any estimated credit loss dollars in excess of the contractually required overcollateral are input in the model as loss rates applied to that pool's underlying portfolio volume.

(3) Recognize the risk mitigation provided by the counterparty's general obligation. This is accomplished by multiplying any remaining losses after the adjustments in ''(1)'' and ''(2)'' above by the appropriate general obligation adjustment factor according to the counterparty's whole-letter issuer credit rating (set forth in the table above) to reflect the likelihood of exhausting the capacity of the issuer to maintain adequate collateral.

We acknowledge that the order of these adjustments may seem incongruous with the legal structure of a given transaction, but we believe the proposed order makes sense from a modeling perspective. For example, the counterparty's general obligation might legally be first in terms of the security provided in support of Farmer Mac's risk position—followed by access to the loan collateral after an event of default by the counterparty. However, we adjust for the risk-mitigation of the contractually required overcollateralization first, followed by the adjustment for the general obligation. As a practical matter, we believe that Farmer Mac, to make itself whole on any losses after the counterparty defaults, would first work through the overcollateral, which would be held by a bankruptcy-remote vehicle. Only after that overcollateral proved insufficient to make Farmer Mac whole, would it need to pursue further recovery from the counterparty.

B. Add a Treatment for Products that Could Include a Subordinated Interest Retained by the Primary Lender or Seller

In the event Farmer Mac introduces new products that include the specific retention of a portion of the credit risk at either a loan level or a pool level by the primary lender or seller, this loan volume would also be modeled in separate worksheets of the CLM. The model would recognize the subordinated interest by multiplying the age-adjusted dollar losses in the subject portfolio by one minus the percentage of the subordinated interest in order to isolate the portion of estimated loss that Farmer Mac would incur. To the extent that such structures include further stratification of losses, such as a cap on the exposure to losses assumed by Farmer Mac, such stratification would be treated in a similar manner.

C. Add Haircuts on Nonprogram Investments

Currently, the RBCST does not include a component to reflect counterparty risk on Farmer Mac's portfolio of nonprogram investments or its derivatives. We propose adopting a system of haircuts to the yields on investment securities scaled according to credit ratings, with larger haircuts applied to cash flows from investments from issuers with lower credit ratings. We previously proposed haircuts in our November 2005 proposed rule but did not include them in our final rule published on December 26, 2006.

The previously proposed rule based investment haircuts on the risk-based capital regulations of the Office of Federal Housing Enterprise Oversight (OFHEO) (12 CFR part 1750). OFHEO's haircut levels were based on worst-case corporate bond default rates using Depression-era default rates and recovery rates, expanded to a 10-year period. For all counterparties, the default rates used were 5 percent for AAA, 12.5 percent for AA, 20 percent for A, 40 percent for BBB and 100 percent for below BBB or unrated. Severity rates used were 70 percent for nonderivative securities, yielding net haircuts of 3.5 percent, 8.75 percent, 14.0 percent, and 28.0 percent for ratings AAA through BBB, respectively. One hundred percent (100%) haircuts were applied to the ''BBB or unrated'' category. Our November 2005 proposal contained the same haircut levels as in OFHEO's regulations.

We decided not to adopt the November 2005 haircut proposal out of concern that the worst-case perspective on historical default rates is not as appropriate for Farmer Mac as it is for the housing Government-sponsored enterprises (GSEs). While it is plausible that worst-case stress in the housing markets could be highly correlated with worst-case conditions throughout the economy as exhibited by corporate bond defaults, we believe that worst-case agricultural credit conditions would likely be far less correlated with events of major stress in financial markets generally. Therefore, we have based the haircuts in this proposed rule on average bond default rates rather than worst-case historical corporate defaults. In addition, we have chosen not to follow a similar method for expansion of the worst case interval to the 10-year time interval. Instead, we propose a more direct reliance on empirical evidence and base the haircuts on Moody's Average 10-year cumulative issuer-weighted corporate default rates by whole letter rating, adjusted by the average implied long-term severity rate for Senior Unsecured bonds. The weighted-average yields of non-program investment categories would be reduced by the haircut percentage phased in linearly over the 10-year modeling horizon. The haircut levels are the same as the loss rate adjustment factors proposed above for application on loans underlying guaranteed notes, and like those factors these will be updated as

new information becomes available. The proposed investment haircuts to recognize counterparty risk are as follows:

Whole letter credit rating	Haircut (percent)
AAA	0.49
AA	1.26
A	1.58
BBB	3.98
Below BBB and Unrated	15.16

We propose to phase in the haircuts over the 10-year modeling horizon, based on our assumption that defaults on investments in response to a general downturn in the economy would not be instantaneous but rather spread through time. Furthermore, consistent with the OFHEO rule, we would not assign the rating of a parent company to its unrated subsidiary because NRSROs will not impute a corporate parent's rating to a derivative or credit enhancement counterparty in the context of a securities transaction, and because extending that rating to the unrated subsidiary would be tantamount to the regulator rating the subsidiary.[5] However, when an investment is structured as a collateralized obligation backed by the issuer's general obligation and, in turn, a pool of collateral, we accept the issuer rating of that issuer as the credit rating applicable to the security. Unrated securities that are fully guaranteed by GSEs receive the same treatment as AAA securities. Unrated securities backed by the full faith and credit of the U.S. Government do not receive a haircut.

In the event that FCA approves the purchase of an unrated investment, and portions of that investment with specific risk characteristics are later sold by Farmer Mac, the Director will take reasonable measures to adjust the haircut level applied to the investment to recognize the change in the risk characteristics of the retained portion. In taking these measures, the Director will consider the approaches taken to address capital requirements related to similar investments that have been adopted by other Federal financial institution regulators.

We propose to apply the haircuts to yields on a weighted-average basis by investment categories established in the ''Data Inputs'' worksheet of the RBCST, e.g., commercial paper, corporate debt and asset-backed securities, agency mortgaged-backed securities and collateralized mortgage obligations. This treatment would require Farmer Mac to calculate the weighted-average haircut by investment category to be applied to the weighted-average yields for each investment category and to input the haircuts into the ''Data Inputs'' worksheet. The proposed haircuts are set forth in the table in paragraph e. of section 4.1 in the appendix A, subpart B of part 652.

We considered proposing a similar haircut on derivative securities, on the ground that credit stress that impacts Farmer Mac's nonprogram investment portfolio would reasonably be expected to affect its derivatives counterparties and its terms of access to the swap market.[6] We believe a more appropriate approach to haircutting derivatives may be to reflect lost payments on defaulted derivative securities in a net-receive position, as well as the ''replacement cost''—i.e., the additional expense associated with the replacement of derivative positions when the counterparty defaults and the market value of the derivative has increased since the date the defaulted derivative contract was executed. Such an increased market value would be to Farmer Mac's benefit when the counterparty does not default, but to its detriment when it does default. The Agency plans to address this issue in future revisions of the RBCST and specifically requests comment on the most appropriate approach to incorporate into the RBCST such ''replacement cost'' risk relating to derivative securities.

D. Improve the Estimate of Carrying Costs of Nonperforming Loans by Revising LLRT Assumptions

The RBCST was originally developed with a loss-severity estimate that assumes it would take Farmer Mac 1 year to work through problem loans from the point of default through final disposition. An estimate was used because, at the time of development of the RBCST, historical nonperforming loan resolution timing data from Farmer Mac were not sufficient. Farmer Mac data collected since that time indicate that an adjustment to the 1-year assumption to recognize Farmer Mac's actual historical experience is appropriate. If the actual historical time interval is longer than the current model's assumption, the capital needs for carrying nonperforming assets are likely understated in the model. Therefore, we propose amendments to the model to reflect costs associated with any additional time period over which Farmer Mac has carried nonperforming loans on average throughout its history. The LLRT is the weighted average time in fractions of 1 year that Farmer Mac has carried nonperforming loans from the date of the last interest payment, the Interest Paid-Through Date (ITPD) and the date the loan is finally resolved. This proposed LLRT differs from that proposed in November 2005 in the method used to estimate the LLRT period, as described in detail below.

In the final rule preamble to RBCST Version 2.0 published December 26, 2006, we discussed our intent to review further the scaling factor used to estimate the unpaid premium balance associated with estimated loan loss dollar volume. After further review, we believe that basing the scaling factor on the total current portfolio average relationship between origination loan amount and current outstanding loan amounts, as originally proposed, is more appropriate than basing the scaling factor on that same relationship among the small universe of loans that have been through the default and resolution process historically. Our view is based on the small size of the latter data set. This proposed rule also clarifies the calculation of the LLRT period and incorporates additional information provided by Farmer Mac regarding its actual historical LLRT experience.

With the exception of the 1-year period assumed in the loss-severity rate, the current RBCST under a steady-state scenario requires backfilling of loan loss volume with like assets, without recognizing any of the costs associated with carrying loans as non-earning, but funded, assets. Under the proposed rule, the RBCST would reflect additional costs associated with carrying the unpaid principal balance of nonperforming loans during the portion of the LLRT period that exceeds the 1-year assumption.

The change would be incorporated into the RBCST as follows. Off-balance sheet loans with estimated losses are assumed to be purchased from the off-balance sheet portfolio and fully funded at the short-term cost of funds rate used in the model, and any associated guarantee fee income is reversed. The short-term cost of funds (adjusted to incorporate interest rate shock effects) is used to estimate this additional funding cost in recognition of Farmer Mac's actual business practices. On-balance sheet loans generating losses are also removed from the interest earnings calculations and continue to generate interest expense at the blended cost of long- and short-term funds for the

[5] 66 FR 47730, 47777 (September 13, 2001).

[6] The term ''derivative'' refers to over-the-counter financial derivative instruments used by Farmer Mac to hedge interest rate risk and synthetically extend the term structure of its debt to reduce funding costs.

portion of the LLRT period that exceeds 1 year. In response to a comment on the original proposed rule, the rates are not adjusted to incorporate interest rate shock effects in this proposed rule, in contrast to the original proposal of this revision, in recognition that these rates would be in place at the time of the onset of the stress. The model would continue to backfill new loans at the point of loan resolution to retain its steady-state specification.

The proposed revisions involve two principal changes from the current RBCST. First, the date of backfill would be moved to a point in time that more accurately reflects Farmer Mac's actual experience. The model would then capture the additional costs of carrying loans in a non-interest earning category on the balance sheet. Second, the guarantee fee income would be reduced by the weighted average guarantee fee in the portfolio multiplied by the relevant off-balance sheet loan volume over the portion of the LLRT period that exceeds one year. The LLRT would become a data input to be updated with each quarterly submission of the model.

When we first proposed to revise this component in November 2005, we received several comments that noted the need for greater clarity in the LLRT's calculation formula. We have attempted to provide greater clarity in the proposed LLRT calculation as follows:

(1) Assemble in a spreadsheet individual loan level data for all historical nonperforming loans that migrated from the program loan portfolio into nonaccrual status. Identify the ''resolution type,'' i.e., whether the loan resolved by the borrower bringing the loan current or paying off the loan in full, or whether the loan was foreclosed and liquidated prior to being placed in real estate owned (REO), or placed in REO. For each of these resolution types, include the associated dates (e.g., the date the loan was brought current, paid off, liquidated prior to REO, or placed in REO);

(2) Include the following data elements:

Loan Number
Origination Date
Original Balance
Payment Frequency
Interest Paid Through Date (ITPD)
Non-Accrual Date
Unpaid Principal Balance (UPB) at Non-Accrual Date
Accrued Interest Through Non-Accrual Date
Resolution-type Code (assign numerical code to each type listed in the paragraph above)
Resolution Date
Net Gain/Loss Amount

(3) Remove loan records with missing data elements in ''(2)'' above from the database for purposes of the LLRT calculation;

(4) Calculate the number of days between the ITPD and the Resolution Date for each loan;

(5) Divide that number of days by 365. The quotient is the LLRT for each loan. Calculate the weighted-average LLRT using weights based on the total obligation at the Non-Accrual Date (Unpaid Principal Balance at Non-Accrual) and input the resulting weighted-average LLRT into the model's Data Inputs worksheet.

(6) For nonperforming loans that have not resolved, include these loans in the calculation using the quarter end ''as of'' date of each model submission in place of the resolution date, but include them only if the calculated time interval to the ''as of'' date is longer than the calculated average LLRT when these records are excluded. In other words, if the carrying time interval is not longer than the calculated LLRT using the data set excluding these records, the records should be excluded from the final LLRT calculation. This will prevent loan records that have not gone completely through the resolution process from exerting a downward influence on the LLRT but allow them to have an upward influence if the unresolved loans' LLRTs are greater than the calculated average before inclusion of such loans.

Farmer Mac commented on our November 2005 proposal that the application of funding rates to the calculation of the carrying cost of nonperforming loans is inconsistent with its actual practice and that the proposed change should be withdrawn. Farmer Mac's comment focused on three aspects of the proposed LLRT change. We will summarize those three and then provide a discussion of each with our response. In this discussion, we refer to liabilities due in 1 year or less as short-term liabilities and to liabilities due after 1 year as ''long-term'' debt. The comment's three points were: (a) Farmer Mac does not fund nonperforming loans using a certain tenor of debt with perfect consistency, (b) Farmer Mac can effectively change the cost of funds of any nonperforming on-balance sheet loan by employing a ''cross-funding'' strategy, and (c) the model should not fund on-balance sheet, nonperforming loans at the shocked interest rates under the interest rate risk stress component in the model because these loans would, by having been on the balance sheet at the point in time when rates are shocked, have already been funded at pre-shock rates.

Farmer Mac acknowledged that purchases of nonperforming, off-balance sheet loans would be done at short-term rates in the preponderance of cases, which is consistent with this proposed rule. However, Farmer Mac stated that, in actual practice, it uses a mix of short- and long-term debt because it decides on the appropriate funding term for such purchases based on the existing yield curve conditions and REO disposition expectations. While we accept the premise that in certain cases Farmer Mac might fund such purchases using longer term debt, we believe these cases are likely to be rare exceptions (e.g., steeply inverted yield curves) and do not create a sufficiently compelling reason to add more complexity to the model such as, for example, a new data input for average off-balance sheet nonperforming loan funding rates. Therefore, we made no change to this specific aspect of the model in this proposed rule.

Farmer Mac commented that it could employ a cross-funding strategy to effectively fund on-balance sheet non-performing loans at the short-term debt rates such as it uses in most cases of purchases of off-balance sheet nonperforming loans. While we agree that such opportunities could occur, we believe that assuming that Farmer Mac would always have the opportunity to purchase new program assets with the same size and expected life characteristics as on-balance sheet nonperforming loans is too broad an assumption to incorporate into the model. While it is possible that Farmer Mac could execute a similar rebalancing and reassignment of debt tenors among its program assets by adjustments to its ongoing daily funding selections, we would also view such a potentially complex incorporation of this contingent scenario into the model as unjustified for the added level of accuracy it might provide in certain cases. Therefore, we have made no change to the funding rates applied to calculate carrying cost of on-balance sheet nonperforming loans in this proposed rule.

Finally, Farmer Mac commented that the model should not fund on-balance sheet, nonperforming loans at shocked interest rate levels established by statute because these loans would, by having been already on the balance sheet at the point in time when rates are shocked, have been funded at pre-shocked rates. We agree with the comment and have revised the cost of funds applied to on-balance sheet nonperforming loans during the LLRT to pre-shock blended long- and short-term cost of funds rates in this proposed rule.

The proposed LLRT revisions are forward-looking only. In other words, actual loans that defaulted in year zero and are in their second year of nonperforming status in year one of the model's 10-year time horizon are not included in the proposed LLRT revision, and therefore no adjustment to restate current balance sheet amounts is needed. We considered an approach involving such a restatement but rejected it as unnecessarily complex. We note that our proposed revision to more accurately reflect the carrying cost of nonperforming loans results in less

additional stress in a down-rate interest rate risk environment. This result is appropriate, as it would be less costly to fund nonperforming loans when interest rates are relatively low.

We propose one further adjustment to complete the LLRT revision. The RBCST is sometimes referred to as an ''origination loan model'' because it performs its loss estimation based on origination loan amounts and dates. The model does not incorporate loan interest rates or amortization of the loan portfolio. However, implementation of the LLRT revision would require us to make an estimate of loan amortization because it would be inaccurate to estimate the additional carrying cost associated with the LLRT period by applying the appropriate cost of funds to a loan's origination amount. We propose to use the portfolio average principal amortization to make this adjustment (i.e., total portfolio current scheduled principal balance divided by total origination balance). We would also incorporate into the blended rate used to calculate the carrying cost of nonperforming on-balance sheet loans an increment of interest expense associated swap expense according to Farmer Mac's practice of combining debt and swap contracts to fund loans.

E. Technical Changes to Improve Formatting and Clarity of Cell Labeling and Submission Deadlines

In the RBCST spreadsheet, we have relocated the quarter-end date selection pull-down menu from the Assumptions and Relationships page to the Capital worksheet for convenience. We have also made line item labeling changes to enhance clarity in both the CLM and the RBC modules. We have also revised § 652.85 to update submission deadlines to be the same as the filing deadlines of Farmer Mac's public disclosures on Forms 10–Q and 10–K required by the Securities and Exchange Commission.

IV. Impact of Proposed Changes on Required Capital

We have evaluated the impact of the proposed changes to the currently active version of the model, Version 2.0. Our tests indicate that changes related to the LLRT would have the most significant impact on risk-based capital calculated by the model. The table below provides an indication of the impact of the revisions in the quarter ended March 31, 2007. The lines labeled ''General Obligation Adjustment'', ''Investment Haircuts'', and ''Carrying Costs of Nonperforming Loans'' present the impacts if only that revision were made to the current version, and the column labeled ''Difference'' calculates the impact of that individual change for the quarter ended March 31, 2007, compared to the requirement calculated using the currently active Version 2.0. The bottom line presents the impact of all proposed revisions in Version 3.0. As the table shows, the individual estimated impacts do not have an additive relationship to the total impact on the model output. This is due to the interrelationship of the changes with one another when they are combined in Version 3.0.

Calculated regulatory capital ($ in thousands)	3/31/2007	Difference
RBCST Version 2.0	80,831	.....
Treatment of Loans Backed by an Obligation of the Counterparty and Contractually Required Overcollateral	73,244	−7,587
Investment Haircuts	83,922	3,091
Carrying Cost of Nonperforming Loans	105,170	24,340
RBCST Version 3.0 Change Impacts	100,079	19,249

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies the rule will not have a significant economic impact on a substantial number of small entities. Farmer Mac has assets and annual income over the amounts that would qualify it as a small entity. Therefore, Farmer Mac is not considered a ''small entity'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 652

Agriculture, Banks, banking, Capital, Investments, Rural areas.

For the reasons stated in the preamble, part 652 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended to read as follows:

PART 652—FEDERAL AGRICULTURAL MORTGAGE CORPORATION FUNDING AND FISCAL AFFAIRS

1. The authority citation for part 652 continues to read as follows:

Authority: Secs. 4.12, 5.9, 5.17, 8.11, 8.31, 8.32, 8.33, 8.34, 8.35, 8.36, 8.37, 8.41 of the Farm Credit Act (12 U.S.C. 2183, 2243, 2252, 2279aa–11, 2279bb, 2279bb–1, 2279bb–2, 2279bb–3, 2279bb–4, 2279bb–5, 2279bb–6, 2279cc); sec. 514 of Pub. L. 102–552, 106 Stat. 4102; sec. 118 of Pub. L. 104–105, 110 Stat. 168.

Subpart B—Risk-Based Capital Requirements

2. Amend § 652.65 by redesignating paragraph (b)(5) as new paragraph (b)(6) and adding a new paragraph (b)(5) to read as follows:

§ 652.65 Risk-based capital stress test.

* * * * *

(b) * * *

(5) You will further adjust losses for loans that collateralize the general obligation of Off-Balance Sheet AgVantage volume, and for loans where the program loan counterparty retains a subordinated interest in accordance with Appendix A to this subpart.

* * * * *

3. Amend § 652.85 by revising paragraph (d) to read as follows:

§ 652.85 When to report the risk-based capital level.

* * * * *

(d) You must submit your quarterly risk-based capital report for the last day of the preceding quarter by the earlier of the reporting deadlines for Securities and Exchange Commission Forms 10–K and 10–Q, or the 40th day after each of the quarter's ending March 31st, June 30th, and September 30th, and the 75th day after the quarter ending on December 31st.

4. Appendix A of subpart B, part 652 is amended by:

a. Revising the table of contents;

b. Revising the first and second sentences of section 2.0;

c. Redesignating existing section 2.4 as new section 2.5;

d. Adding a new section 2.4;

e. Revising section 4.1 e.;

f. Revising the last sentence of section 4.2 b.(3) introductory text;

g. Redesignating existing section 4.2 b.(3)(C) and (D) as new paragraph (3)(F) and (G);

h. Adding new section 4.2 b. (3)(C), (D), and (E);

i. Revising section 4.4;

j. Revising section 4.5 a.;

k. Removing the word ''unretained'' and adding in its place, the word

''retained'' in the ninth sentence of section 4.6 b.

Appendix A—Subpart B of Part 652—Risk-Based Capital Stress Test

1.0 Introduction.
2.0 Credit Risk.
2.1 Loss-Frequency and Loss-Severity Models.
2.2 Loan-Seasoning Adjustment.
2.3 Example Calculation of Dollar Loss on One Loan.
2.4 Treatment of Loans Backed by an Obligation of the Counterparty and Loans for which Pledged Loan Collateral Volume Exceeds Farmer Mac-Guaranteed Volume.
2.5 Calculation of Loss Rates for Use in the Stress Test.
3.0 Interest Rate Risk.
3.1 Process for Calculating the Interest Rate Movement.
4.0 Elements Used in Generating Cashflows.
4.1 Data Inputs.
4.2 Assumptions and Relationships.
4.3 Risk Measures.
4.4 Loan and Cashflow Accounts.
4.5 Income Statements.
4.6 Balance Sheets.
4.7 Capital.
5.0 Capital Calculations.
5.1 Method of Calculation.

* * * * *

2.0 Credit Risk.

Loan loss rates are determined by applying the loss-frequency equation and the loss-severity factor to Farmer Mac loan-level data. Using this equation and severity factor, you must calculate loan losses under stressful economic conditions assuming Farmer Mac's portfolio remains at a ''steady state.'' * * *

* * * * *

2.4 Treatment of Loans Backed by an Obligation of the Counterparty, and Loans for which Pledged Loan Collateral Volume Exceeds Farmer Mac-Guaranteed Volume.

You must calculate the age-adjusted loss rates for these loans that includes adjustments to scale losses according to the proportion of total submitted collateral to the guaranteed amount as provided for in the ''Dollar Losses'' column of the transformed worksheets in the Credit Loss Module based on new data inputs required in the ''Coefficients'' worksheet of the Credit Loss Module. Then, you must adjust the calculated loss rates as follows.

a. For loans in which the seller retains a subordinated interest, subtract from the total estimated age-adjusted dollar losses on the pool the amount equal to current unpaid principal times the subordinated interest percentage.

b. Some pools of loans underlying specific transactions could include loan collateral volume pledged to Farmer Mac in excess of Farmer Mac's guarantee amount (''overcollateral''). Overcollateral can be either: (i) Contractually required according to the terms of the transaction, or (ii) not contractually required, but pledged in addition to the contractually required amount at the discretion of the counterparty, often for purposes of administrative convenience regarding the collateral substitution process, or (iii) both (i) and (ii).

1. If a pool of loans includes collateral pledged in excess of the guaranteed amount, you must adjust the age-adjusted, loan-level dollar losses by a factor equal to the ratio of the guarantee amount to total submitted collateral. For example, consider a pool of two loans serving as security for a Farmer Mac guarantee on a note with a total issuance face value of $2 million and on which the counterparty has submitted 10-percent overcollateral. The two loans in the example have the following characteristics and adjustments.

Loan	Origination balance	Age-adjusted loss rate (percent)	Estimated age-adjusted losses	Guarantee amount scaling adjustment (2/2.2) (percent)	Losses adjusted for overcollateral
1	$1,080,000	7.0	$75,600	90.91	$68,727
2	1,120,000	5.0	56,000	90.91	50,909

2. If a pool of loans includes collateral pledged in excess of the guaranteed amount that is required under the terms of the transaction, you must further adjust the dollar losses as follows. Calculate the total losses on the subject portfolio of loans after age adjustments and any adjustments related to total submitted overcollateral as described in ''1.'' above. Calculate the total dollar amount of contractually required overcollateral in the subject pool. Subtract the total dollars of contractually required overcollateral from the adjusted total losses on the subject pool. If the result is less than or equal to zero, input a loss rate of zero for this transaction pool in the Data Inputs worksheet of the RBCST. A new category must be created for each such transaction in the RBCST. If the loss rate after subtracting contractually required overcollateral is greater than zero, proceed to additional adjustment for the risk-reducing effects of the counterparty's general obligation described in ''3.'' below.

3. Loans with a positive loss estimate remaining after adjustments in ''1.'' and ''2.'' above, are further adjusted for the security provided by the general obligation of the counterparty. To make this adjustment, multiply the estimated dollar losses remaining after adjustments in ''1.'' and ''2.'' above by the appropriate general obligation adjustment factor based on the counterparty's whole-letter issuer credit rating by a nationally recognized statistical rating organization (NRSRO).

The following table sets forth the general obligation adjustment factors and their components by whole-letter credit rating (Adjustment Factor = Default Rate x Severity Rate).[15]

Whole-letter rating	Default rate (percent)	Severity rate (percent)	General obligation adjustment factor (percent)
AAA	0.89	55	0.49
AA	2.31	55	1.26
A	2.90	55	1.58
BBB	7.29	55	3.98
Below BBB and Unrated	27.39	55	15.16

The adjustment factors will be updated annually as Moody's annual report on Default and Recovery Rates of Corporate Bond Issuers becomes available, normally in January or February of each year. In the event that there is an interruption of Moody's

[15] Hamilton, D., Ou S., Kim R., Cantor R., ''Corporate Default and Recovery Rates, 1920–2006,'' published by Moody's Investors Service, February 2007—the most recent edition as of April 2007; Default Rates, page 22, Recovery Rates (Severity Rate = 1 minus Senior Unsecured Average Recovery Rate) page 18.

publication of this annual report, or FCA determines that the format of the report has changed enough to prevent or call into question the identification of updated factors, the prior year's factors will remain in effect until FCA revises the process through rulemaking.

4. Continuing the previous example, the pool contains two loans on which Farmer Mac is guaranteeing a total of $2 million and with total submitted collateral of 110 percent of the guaranteed amount. Of the 10-percent total overcollateral, 5 percent is contractually required under the terms of the transaction. The pool consists of two loans of slightly over $1 million. Total overcollateral is $200,000, of which $100,000 is contractually required. The counterparty has a single ''A'' credit rating, and after adjusting for contractually required overcollateral, estimated losses are greater than zero. The net loss rate is calculated as described in the steps in the table below.

		Loan A	Loan B
1	Guaranteed Volume	$2,000,000	
2	Origination Balance of 2-Loan Portfolio	$1,080,000	$1,120,000
3	Age-adjusted Loss Rate	7%	5%
4	Estimated Age-adjusted Losses	$75,600	$56,000
5	Guarantee Volume Scaling Factor	90.91%	90.91%
6	Losses Adjusted for Total Overcollateral	$68,727	$50,909
7	Contractually required Overcollateral on Pool (5%)	$100,000	
8	Net Losses on Pool Adjusted for Contractually Required Overcollateral	$19,636	
9	General Obligation Adjustment Factor for ''A'' Issuer	1.58%	
10	Losses Adjusted for ''A'' General Obligation	$310	
11	Loss Rate Input in the RBCST for this Pool	0.02%	

The net, fully adjusted losses are distributed over time on a straight-line basis. When a transaction reaches maturity within the 10-year modeling horizon, the losses are distributed on a straightline over a timepath that ends in the year of the transaction's maturity.

* * * * *

4.1 Data Inputs.

* * * * *

e. *Weighted Haircuts for Non-Program Investments.* For non-program investments, the stress test adjusts the weighted average yield data referenced in section 4.1 b. to reflect counterparty risk. Non-program investments are defined in § 652.5. The Corporation must calculate the haircut to be applied to each investment based on the lowest whole-letter credit rating the investment received from a NRSRO using the haircut levels in the following two tables.

The first table provides the mappings of NRSRO ratings to whole-letter ratings for purposes of applying haircuts. Any ''+'' or ''–'' signs appended to NRSRO ratings that are not shown in the table should be ignored for purposes of mapping NRSRO ratings to FCA whole-letter ratings. The second table provides the haircut levels by whole-letter rating category.

FCA WHOLE-LETTER CREDIT RATINGS MAPPED TO RATING AGENCY CREDIT RATINGS

FCA Ratings Category	AAA	AA	A	BBB	Below BBB and Unrated.
Standard & Poor's Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Fitch Long-Term	AAA	AA	A	BBB	Below BBB and Unrated.
Moody's Long-Term	Aaa	Aa	A	Baa	Below Baa and Unrated.
Standard & Poor's Short-Term	A–1+	A–1	A–2	A–3	SP–3, B, or Below and Unrated.
	SP–1+	SP–1	SP–2		
Fitch Short-Term	F–1+	F–1	F–2	F–3	Below F–3 and Unrated.
Moody's		Prime–1	Prime–2	Prime–3	Not Prime, SG and Unrated.
		MIG1	MIG2	MIG3	
		VMIG1	VMIG2	VMIG3	
Fitch Bank Ratings	A	B	C	D	E
		A/B	B/C	C/D	D/E.
Moody's Bank Financial Strength Rating	A	B	C	D	E.

FARMER MAC RBCST MAXIMUM HAIRCUT BY RATINGS CLASSIFICATION

Ratings classification	Non-program investment counterparties (excluding derivatives) (percent)
Cash	0.00
AAA	0.49
AA	1.26
A	1.58
BBB	3.98
Below BBB and Unrated	15.16

Certain special cases will receive the following treatment. For an investment structured as a collateralized obligation backed by the issuer's general obligation and, in turn, a pool of collateral, reference the Issuer Rating or Financial Strength Rating of that issuer as the credit rating applicable to the security. Unrated securities that are fully guaranteed by Government-sponsored enterprises (GSE) such as the Federal National Mortgage Corporation (Fannie Mae) will receive the same treatment as AAA securities. Unrated securities backed by the full faith and credit of the U.S. Government will not receive a haircut.

If FCA approves the purchase of an unrated investment, and portions of that investment are later sold by Farmer Mac according to their specific risk characteristics, the Director will take reasonable measures to adjust the haircut level applied to the investment to recognize the change in the risk characteristics of the retained portion. The Director will consider similar methods for dealing with capital requirements adopted by other Federal financial institution regulators in similar situations.

Individual investment haircuts must then be aggregated into weighted-average haircuts by investment category and submitted in the ''Data Inputs'' worksheet. The spreadsheet uses these inputs to reduce the weighted-average yield on the investment category to account for counterparty insolvency according to a 10-year linear phase-in of the haircuts. Each asset account category identified in this data requirement is discussed in section 4.2, ''Assumptions and Relationships.''

* * * * *

4.2 Assumptions and Relationships

* * * * *

b. * * *

(3) *Elements related to income and expense assumptions.* * * * These parameters are the gain on agricultural mortgage-backed securities (AMBS) sales, miscellaneous income, operating expenses, reserve

requirement, guarantee fees and loan loss resolution timing.

* * * * *

(C) The stress test assumes that short-term cost of funds is incurred in relation to the amount of defaulting loans purchased from off-balance sheet pools. The remaining unpaid principal balance on this loan volume is the origination amount reduced by the proportion of the total portfolio that has amortized as of the end of the most recent quarter. This volume is assumed to be funded at the short-term cost of funds and this expense continues for a period equal to the loan loss resolution timing period (LLRT) period minus 1. We will calculate the LLRT period from Farmer Mac data. In addition, during the LLRT period, all guarantee income associated with the loan volume ceases.

(D) The stress test generates no interest income on the estimated volume of defaulted on-balance sheet loan volume required to be carried during the LLRT period, but continues to accrue funding costs during the remainder of the LLRT period.

(E) You must update the LLRT period in response to changes in the Corporation's actual experience with each quarterly submission.

* * * * *

4.4 Loan and Cashflow Accounts

The worksheet labeled ''Loan and Cashflow Data'' contains the categorized loan data and cashflow accounting relationships that are used in the stress test to generate projections of Farmer Mac's performance and condition. As can be seen in the worksheet, the steady-state formulation results in account balances that remain constant except for the effects of discontinued programs, maturing Off-Balance Sheet AgVantage positions, and the LLRT adjustment. For assets with maturities under 1 year, the results are reported for convenience as though they matured only one time per year with the additional convention that the earnings/cost rates are annualized. For the pre-1996 Act assets, maturing balances are added back to post-1996 Act account balances. The liability accounts are used to satisfy the accounting identity, which requires assets to equal liabilities plus owner equity. In addition to the replacement of maturities under a steady state, liabilities are increased to reflect net losses or decreased to reflect resulting net gains. Adjustments must be made to the long- and short-term debt accounts to maintain the same relative proportions as existed at the beginning period from which the stress test is run with the exception of changes associated with the funding of defaulted loans during the LLRT period. The primary receivable and payable accounts are also maintained on this worksheet, as is a summary balance of the volume of loans subject to credit losses.

4.5 Income Statements

a. Information related to income performance through time is contained on the worksheet named ''Income Statements.'' Information from the first period balance sheet is used in conjunction with the earnings and cost-spread relationships from Farmer Mac supplied data to generate the first period's income statement. The same set of accounts is maintained in this worksheet as ''Loan and Cashflow Accounts'' for consistency in reporting each annual period of the 10-year stress period of the test with the exception of the line item labeled ''Interest reversals to carry loan losses'' which incorporates the LLRT adjustment to earnings from the ''Risk Measures'' worksheet. Loans that defaulted do not earn interest or guarantee any commitment fees during LLRT period. The income from each interest-bearing account is calculated, as are costs of interest-bearing liabilities. In each case, these entries are the associated interest rate for that period multiplied by the account balances.

Dated: September 7, 2007.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E7–18014 Filed 9–12–07; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29170; Directorate Identifier 2007–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), 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:

Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.

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 October 15, 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:* 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.
- *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 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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

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–2007–29170; Directorate Identifier 2007–NM–075–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 based on 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 2007–0067R1, dated June 7, 2007 (referred to after this

as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.
>
> This Airworthiness Directive mandates a repetitive internal inspection of the lower stiffeners, and a repetitive external inspection of the lower panels in center and outer wing box at level of rib 1 junction.

The corrective action includes contacting Airbus for repair instructions and repair if any crack is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Service Bulletins A320–57–1129 and A320–57–1130, both Revision 01, both dated July 28, 2006. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

Depending on airplane configuration, the compliance times specified in Service Bulletin A320–57–1129 range from between 37,500 and 42,000 flight cycles and 96,100 and 107,300 flight hours, whichever occurs first, from AD effective date; the repetitive intervals range from between 6,100 and 6,500 flight cycles and 15,700 and 16,800 flight hours, whichever occurs first; the grace period is 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

Depending on airplane configuration, the compliance times specified in Service Bulletin A320–57–1130 range from between 23,600 and 45,000 flight cycles and 60,400 and 101,000 flight hours, whichever occurs first, from AD effective date; the repetitive intervals range from between 6,100 and 10,000 flight cycles and 15,600 and 22,500 flight hours, whichever occurs first; the grace period is 6,100 flight cycles or 15,600 flight hours, whichever occurs first.

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 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 583 products of U.S. registry. We also estimate that it would take about between 16 and 77 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be between $746,240 and $3,591,280, or between $1,280 and $6,160 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2007–29170; Directorate Identifier 2007–NM–075–AD.

Comments Due Date

(a) We must receive comments by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A319 and A320 series airplanes, certificated in any category, all certified models, all serial numbers (MSN); except airplanes identified in paragraphs (c)(1) and (c)(2) of this AD. Model A320 series airplanes MSN 2164 through MSN 2688 that have partially received Airbus Modification 33421 in production are affected by the requirements of this AD.

(1) Model A319 series airplanes that have received Airbus Modifications 28238, 28162, and 28342 in production, or Airbus Modification 33421 in production.

(2) Model A320 series airplanes that have received Airbus Modification 33421 fully embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

Some taperlocks used in the wing-to-fuselage junction at rib 1 were found to be non-compliant with the applicable specification, resulting in a loss of pre-tension in the fasteners. In such conditions, the structural integrity of the aircraft could be affected.

This Airworthiness Directive mandates a repetitive internal inspection of the lower stiffeners, and a repetitive external inspection of the lower panels in center and outer wing box at level of rib 1 junction.

The corrective action includes contacting Airbus for repair instructions and repair if any crack is found.

Actions and Compliance

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

(1) For A320–200 aircraft: Before the defined threshold or within the defined grace period after the effective date of this AD, whichever occurs later, as listed in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–57–1129, Revision 01, dated July 28, 2006, and following the instructions given in the service bulletin, perform an internal ultrasonic inspection of the lower stiffeners in the center and outer wing box at the level of the rib 1 junction to detect cracks, and if any crack is found, before further flight contact Airbus for repair instructions and repair. Repeat this inspection at the intervals defined in paragraph 1.E., ''Compliance,'' of the service bulletin.

(2) For all aircraft: Before the defined threshold or within the defined grace period after the effective date of this AD, whichever occurs later, as listed in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A320–57–1130, Revision 01, dated July 28, 2006, and following the instructions given in the service bulletin, perform an external ultrasonic inspection of the lower stiffeners in the center and outer wing box at the level of the rib 1 junction to detect cracks, and if any crack is found, before further flight contact Airbus for repair instructions and repair. Repeat this inspection at the intervals defined in paragraph 1.E., ''Compliance,'' of the service bulletin. Aircraft that have already accomplished Airbus Service Bulletin A320–57–1130, dated September 10, 2004, are compliant with this paragraph.

(3) Modification of the aircraft in accordance with the instructions contained in Airbus Service Bulletins A320–57–1131, A320–57–1137, or A320–57–1140, all dated November 21, 2006; terminates the repetitive inspection requirements of this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

Although the MCAI or service information does not specify a compliance time for corrective action (repair of cracks), paragraphs (f)(1) and (f)(2) of this AD require that the corrective action be done before further flight.

Although the MCAI and/or service information specify a compliance time for accomplishing the inspections after the effective date on the MCAI, this AD requires compliance within the specified compliance time after the effective date of this AD.

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, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. 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, 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 EASA Airworthiness Directive 2007–0067R1, dated June 7, 2007; and Airbus Service Bulletins A320–57–1129 and A320–57–1130, both Revision 01, both dated July 28, 2006; for related information.

Issued in Renton, Washington, on September 4, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18046 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29175; Directorate Identifier 2007–NM–134–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50, Mystere-Falcon 900, Falcon 900EX, Falcon 2000, and Falcon 2000EX Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A rotating rod in the trailing edge flap control linkage broke in flight. Investigations revealed that the rotating rod had been installed in the wrong side during a maintenance operation. This incorrect installation caused a contact between the rotating rod and its retaining bracket leading, after some time in operation, to the rod breakage and flap asymmetry situation.

The consequence on the airplane of the flap asymmetry combined with a latent failure of the asymmetry detection system is classified as a catastrophic failure condition.

The unsafe condition is failure of the rotating rod in the control linkage of the trailing edge flap and consequent flap asymmetry during the approach to landing, which could result in reduced controllability 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 October 15, 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:* 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.

• *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 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, comments received and other information. The street address for the Docket Operations 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

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–2007–29175; Directorate Identifier 2007–NM–134–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 based on 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 2006–0115, dated May 10, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A rotating rod in the trailing edge flap control linkage broke in flight. Investigations revealed that the rotating rod had been installed in the wrong side during a maintenance operation. This incorrect installation caused a contact between the rotating rod and its retaining bracket leading, after some time in operation, to the rod breakage and flap asymmetry situation.
>
> The consequence on the airplane of the flap asymmetry combined with a latent failure of the asymmetry detection system is classified as a catastrophic failure condition.

The unsafe condition is failure of the rotating rod in the control linkage of the trailing edge flap and consequent flap asymmetry during the approach to landing, which could result in reduced controllability of the airplane. The corrective actions include the following: Verifying the correct assembly of the flap rotating rods and associated brackets and installing the rod and bracket with correct orientation/positioning if necessary; and inspecting the rod for damage and replacing the rod if any damage is found. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dassault has issued the following service information:

Airplane model	Service Bulletin No.	Date
Mystere-Falcon 50	F50–468	March 29, 2006.
Mystere-Falcon 900	F900–367	March 29, 2006.
Falcon 900EX	F900EX–269	March 29, 2006.
Falcon 2000	F2000–326	March 29, 2006.
Falcon 2000EX	F2000EX–83	March 29, 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 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 739 products of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $118,240, or $160 per product.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Dassault Aviation: Docket No. FAA–2007–29175; Directorate Identifier 2007–NM–134–AD.

Comments Due Date

(a) We must receive comments by October 15, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1), (c)(2), (c)(3), and (c)(4) of this AD; certificated in any category.

(1) Dassault Model Mystere-Falcon 50 airplanes on which Dassault Modification M2996 has not been implemented.

(2) Dassault Model Mystere-Falcon 900 airplanes on which Dassault Modification M5007 has not been implemented.

(3) Dassault Model Falcon 900EX airplanes on which Dassault Modification M5007 has not been implemented (including serial number 601 and subsequent, also known as ''DX'' airplanes).

(4) Dassault Model Falcon 2000 and Falcon 2000EX airplanes on which Dassault Modification M2465 has not been implemented.

Subject

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

Reason

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

A rotating rod in the trailing edge flap control linkage broke in flight. Investigations revealed that the rotating rod had been installed in the wrong side during a maintenance operation. This incorrect installation caused a contact between the rotating rod and its retaining bracket leading, after some time in operation, to the rod breakage and flap asymmetry situation.

The consequence on the airplane of the flap asymmetry combined with a latent failure of the asymmetry detection system is classified as a catastrophic failure condition.

The unsafe condition is failure of the rotating rod in the control linkage of the trailing edge flap and consequent flap asymmetry during the approach to landing, which could result in reduced controllability of the airplane. The corrective actions include the following: Verifying the correct assembly of the flap rotating rods and associated brackets and installing the rod and bracket with correct orientation/positioning if necessary; and inspecting the rod for damage and replacing the rod if any damage is found.

Actions and Compliance

(f) Unless already done, within 330 flight hours or 7 months after the effective date of this AD, whichever occurs first, do the following actions.

(1) Verify the correct assembly of the flap rotating rods and associated retaining brackets installed in the LH (left-hand)/RH (right-hand) wing root compartment and in the LH and RH main landing gear compartment and inspect the rod for damage, in accordance with the applicable Dassault Service Bulletin given in Table 1 of this AD.

(2) If a rod is found damaged, replace this rod prior to next flight in accordance with the applicable Dassault Service Bulletin given in Table 1 of this AD. If the rod orientation or bracket positioning is not correct, correct the orientation or positioning, as applicable, prior to next flight in accordance with the applicable Dassault Service Bulletin given in Table 1 of this AD.

(3) Label the rods and associated retaining brackets in accordance with the applicable Dassault Service Bulletin given in Table 1 of this AD.

TABLE 1.—DASSAULT SERVICE BULLETINS

Airplane Model	Service Bulletin No.	Date
Mystere-Falcon 50	F50–468	March 29, 2006.
Mystere-Falcon 900	F900–367	March 29, 2006.
Falcon 900EX	F900EX–269	March 29, 2006.
Falcon 2000	F2000–326	March 29, 2006.
Falcon 2000EX	F2000EX–83	March 29, 2006.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. 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, 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 2006–0115, dated May 10, 2006; and the Dassault Service Bulletins listed in Table 1 of this AD, for related information.

Issued in Renton, Washington, on August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18045 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29174; Directorate Identifier 2007–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 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 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD would require repetitive inspections to detect cracking of the body station 303.9 frame, and corrective action if necessary. This proposed AD also provides for optional terminating action for the repetitive inspections. This proposed AD results from reports of cracks found at the cutout in the web of body station frame 303.9 inboard of stringer 16L. We are proposing this AD to detect and correct such cracking, which could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression of the airplane.

DATES: We must receive comments on this proposed AD by October 29, 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: Howard Hall, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6430; 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–2007–29174; Directorate Identifier 2007–NM–125–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

We have received reports of cracks found at the cutout in the web of the body station 303.9 frame inboard of stringer 16L on seven Boeing Model 737 ''classic'' airplanes. The cracks were found on airplanes that had accumulated between 37,562 and 64,000 total flight cycles. Such cracking, if not corrected, could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression of the airplane.

Relevant Service Information

We have reviewed two service bulletins related to this action. The service bulletins are similar but affect different groups of airplanes.

Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007, for certain Model 737–300, –400, and –500 series airplanes, describes the following actions:

- Repetitive high-frequency eddy current (HFEC) and detailed inspections to detect cracking in the station 303.9 web and doubler around the cutouts for door stop straps at stringers 15L and 16L.
- A repair/preventive change, which includes installing a new web, doubler, and stop fitting assemblies; changing the shape of the web cutout; and doing an eddy current inspection.

Service Bulletin 737–53A1188 specifies a threshold for the initial inspection of 10,000 total flight cycles and a grace period of 2,250 flight cycles.

Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, for certain Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, describes the following actions:

- Repetitive ultrasound inspections of the slot-shaped cutout in the web for the door stop strap at stringer 16L.
- Repetitive HFEC inspections of the web along the upper edge and lower edge of the doubler around the doorstop strap at stringer 16L.
- Repetitive detailed inspections of the web around the doubler for the cutout at stringer 16.
- A repair/preventive change, which involves installing a new web and doubler.

Service Bulletin 737–53A1197 specifies a threshold for the initial inspection of 30,000 total flight cycles and a grace period of 2,250 flight cycles.

For both service bulletins, a repair/preventive change eliminates the need

for the repetitive inspections. For airplanes on which the repair/preventive change was previously done according to the original version or Revision 1 of Alert Service Bulletin 737–53A1188, replacing the existing kit with a new kit (in accordance with Revision 2) is necessary to eliminate the need for the repetitive inspections.

Accomplishing the actions specified in the service bulletins 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 below.

Difference Between Proposed AD and Service Information

The service bulletins specify to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions 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 2,765 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs, depending on airplane configuration, for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	1 to 4	$80	None	$80 to $320, per inspection cycle.	1,154	$92,320 to $369,280, per inspection cycle.
Repair/preventive change, if done.	12 to 30	80	$564 to $2,236	$1,524 to $4,636	Up to 1,154	Up to $5,349,944.

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–2007–29174; Directorate Identifier 2007–NM–125–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 29, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes, certificated in any category, identified in Table 1 of this AD.

TABLE 1.—APPLICABILITY

Boeing model—	As identified in Boeing Alert Service Bulletin—
737–100, –200, and –200C series airplanes	737–53A1197, dated August 25, 2006.
737–300, –400, and –500 series airplanes	737–53A1188, Revision 2, dated May 9, 2007, or 737–53A1197, dated August 25, 2006.

Unsafe Condition

(d) This AD results from reports of cracks found at the cutout in the web of body station frame 303.9 inboard of stringer 16L. We are issuing this AD to detect and correct such cracking, which could prevent the left forward entry door from sealing correctly, and could cause in-flight decompression 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.

Repetitive Inspections: Service Bulletin 737–53A1188

(f) For airplanes identified in Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007, including airplanes modified by the repair/preventive change specified in the original version, dated April 9, 1998, or Revision 1, dated March 18, 1999, of the service bulletin: Do detailed and high frequency eddy current (HFEC) inspections in the web and doubler around the slotted holes in the frame web at stringers 15L and 16L, in accordance with the Accomplishment Instructions of the service bulletin. Do the inspections at the applicable time specified in paragraph 1.E. of the service bulletin, except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight in accordance with the service bulletin, except as provided by paragraph (i) of this AD. Repeat the inspections at intervals not to exceed 4,500 flight cycles until accomplishment of the repair/preventive change in accordance with the service bulletin, which terminates the repetitive inspection requirements. A repair/preventive change done in accordance with the original version or Revision 1 of the service bulletin does not terminate the repetitive inspections, but the repetitive inspections may be terminated after the existing kit is replaced with a new kit in accordance with Revision 2 of the service bulletin, paragraph 3.B., Part II, step 3, or Part III, step 3.

Repetitive Inspections: Service Bulletin 737–53A1197

(g) For airplanes identified in Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006: Do an ultrasound inspection of the slot-shaped cutout in the web for the door stop strap at stringer 16L, an HFEC inspection of the web along the upper and lower edges of the doubler around the doorstop strap at stringer 16L, and a detailed inspection of the web around the doubler for the cutout at stringer 16L, in accordance with the Accomplishment Instructions of the service bulletin. Do the inspections at the applicable time specified in paragraph 1.E. of the service bulletin, except as provided by paragraph (h) of this AD. Do all applicable corrective actions before further flight in accordance with the service bulletin, except as provided by paragraph (i) of this AD. Repeat the inspections at intervals not to exceed 4,500 flight cycles, until accomplishment of the repair/preventive change in accordance with the service bulletin, which terminates the repetitive inspections.

Exceptions to Service Bulletin Specifications

(h) Where Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007; and Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, specify a compliance time after release of the service bulletin, this AD requires compliance within the specified time after the effective date of this AD.

(i) Where Boeing Alert Service Bulletin 737–53A1188, Revision 2, dated May 9, 2007; and Boeing Alert Service Bulletin 737–53A1197, dated August 25, 2006, specify to contact Boeing for appropriate action, including repair of damage outside the scope of the service bulletin, repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

Alternative Methods of Compliance (AMOCs)

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

(2) 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 August 31, 2007.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–18049 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 07 0301041–7043–02]

RIN 0691–AA63

Direct Investment Surveys: BE–11, Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend regulations concerning the reporting requirements for the BE–11, Annual Survey of U.S. Direct Investment Abroad. The BE–11 survey is conducted annually and is a sample survey that obtains financial and operating data covering the overall operations of U.S. parent companies and their foreign affiliates. Currently, banks are excluded from coverage. BEA proposes to expand the reporting requirements on the BE–11 annual survey so that U.S. parent companies that are banks, foreign affiliates of bank parents, and bank foreign affiliates of nonbank parents will be reportable. A few minor changes will be required to the instructions on Form BE–11A, Report for U.S. Reporter, so it can be used to collect bank as well as nonbank data. BEA is now implementing a new, specialized Form BE–11B for foreign affiliates of bank parents and bank foreign affiliates of nonbank parents.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before 5 p.m. November 13, 2007.

ADDRESSES: You may submit comments, identified by RIN 0691–AA63, and referencing the agency name (Bureau of Economic Analysis), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. For agency, select ''Commerce Department—all.''
- *E-mail: David.Galler@bea.gov.*
- *Fax:* Office of the Chief, Direct Investment Division, (202) 606–5318.
- *Mail:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Washington, DC 20230.
- *Hand Delivery/Courier:* Office of the Chief, Direct Investment Division, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving, Section M100, 1441 L Street, NW., Washington, DC 20005.

Public Inspection: Comments may be inspected at BEA's offices, 1441 L Street, NW., Room 7005, between 8:30 a.m. and 5 p.m., Eastern Time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David H. Galler, Chief, Direct Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9835.

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR Part 806.14 to set forth the reporting requirements for the BE–11, Annual

Survey of U.S. Direct Investment Abroad. 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Changes

The BE–11 survey is a mandatory survey and is conducted annually by BEA under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA proposes to collect data on bank and nonbank U.S. parent companies and their bank and nonbank foreign affiliates on the BE–11 annual survey. Currently, collection of data on the BE–11 annual survey is limited to that of nonbank U.S. parent companies and their nonbank foreign affiliates. Data for bank U.S. parent companies and their bank and nonbank foreign affiliates and data for bank affiliates of nonbank U.S. parent companies have been collected only once every five years on BEA's BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

To collect data for a U.S. Reporter that is a bank, BEA is proposing to use the BE–11A, Report for U.S. Reporter, that is used for nonbank U.S. parents. BEA is proposing that a new, specialized form, Form BE–11B(FN), be provided for foreign affiliates of bank U.S. parents and bank affiliates of nonbank U.S. parents. The items proposed to be collected on this form would include most of those collected on the form used for bank affiliates on the BE–10 benchmark survey and a few additional items, including sales of services by destination and employment by broad occupational structure, that would make the data more useful for studies of offshoring and more comparable with the data collected for nonbank affiliates of nonbank parents. Because affiliates of bank parents and bank affiliates of nonbank parents tend to be quite large, BEA is proposing to set the exemption level for reporting on the proposed Form BE–11B(FN) at $250 million. (In comparison, the exemption level for other foreign affiliates would be $40 million.) Foreign affiliates of bank U.S. parents and bank affiliates of nonbank U.S. parents with total assets, sales or gross operating revenues, and net income of $250 million or less (positive or negative) would not be required to be reported on the annual survey. Instructions on the forms and in the instruction booklet will be modified to include banks.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, conducts the BE–11 survey under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, ''the Act.'' Section 4(a) of the Act requires that with respect to United States direct investment abroad, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international financial flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, as amended by Executive Orders 12318 and 12518, the President delegated the responsibility for performing functions under the Act concerning direct investment to the Secretary of Commerce, who has redelegated it to BEA. The annual survey of U.S. direct investment abroad is a sample survey that collects information on a variety of measures of the overall operations of U.S. parent companies and their foreign affiliates, including total assets, sales, net income, employment and employee compensation, research and development expenditures, and exports and imports of goods. The sample data are used to derive universe estimates in nonbenchmark years from similar data reported in the BE–10, Benchmark Survey of U.S. Direct Investment Abroad, which is taken every five years. The data are needed to measure the size and economic significance of direct investment abroad, measure changes in such investment, and assess its impact on the U.S. and foreign economies. The data are disaggregated by country and industry of the foreign affiliate and by industry of the U.S. parent.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement has been submitted to the OMB for approval as a revision to a collection currently approved under OMB control number 0608–0053. BEA proposes to expand the reporting requirements on the BE–11 annual survey so that U.S. parent companies that are banks and their foreign affiliates and bank foreign affiliates of nonbank U.S. parent companies will now be reportable. Minor changes will be required to the instructions on Form BE–11A, Report for U.S. Reporter, so it can be used to collect bank as well as nonbank data. A new, sepialized form, Form BE–11B(FN), will be provided for foreign affiliates of bank parents and bank affiliates of nonbank parents.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid OMB control number.

The BE–11 survey, as proposed, is expected to result in the filing of reports from approximately 1,550 respondents. The respondent burden for this collection of information will vary from one company to another, but is estimated to average 79.3 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 122,900 hours (1,550 respondents times 79.3 hours average burden). This estimate is slightly above the burden of 117,600 hours currently requested for this survey in the OMB inventory. The increase in the burden is due to proposed changes in reporting requirements.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (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. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; FAX: 202–606–5311; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0053, Attention PRA Desk Officer for BEA, via e-mail at *pbugg@omb.eop.gov,* or by Fax at 202–395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few small U.S. businesses are subject to the reporting requirements of this survey. U.S. companies that have direct investments abroad tend to be quite large, thereby excluding them from the definition of small entity. The proposed changes to the BE–11 annual survey would not increase the burden on small businesses. The exemption level for the BE–11 survey is set in terms of the size of a U.S. company's foreign affiliates (foreign companies owned 10 percent or more by the U.S. company); if a foreign affiliate has total assets, sales, or net income (loss) greater than the exemption level, it must be reported on Form BE–11B(LF), BE–11B(SF), BE–11B(FN), BE–11B(EZ), or BE–11C. The exemption level for the BE–11 survey for nonbank affiliates of nonbank U.S. Reporters is unchanged at $40 million. Because affiliates of bank parents and bank affiliates of nonbank parents tend to be quite large and to keep respondent burden as low as possible, the proposed exemption level for reporting on the proposed Form BE–11B(FN) is $250 million. Affiliates of bank parents and bank affiliates of nonbank parents with total assets, sales or gross operating revenues, and net income (loss) of $250 million or less would not be required to be reported on the annual survey. To further ease the reporting burden on smaller businesses, U.S. Reporters with total assets, sales or gross operating revenues, and net income (loss) less than or equal to $150 million are required to report only selected items on the BE–11A form for U.S. Reporters in addition to forms they may be required to file for their foreign affiliates.

Because few small businesses are impacted by this rule, and because those small businesses that are impacted are subject to only minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

U.S. investment abroad, Multinational corporations, Economic statistics, Penalties, Reporting and recordkeeping requirements.

Dated: August 2, 2007.

Rosemary D. Marcuss,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp., p. 173) and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.14(f)(3) is revised to read as follows:

§ 806.14 U.S. direct investment abroad.

* * * * *

(f) * * *

(3) BE–11—Annual survey of U.S. Direct Investment Abroad: A report, consisting of Form BE–11A and Form(s) BE–11B(LF) (Long Form), BE–11B(SF) (Short Form), BE–11B(FN), BE–11B(EZ), and/or BE–11C, is required of each U.S. Reporter that, at the end of the Reporter's fiscal year, had a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. Forms required and the criteria for reporting on each are as follows:

(i) Form BE–11A (Report for U.S. Reporter) must be filed by each U.S. person having a foreign affiliate reportable on Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C. If the U.S. Reporter is a corporation, Form BE–11A is required to cover the fully consolidated U.S. domestic business enterprise. However, where a U.S. Reporter's primary line of business is not in banking (or related financial activities), but the Reporter also has ownership in a bank, the bank, including all of its domestic subsidiaries or units, must file on a separate Form BE–11A. The nonbanking U.S. operations not owned by the bank must also file on a Form BE–11A.

(A) If for a U.S. Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter must file a complete Form BE–11A. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(B) If for a U.S. Reporter no one of the three items listed in paragraph (f)(3)(i)(A) of this section was greater than $150 million (positive or negative) at the end of, or for, the Reporter's fiscal year, the U.S. Reporter is required to file on Form BE–11A only items 1 through 31 and Part IV. It must also file a Form BE–11B(LF), (SF), (FN), (EZ), or BE–11C as applicable, for each nonexempt foreign affiliate.

(ii) Forms BE–11B(LF), (SF), and (EZ) (Report for Majority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter).

(A) A BE–11B(LF)(Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $150 million (positive or negative) at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(B) A BE–11B(SF)(Short Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative), but for which no one of these items was greater than $150 million (positive or negative), at the end of, or for, the affiliate's fiscal year, unless the nonbank foreign affiliate is selected to be reported on Form BE–11B(EZ).

(C) A BE–11B(EZ) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter that is selected to be reported on this form in lieu of Form BE–11B(LF) or Form BE–11B(SF).

(iii) Form BE–11B(FN) (Report for Foreign Affiliate of Bank U.S. Reporter and Bank Affiliate of Nonbank U.S. Reporter) must be filed for (1) each foreign affiliate (bank and nonbank) of a bank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year and (2) each bank foreign affiliate

of a nonbank U.S. Reporter for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $250 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(iv) Form BE–11C (Report for Minority-owned Nonbank Foreign Affiliate of Nonbank U.S. Reporter) must be filed for each minority-owned nonbank foreign affiliate of a nonbank U.S. Reporter that is owned at least 20 percent, but not more than 50 percent, directly and/or indirectly, by all U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $40 million (positive or negative) at the end of, or for, the affiliate's fiscal year. In addition, for the report covering fiscal year 2007 only, a Form BE–11C must be filed for each minority-owned nonbank foreign affiliate that is owned, directly or indirectly, at least 10 percent by one nonbank U.S. Reporter, but less than 20 percent by all nonbank U.S. Reporters of the affiliate combined, and for which any one of the three items listed in paragraph (f)(3)(ii)(A) of this section was greater than $100 million (positive or negative) at the end of, or for, the affiliate's fiscal year.

(v) Based on the preceding, an affiliate is exempt from being reported if it meets any one of the following criteria:

(A) For nonbank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $40 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $40 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(B) For affiliates of bank U.S. Reporters and bank affiliates of nonbank U.S. Reporters, none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $250 million (positive or negative). However, affiliates that were established or acquired during the year and for which at least one of these items was greater than $10 million but not over $250 million must be listed, and key data items reported, on a supplement schedule on Form BE–11A.

(C) For nonbank foreign affiliates of nonbank U.S. Reporters, for fiscal year 2007 only, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined and none of the three items listed in paragraph (f)(3)(ii)(A) of this section exceeds $100 million (positive or negative).

(D) For fiscal years other than 2007, it is less than 20 percent owned, directly or indirectly, by all U.S. Reporters of the affiliate combined.

(vi) Notwithstanding paragraph (f)(3)(v) of this section, a Form BE–11B(LF), (SF), (FN), (EZ) or BE–11C must be filed for a foreign affiliate of the U.S. Reporter that owns another non-exempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt. That is, all affiliates upward in the chain of ownership must be reported.

* * * * *

[FR Doc. E7–18036 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–143797–06]

RIN 1545–BF97

Employer Comparable Contributions to Health Savings Accounts Under Section 4980G; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations providing guidance on employer comparable contributions to Health Savings Accounts (HSAs).

DATES: The public hearing, originally scheduled for September 28, 2007 at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Kelly Banks of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622–0392 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Friday, June 1, 2007 (72 FR 30501), announced that a public hearing was scheduled for September 28, 2007, at 10 a.m. in the IRS Auditorium, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 4980G of the Internal Revenue Code.

The public comment period for these regulations expired on August 30, 2007. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed by August 28, 2007. As of September 6, 2007, no one has requested to speak and therefore, the public hearing scheduled for September 28, 2007, is cancelled.

La Nita VanDyke,

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

[FR Doc. E7–18037 Filed 9–12–07; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2006–0650–200705(b); FRL–8464–1]

Approval and Promulgation of Implementation Plans Kentucky: Volatile Organic Compound Definition Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP) submitted by the Kentucky Environmental and Public Protection Cabinet on December 14, 2006. The revision includes changes to the definitions section of Kentucky's Air Quality Regulations regarding the definition of ''volatile organic compounds,'' which was updated to be consistent with the federal definition. In the Final Rules Section of this **Federal Register**, the EPA is approving Kentucky's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. ''EPA–R04–OAR–2006–0650,'' by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: lesane.heidi@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2006–0650,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Heidi LeSane, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9074. Ms. LeSane can also be reached via electronic mail at *lesane.heidi@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: August 27, 2007.

Russell L. Wright, Jr.,

Acting Regional Administrator, Region 4.

[FR Doc. E7–17630 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–0293; FRL–8464–5]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; VOC Emissions From Fuel Grade Ethanol Production Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a March 30, 2007, request from the Indiana Department of Environmental Management (IDEM) to revise the Indiana State Implementation Plan (SIP) by adding a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills. This rule revision creates an industry-specific Best Available Control Technology (BACT) standard for new fuel grade ethanol production dry mills that replaces the otherwise required case-by-case BACT determination for new facilities with the potential to emit 25 tons or more of VOC per year. The benefit of this rule is that establishing specific standards in place of a case-by-case analysis improves the clarity, predictability, and timeliness of permit decisions.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–0293, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312)886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

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

Dated: August 24, 2007.

Richard C. Karl,

Acting Regional Administrator, Region 5.

[FR Doc. E7–17880 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2006–0976; FRL–8467–4]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; Oxides of Nitrogen Budget Trading Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Ohio's request to permanently retire 240 oxides of nitrogen (NO_X) allowances from the State's 2005 new source set aside, which would otherwise have been distributed to existing sources that are required participants in the State of Ohio's NO_X budget. Under the Federal NO_X Budget Trading Program, each participating state receives a main pool of 'allowances', which are credits that permit a source to emit one ton of NO_X per allowance. Allowances are apportioned state-wide to electricity generating units and other large NO_X sources which are subject to the budget trading program. Each year, a certain number of allowances are set aside from the main pool by the State, specifically for use by any new sources subject to the trading program which may come

on-line during that year. If no new sources are created, and no new source set aside allowances are used, the new source set aside allowances are returned to the main pool of allowances for use the following year.

Retiring 240 new source set aside allowances will provide surplus emission reductions to help compensate for the discontinuation of Ohio's 'E-Check' motor vehicle inspection and maintenance (I/M) program in the Cincinnati and Dayton areas for the year 2006 (Ohio is in the process of seeking approval of the removal of E-Check from the State Implementation Plan (SIP), which will be addressed in a separate action). Withholding and permanently retiring 240 new source set aside allowances from the year 2006 control period will provide 240 tons of surplus NO_X emission reductions that are creditable for replacing reductions that otherwise would have occurred from the E-Check program during the 2006 ozone season.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2006–0976, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2006–0976. 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 Section I of 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 Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Anthony Maietta, Life Scientist, at (312) 353–8777 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Life Scientist, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. Does this proposed rule apply to me?
III. Background
A. Why has the State requested revisions to this rule?
B. When did the State submit the requested rule revisions to EPA?
C. When did the State adopt these rule revisions, and have they become effective?
D. When were public hearings held?
E. What comments did the State receive, and how did the State respond?
IV. Review of the State's Submittal
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

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

II. Does this proposed rule apply to me?

This proposed rule affects electrical generation units (EGUs) as well as large boilers which are subject to Ohio's NO_X budget trading program and are not considered to be ''new'' units under the guidelines of the trading program. Affected units will not receive certain excess new unit set aside allowances for the year 2006.

III. Background

A. Why has the State requested revisions to this rule?

On December 31, 2005, Ohio discontinued the motor vehicle inspection and maintenance (I/M) programs, otherwise known as E-Check, in the Cincinnati and Dayton areas. According to section 110(l) of the Clean Air Act, EPA may not approve the

discontinuation of this program unless the State can demonstrate that the revision will not interfere with attainment of the health-based National Ambient Air Quality Standards. For this purpose, Ohio is providing emission reductions that compensate for the emission increase expected to result from discontinuation of E-Check. It should be noted that Ohio is currently seeking approval of the removal of E-Check from the SIP, which will be addressed in a separate rulemaking.

As compensation for the emissions reductions lost through the discontinuation of E-Check, Ohio adopted requirements for low-volatility gasoline and requirements for lower emissions from gas cans, solvent degreasing, and automobile refinishing. EPA approved the gas can, solvent degreasing, and automobile refinishing measures in a rulemaking action published on March 30, 2007, (72 FR 15045). The lower-volatility gasoline requirement was originally intended to be implemented in 2006, but was delayed until June 2008. (For more information see rulemaking published on May 25, 2007, at 72 FR 29269).

Without the low-volatility gasoline program to compensate for emissions in 2006 resulting from discontinuation of E-Check, Ohio asked EPA, in a May 6, 2005, letter, if emission control devices that were installed on various power plants around the Cincinnati-Dayton area could provide the compensatory NO_X emissions reduction. In our response, dated September 20, 2005, EPA noted that, while the reductions clearly occurred and clearly provide both local and regional air quality benefits, these actions would not be considered surplus emission reductions because these reductions would have occurred anyway through regular implementation of the Regional NO_X Budget Trading Program, otherwise known as the NO_X SIP Call.

The NO_X SIP Call created a market-based cap and trade program to reduce NO_X emissions from power plants and other large sources across the Eastern half of the United States. The program is designed to allow states to have greater flexibility to achieve state-wide emission reductions with local as well as regional benefits. Because the NO_X SIP Call garners reductions which are not source-specific, Ohio does not have the ability to decide exactly where reductions will take place.

However, we noted that if Ohio were to withdraw and retire new source set aside allowances, this action would yield surplus reductions. By retiring new source set aside allowances that would otherwise have been redistributed the following year for use by existing sources subject to the trading program, Ohio has mandated a reduction in emissions that EPA considers surplus reductions beyond the reductions of the existing NO_X SIP Call.

Ohio adopted changes to Ohio Administrative Code (OAC) Chapters 3745–72–01 and 3745–14–05, and submitted them for approval on October 11, 2006. These rules provide a revised start date for the use of low-volatility gasoline and provide the necessary quantity of interim, surplus NO_X emission reductions through the permanent retirement of new source set aside allowances from the State's NO_X budget trading program.

Withholding and retiring new source set aside allowances from the year 2005 ensured that these allowances would not return to existing NO_X budget trading program sources in 2006, therefore providing surplus emission reductions for 2006. As indicated above, the portion of the submittal concerning low-volatility gasoline has been addressed by EPA in a separate rulemaking action.

B. When did the State submit the requested rule revisions to EPA?

The Director of the Ohio Environmental Protection Agency (Ohio EPA) submitted a request for EPA to approve revisions to OAC 3745–14–05 (NO_X allowance allocations) in a letter dated October 11, 2006.

C. When did the State adopt these rule revisions, and have they become effective?

The proposed rule language was filed as an emergency rule on April 24, 2006. A proposed permanent adoption package for this rule was filed the same day. The Director of the Ohio Environmental Protection Agency issued an order of adoption for permanent revisions to OAC 3745–14–05 on July 10, 2006. The effective date of this order was July 17, 2006. EPA is rulemaking on the permanent rule revisions and is not acting on the emergency rules.

D. When were public hearings held?

A public hearing on revisions to OAC 3745–14–05 was held on June 2, 2006, in Columbus, Ohio.

E. What comments did the State receive, and how did the State respond?

A commenter questioned the necessity of amending OAC rule 3745–14–05; the commenter stated that the Cincinnati/Dayton area had already monitored attainment, so meeting anti-backsliding regulations is not necessary. Ohio EPA disagreed with the commenter, noting that the Cincinnati area may still be monitoring nonattainment air quality at four sites. Also, OEPA noted that the anti-backsliding elements of the areas' 1-hour ozone nonattainment requirements cannot be removed; therefore the State's proposed rule revisions are, in fact, necessary.

A commenter representing Buckeye Power, Inc., Columbus Southern Power Company, Dayton Power & Light Company, Duke Energy, Ohio Power Company, and Ohio Valley Electric Corporation (hereafter described as the 'Utilities') objected to the proposed rule revisions because local reductions were being realized by applying regional reductions to NO_X budgets, which wouldn't necessarily have local benefit to the Cincinnati/Dayton areas. Ohio EPA responded by noting that air quality modeling indicates that the optimum scenario for reducing ozone in the Cincinnati/Dayton areas is a combination of regional NO_X reductions coupled with local VOC reductions. Ohio EPA also noted that EPA had commented on the regionalism of the retired new source set aside allowances.

The 'Utilities' believe that withdrawal and retirement of 240 new source set aside allowances undermines the stability of the regional NO_X trading program. Ohio EPA disagreed, and noted that the retired allowances were set aside, and unused, by new sources in the specified time period, and that such a small amount of retired new source set aside allowances would not have an impact on the budget trading program.

The 'Utilities' commented that they believe the retirement of NO_X allowances is unlawful under Ohio statute, and that the Ohio EPA has no authority to retire or otherwise remove allowances from the pool. Ohio EPA disagreed, noting that they have indeed had the authority to retire or remove allowances since the program's inception in 2002. Additionally, Ohio EPA found it important to make clear that a NO_X budget allowance does not constitute a property right.

The 'Utilities' commented that they believe retiring allowances will not create emission reductions because sources can simply purchase more allowances from anywhere in the U.S. at the end of the ozone season. Ohio EPA responded by noting that the point of the NO_X Budget Trading Program is not to limit individual sources, but to limit regional emissions, which-as they had already stated-will benefit Cincinnati and Dayton.

The 'Utilities' comment that they had provided Ohio EPA with an alternative proposal for emission reductions in 2005, but Ohio EPA chose not to adopt the proposal. Ohio EPA responded by noting that the utilities' proposal to reduce emissions through compliance with the NO_X Budget Trading Program could not be considered to garner surplus emissions unless allowances were retired to make those reductions surplus. Ohio EPA noted that the utilities did not appear to be willing to retire the associated allowances.

A commenter representing American Municipal Power (AMP) Ohio stated that Ohio EPA had not demonstrated that low-RVP gasoline was not available for the 2006 ozone season. Ohio EPA responded by noting the multitude of issues which caused it to conclude that institution of 7.8 RVP fuel was not an option for the 2006 ozone season. The reasons included a U.S. EPA survey indicating that refinery production capabilities for 7.8 RVP gasoline would fall short for the Cincinnati and Dayton areas, as well as lack of a preemption waiver from U.S. EPA allowing the adoption of low-RVP fuel. Additionally, Ohio EPA noted that if it were to allow noncompliant fuel into the area, compliant suppliers providing low-RVP fuel would be at a disadvantage.

A commenter representing AMP Ohio stated that the Ohio EPA targeted NO_X budget sources for NO_X reductions without fully evaluating other appropriate reduction sources. Ohio EPA disagreed, noting that prior to establishing the RVP fuel program for Cincinnati and Dayton, they fully evaluated numerous control strategies to offset the emissions reduction shortfall that resulted from closing the E-Check program.

A commenter representing the Ohio Manufacturers' Association (OMA) stated that Ohio's manufacturing sector only represents 7% of the state's total NO_X emissions, yet the manufacturing sector is being called on to, in their own words, ''solve the problem''. Ohio EPA noted that the effect of retiring 240 allowances on non-EGU's would be very small for a one-time allocation adjustment. Ohio EPA noted that 15 non-EGU's are participating in Ohio's NO_X trading program, and two of those units are shut down. Furthermore, of the 240 allowances being retired, non-EGU's represent 19 of the 240 allowances spread across the 15 non-EGU facilities whether still in operation or not.

IV. Review of the State's Submittal

The State of Ohio has adopted revisions to its NO_X budget trading program regulations. On October 11, 2006, the State requested that EPA approve these rule revisions for incorporation into Ohio's SIP. Specifically, Ohio's revisions to this rule are:

OAC 3745–14–05 (C)(7):

Ohio inserted this new paragraph which withholds and permanently retires 240 new source set aside allowances from the 2005 control period to offset emission increases associated with the termination of the E-Check program in Cincinnati and Dayton. These withheld and retired allowances would normally have been allocated to existing Ohio NO_X budget sources in 2006.

On February 23, 2007, Ohio supplemented its submittal with information regarding NO_X emission reductions that have occurred in the Cincinnati/Dayton area. This letter identifies several actions that substantially reduced NO_X emissions starting from before the 2006 ozone season, which include installation of selective catalytic reduction controls at 3 units and installation of low NO_X burners at 9 other units. Ohio estimates that the total emission reduction from these actions is over 10,000 tons per ozone season.

In ordinary circumstances, an emission limit can be imposed on a specific source, and the surplus emission reduction clearly occurs at the location of that source. However, a different relationship between regulatory action and resulting emission reductions applies to power plants and other sources regulated under the NO_X SIP Call. The NO_X SIP Call provides a restricted set of allowances that allow a reduced quantity of NO_X emissions across the entire NO_X SIP Call region, while maximizing the flexibility of participants in the program to decide where these reductions will occur. In particular, allowances may be bought and sold and used anywhere in the NO_X SIP Call region. Since the allowances are not assigned to particular locations, Ohio posed the question to EPA of how best to pursue utility emission reductions in the Cincinnati/Dayton area to obtain creditable reductions. EPA responded that reductions at utilities could not be considered surplus to the NO_X SIP Call unless Ohio provided for retirement of allowances, but EPA added that Ohio had substantial flexibility in what allowances to retire.

Ohio's action creates a surplus reduction of 240 tons of NO_X emissions. This action fully conforms with EPA regulations concerning the NO_X SIP Call and other relevant regulations, and so this action is fully approvable. More at issue is whether this action may be treated as fully offsetting the loss of 240 tons of NO_X emission reductions (or its VOC equivalent) from the discontinuation of E-Check in the Cincinnati and Dayton areas.

An important underpinning of the NO_X SIP Call is the interchangeability of emission reductions, *i.e.* a finding that the impacts of the emissions are sufficiently regional in nature and sufficiently insensitive to the spatial distribution of the emission reductions that EPA need not restrict where allowances are used. This finding underlying the NO_X SIP Call has important implications for Ohio's action in retiring allowances. EPA believes that Ohio's retirement of 240 allowances may be credited to make 240 tons of the actual emission reductions occurring in the Cincinnati/Dayton area surplus. We find that the retirement benefits Cincinnati/Dayton air quality, and is reasonable under the circumstances, including the actual emissions reductions in the area.

EPA believes that Ohio may reasonably assign the surplus reductions it has mandated to actual emission reductions that have occurred in the Cincinnati/Dayton area. Allowances have no inherent geographic location. That is, the allowances have no inherent properties that dictate the location of the emission reduction that is attributed to a particular retirement of a particular allowance. Substantial emission reductions have occurred in the Cincinnati/Dayton area. While most of the reductions would be attributable to the NO_X SIP Call, EPA believes that Ohio has latitude to attribute 240 tons of the 2006 NO_X emission reductions in the Cincinnati/Dayton area to its retirement of 240 allowances. Furthermore, even if Ohio or EPA were to associate the allowance retirement with emission reductions in a geographically broader area, EPA believes that the corresponding air quality benefit in the Cincinnati/Dayton area would be similar to the benefit of 240 tons of NO_X emission reductions within the Cincinnati/Dayton area. Indeed, the regional influence of NO_X emissions is the fundamental basis for EPA to establish the NO_X trading program as a regional program without restriction on where (within the trading area) allowances may be used.

EPA views Ohio as having made surplus 240 tons of the emission reductions in 2006. The surplus reductions that result from this retirement provide significant benefit to the Cincinnati/Dayton area, and it is reasonable to assign 240 tons of NO_X emission reductions credit to the

Cincinnati/Dayton area, and to count 240 tons of the area's actual reductions as attributable to the retirement of 240 allowances. Therefore, EPA proposes to approve this rule change, and to conclude that Ohio has provided compensatory emissions decreases for discontinuing the E-Check program in this area in the amount of 240 tons of NO_X emission reduction for the year 2006.

EPA received a January 12, 2007, letter commenting on this issue from a law firm on behalf of the Environmental Committee of the Ohio Electric Utility Institute. This law firm submitted additional comments on February 15, 2007, and on March 13, 2007. EPA views these letters as commenting on the action being proposed here. EPA will review these comments, and address any comments it receives during the comment period, as we prepare final rulemaking on Ohio's submittal.

OAC 3745–14–05 (C)(8) through (C)(10):

Ohio renumbered the existing paragraphs (C)(7) through (C)(9) to (C)(8) through (C)(10), in order to accommodate the inclusion of the new paragraph (C)(7). As the addition of a new paragraph (C)(7) necessitates renumbering the existing paragraphs, we find this rule change to be acceptable and approvable.

V. What action is EPA taking?

EPA is proposing to approve the addition of paragraph (C)(7) to OAC 3745–14–05, and its incorporation into the Ohio SIP, as adopted by the State of Ohio, as defined in Ohio's October 11, 2006, submittal. EPA is also proposing to approve the renumbering of the original OAC 3745–14–05 paragraphs (C)(7) through (C)(9) to (C)(8) through (C)(10), respectively. If EPA takes final action as proposed here, EPA would then retire 240 allowances from Ohio's new source set aside as instructed in this rule. EPA proposes to conclude that Ohio has thereby provided compensatory emissions decreases for discontinuing the E-Check program in this area in the amount of 240 tons of NO_X emission reduction for the year 2006.

VI. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: September 4, 2007.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. E7–18061 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R03–OAR–2007–0448; FRL–8465–7]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted on June 8, 2007 by the State of West Virginia for the Clean Air Interstate Rule (CAIR) Nitrogen Oxides (NO_X) Annual and NO_X Ozone Season Abbreviated SIP. The abbreviated SIP revision EPA is proposing to approve includes West Virginia's methodology for allocation of annual NO_X and ozone season NO_X allowances for Phase 1 of CAIR, which is comprised of control periods 2009 through 2014. EPA is not proposing to make any changes to the CAIR Federal Implementation Plan currently in effect in West Virginia, but is proposing, to the extent EPA approves West Virginia's SIP revision, to amend the appropriate appendices in the CAIR FIP trading rules simply to note that approval. The intended effect of this action is to reduce NO_X emissions in West Virginia that are contributing to nonattainment of the 8 hour ozone and $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS) in downwind states. This action is being taken under section 110 of the Clean Air Act.

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0448 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0448, Marilyn Powers, Acting Branch Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2007–0448. 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.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 30, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–17876 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R03–OAR–2007–0345; FRL–8467–8]

Approval of Plan of the Commonwealth of Pennsylvania; Clean Air Mercury Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Plan submitted by the Commonwealth of Pennsylvania (Pennsylvania) which addresses the requirements of EPA's Clean Air Mercury Rule (CAMR), which EPA promulgated on May 18, 2005 and subsequently revised on June 9, 2006. EPA is proposing to determine that the submitted State Plan fully implements the CAMR requirements for Pennsylvania.

CAMR requires States to regulate emissions of mercury (Hg) from large coal-fired electric generating units (EGUs). CAMR establishes State budgets for annual EGU mercury emissions and requires States to submit State Plans that ensure that annual EGU mercury emissions will not exceed the applicable State budget. States have the flexibility to choose which control measures to adopt to achieve the budgets, including

participating in the EPA-administered CAMR cap-and-trade program.

Pennsylvania chose to adopt a State-specific plan for the control of mercury emissions from EGUs within the State instead of participating in the EPA-administered CAMR cap-and-trade program. Pennsylvania's plan includes a Pennsylvania-specific mercury control regulation for coal-fired EGUs and other elements which the State intends to implement to ensure that Pennsylvania meets its mercury budget.

Pennsylvania's state-specific mercury control regulation establishes annual mercury emission limitations for EGUs as part of a Statewide nontradable mercury allowance program; sets mercury emissions standards for EGUs; and includes monitoring, recordkeeping, reporting and other provisions.

DATES: Comments must be received on or before October 15, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0345, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: Campbell.Dave@epa.gov.*
3. *Mail:* EPA–R03–OAR–2007–0345, Dave Campbell, Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
4. *Hand Delivery or Courier:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2007–0345. 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are also available at the Pennsylvania Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Chalmers at 215–814–2061, or by e-mail at *chalmers.ray@epa.gov.*

SUPPLEMENTARY INFORMATION:

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VI. Statutory and Executive Order Reviews

I. What Action Is EPA Proposing To Take?

EPA is proposing to approve Pennsylvania's State Plan for the control of mercury emissions from coal-fired EGUs, as submitted by Pennsylvania on November 6, 2006, and as subsequently revised by Pennsylvania on March 16, 2007. EPA is proposing to determine that the State Plan will meet the applicable requirements of CAMR. In its State Plan, Pennsylvania would meet CAMR requirements by implementing a Pennsylvania-specific mercury control regulation for coal-fired EGUs, rather than through participation in the EPA-administered CAMR cap-and-trade program. Pennsylvania's state-specific regulation establishes annual emission limitations as part of a Statewide mercury nontradable allowance program; sets mercury emissions standards; and includes other requirements for the purpose of controlling mercury emissions from coal-fired EGUs.

II. What Is the Regulatory History of CAMR?

CAMR was published by EPA on May 18, 2005 (70 FR 28606, ''Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units; Final Rule''). In this rule, acting pursuant to its authority under section 111(d) of the Clean Air Act (CAA), 42 U.S.C. 7411(d), EPA required that all States and the District of Columbia (all of which are referred to herein as States) meet Statewide annual budgets limiting mercury emissions from coal-fired EGUs (as defined in 40 CFR 60.24(h)(8)) under Clean Air Act (CAA) section 111(d). EPA required all States to submit State Plans with control measures that ensure that total, annual mercury emissions from the coal-fired EGUs located in the respective States do not exceed the applicable Statewide annual EGU mercury budget. Under CAMR, States may implement and enforce these reduction requirements by participating in the EPA-administered cap-and-trade program or by adopting any other effective and enforceable control measures.

CAA section 111(d) requires States, and, along with CAA section 301(d) and the Tribal Air Rule (40 CFR part 49), allows Tribes granted treatment as States (TAS), to submit State Plans to EPA that implement and enforce the standards of performance. CAMR explains what must be included in State Plans to address the requirements of CAA section 111(d). The State Plans were due to EPA by November 17, 2006. Under 40 CFR 60.27(b), the Administrator will approve or disapprove the State Plans.

III. What Are the General Requirements of CAMR State Plans?

CAMR establishes Statewide annual EGU mercury emission budgets and is to

be implemented in two Phases. The first Phase of reductions starts in 2010 and continues through 2017. The second Phase of reductions starts in 2018 and continues thereafter. CAMR requires States to implement the budgets by either: (1) Requiring coal-fired EGUs to participate in the EPA-administered cap-and-trade program; or (2) adopting other coal-fired EGU control measures of the respective State's choosing and demonstrating that such control measures will result in compliance with the applicable State annual EGU mercury budget.

Each State Plan must require coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning mercury mass emissions. Each State Plan must also show that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU mercury budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75.

IV. How Can States Comply With CAMR?

Each State Plan must impose control requirements that the State demonstrates will limit Statewide annual mercury emissions from new and existing coal-fired EGUs to the amount of the State's applicable annual EGU mercury budget. States have the flexibility to choose the type of EGU control measures they will use to meet the requirements of CAMR. EPA anticipates that many States will choose to meet the CAMR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAMR cap-and-trade program. EPA also anticipates that many States may choose to control Statewide annual mercury emissions for new and existing coal-fired EGUs through an alternative mechanism other than the EPA-administered CAMR cap-and-trade program. Each State that chooses an alternative mechanism must include with its plan a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU mercury emission budget.

A State submitting a State Plan that requires coal-fired EGUs to participate in the EPA-administered CAMR cap-and-trade program may either adopt regulations that are substantively identical to the EPA model mercury trading rule (40 CFR part 60, subpart HHHH) or incorporate by reference the model rule. CAMR provides that States may only make limited changes to the model rule if the States want to participate in the EPA-administered trading program. A State Plan may change the model rule only by altering the allowance allocation provisions to provide for State-specific allocation of mercury allowances using a methodology chosen by the State. A State's alternative allowance allocation provisions must meet certain allocation timing requirements and must ensure that total allocations for each calendar year will not exceed the State's annual EGU mercury budget for that year.

V. Analysis of Pennsylvania's CAMR State Plan Submittal

A. EPA Is Proposing To Find That Pennsylvania's State Plan Meets All CAMR Budget Related and Other Requirements for Approval

In today's action, EPA is proposing to approve Pennsylvania's State Plan as assuring that mercury emissions from the State's EGUs will not exceed the levels specified in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3), i.e., 1.779 tons per year for EGU mercury emissions in Phase 1 and 0.702 tons per year for EGU mercury emissions in Phase 2.

The State Plan includes a State-specific regulation which requires owners or operators of affected new or existing coal-fired EGUs [1] to comply with a Statewide mercury nontradable allowance program among other provisions. Pennsylvania assured that the regulation would apply to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania by using in the regulation a definition of EGU consistent with the definition specified in CAMR at 40 CFR 60.24(h)(8). Pennsylvania's Statewide mercury nontradable allowance program, limits total mercury emissions from EGUs in the State to the same Phase 1 and Phase 2 amounts as are set forth in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). Pennsylvania's mercury nontradeable allowance program requires its Phase 1 reductions to be achieved starting January 1, 2010, the same date as the Phase 1 reductions are required to be achieved under the CAMR, but requires its Phase 2 reductions to be achieved starting January 1, 2015, earlier than the required Phase 2 reductions under CAMR.

Pennsylvania's State-specific regulation implements the annual limits on total mercury emissions of EGUs in the State by setting aside for each EGU an amount of nontradable allowances that comprises the annual emission limitation (in ounces of mercury emissions) for that EGU. The amount set aside may include allowances requested by the owner or operator and provided from an annual emission limitation supplement pool. Further, the regulation states, in § 123.207(p), that an owner or operator must demonstrate compliance with annual emission limitation on a unit-by-unit, facility-wide, or system-wide basis and explains, in § 123.207(q) and (r), that, under facility-wide or system-wide compliance, the total annual emissions from the EGUs involved must be less than the total amount of allowable annual emissions for such EGUs. However, the regulation also provides, in §§ 123.207(j)(5) and 123.209, that each ounce of emissions by an EGU, facility, or system, as applicable, in excess of the amount of allowances set aside for the EGU, facility, or system, including any set aside under § 123.209, constitutes a violation. EPA interprets § 123.207(j)(5) and (p) through (r) and § 123.209 as requiring that the total mercury emissions from an EGU, or from the appropriate group of EGUs where compliance is on a facility-wide or system-wide basis, determined in accordance with §§ 123.210–123.215, must not exceed the total amount of allowances set aside for the EGU or the appropriate group of EGUs, including any allowances set aside from the annual emission limitation supplement pool, for the year.

It should be noted that Pennsylvania's mercury reduction regulation also restricts the emissions of mercury from existing and new coal-fired EGUs through the imposition of emission standards. These standards, established in § 123.205, are to be achieved in addition to the Statewide mercury nontradeable allowance program provisions described above. The CAMR does not establish or require similar emissions standards to be applied to individual emission units. As discussed above, CAMR requires a demonstration that the State Plan will ensure that the State will meet its assigned State annual EGU mercury emission budget. Pennsylvania meets this requirement through the establishment of its Statewide nontradeable mercury allowance program and not through the

[1] EPA notes that Pennsylvania's definitions of ''existing EGU'' and ''new EGU'' overlap in that an EGU that ''commenced construction, modification, or reconstruction'' on January 1, 2004 would be covered by both definitions. EPA believes that this technical problem with the rule will likely have no practical consequence since it is unlikely that there will be such a unit and Pennsylvania can resolve this if and when a problem arises. Therefore, EPA's proposed approval includes these definitions.

emission limitations required by § 123.205.

In addition, EPA is proposing to approve Pennsylvania's Plan, interpreted as discussed below, as meeting the CAMR provision that State plans must require owners and operators of coal-fired EGUs to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75. The provisions of the regulation included in the State's plan concerning monitoring, recordkeeping, and reporting, found at §§ 123.210–123.215, are intended to be consistent with the monitoring, reporting, and recordkeeping requirements for mercury mass emissions in 40 CFR part 75, Subpart I and in EPA's CAMR model rule, which is based on and references 40 CFR part 75, Subpart I. Section 123.210(a) and (b) states that, for purposes of compliance with 12-month rolling average mercury emission requirements in § 123.205 and annual mercury mass emission requirements in § 123.207, the monitoring, reporting, and recordkeeping requirements of §§ 123.210–123.215 and 139.101, 40 CFR part 75, Subpart I, and Pennsylvania's Continuous Source Monitoring Manual (DEP 274–0300–001) apply. The manual (at 1), in turn, states that part 75 applies to ''monitoring systems required pursuant to only'' part 75 (e.g., mercury mass monitoring systems) and that ''[a]pproval for compliance with [part 75] must be obtained from'' EPA. In addition, § 123.210(k) states that an owner or operator may not use any alternative to a part 75 requirement unless the alternative is approved by the Administrator in writing. EPA therefore interprets the monitoring, reporting, and recordkeeping requirements in Pennsylvania's regulation as requiring owners and operators to meet the requirements of 40 CFR part 75, Subpart I and providing that, if there is any conflict between those requirements and any other requirements set forth in §§ 123.210–123.215, the part 75 provisions will take precedence for the purpose of compliance with annual mercury mass emission requirements.

Specifically, Pennsylvania's regulation includes provisions, in § 123.210(n)(1), allowing discontinuation of use of an approved monitoring system when the owner or operator is using another certified monitoring system for the appropriate parameter that is approved by the department in accordance with §§ 123.210–123.215 and Chapter 139, Subchapter C. In light of the other provisions of Pennsylvania's regulation discussed above, EPA interprets § 123.210(n)(1) as allowing discontinuation of an approved monitoring system used for determining compliance with the annual mercury mass emission requirements in § 123.207 only if another monitoring system for the appropriate parameter is approved in accordance with part 75, subpart I.[2]

Further, Pennsylvania's regulation includes provisions, in § 123.211(a)(5)(iii), requiring the substitution of alternative data in cases where the State ''issues a notice of disapproval of a certification application or a notice of disapproval of certification status'' and allowing the substitution of either data values as specified in part 75 or ''an alternative emission value that is more representative of actual emissions that occurred during the period.'' In light of the other provisions of Pennsylvania's regulation discussed above, EPA interprets § 123.211(a)(5)(iii) as giving Pennsylvania the authority to approve substitute data values other than those specified by part 75 only in cases where those data values would be used solely for the purpose of showing compliance with the mercury emission requirements in § 123.205 and not for any data required for the purpose of showing compliance with the annual mercury mass emission limitation in § 123.207.

Similarly, § 123.212(a) of Pennsylvania's regulations requires the use of substitute data based on the Continuous Source Monitoring Manual if a monitoring system fails to meet certain quality-assurance, quality-control, or data validation requirements. As discussed above, the manual requires mercury mass emission monitoring systems to meet the requirements of part 75. Further, § 123.212(a) also states that a mercury mass emission monitoring system failing to meet quality-assurance or quality-control requirements must use substitute data under part 75. EPA therefore interprets § 123.212(a) to require the use of substitute data as prescribed in part 75 for the purpose of showing compliance with the annual mercury mass emission limitation in § 123.207.

EPA is also proposing to approve the Plan as meeting the requirements of CAMR, and also of 40 CFR Subpart B, entitled, ''Adoption and Submittal of State Plans for Designated Facilities,'' for a demonstration of legal authority. The State's Plan includes an opinion by the Chief Counsel of the Pennsylvania Department of Environmental Protection which demonstrates that the State has the required legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU mercury budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75.

Finally, EPA is proposing to approve the State's Plan as meeting the other applicable general requirements for approval under 40 CFR part 60, subpart B. The State's Plan requires owners and operators of affected coal-fired EGUs in Pennsylvania to comply with emission limitations (expressed as nontradable mercury allowances) that ensure that total emissions from the affected coal-fired EGUs in Pennsylvania will not exceed the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). The State's Plan also requires owners or operators of affected coal-fired EGUs to achieve mercury emission reductions on a schedule that is equivalent to, or more rapid than, the schedule under CAMR. The State's Plan includes evidence that three public hearings were held, and also that public notice of these hearings was provided. The State's Plan also includes an emissions inventory of the State's EGUs.

EPA describes the State's Plan in more detail below.

B. Summary of State Plan

Pennsylvania's State Plan includes a State regulation at 25 Pa. Code, Chapter 123, Standards for Contaminants; Mercury, Annex A. Pennsylvania's state-specific mercury control regulation establishes annual mercury emission limitations for EGUs as part of a Statewide mercury nontradable allowance program, sets mercury emissions standards for EGUs, and includes monitoring, recordkeeping, reporting and other provisions.

Pennsylvania's State-specific regulation is applicable to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3). Pennsylvania assured that the regulation would apply to all of the EGUs which have emissions required to be accounted for under the CAMR budget for Pennsylvania by using

[2] EPA notes that § 123.210(j) incorrectly references ''subsections (f)–(h)'' (rather than just subsection (h)) and that the provision only makes sense where a certified monitoring system already exists and a new stack or flue or new control device is added, which is addressed only in subsection (h). In any event, that § 123.210(j) is based on a provision in § 60.4170(c)(2) that EPA has proposed to remove. See 71 FR 77100, 77117 (2006). EPA interprets § 123.210(j) to apply only with regard to subsection (h), and, if EPA finalizes removal of § 60.4170(c)(2), § 123.210(j) will no longer apply at all for the purpose of compliance with the annual mercury mass emission limitation under § 123.207.

in the regulation a definition of EGU consistent with the definition specified in CAMR at 40 CFR 60.24(h)(8).

The Statewide mercury nontradable allowance program ensures that the mercury emissions from new and existing EGUs in the State will not exceed the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3) by limiting total mercury emissions from EGUs in the State to the same Phase 1 and Phase 2 amounts as specified in the CAMR budget for the State. Under the Statewide mercury nontradable mercury allowance program the total amount of mercury emissions allowed to be emitted from affected coal-fired EGUs is 56,928 ounces (3,558 lbs or 1.779 tons) per year during Phase 1 extending from January 1, 2010 through December 31, 2014, and 22,464 ounces (1,404 pounds or 0.702 tons) per year during Phase 2 starting January 1, 2015 (rather than January 1, 2018, as specified in the CAMR budget for Pennsylvania found at 40 CFR 60.24(h)(3)) and continuing in subsequent years.

The Statewide mercury nontradable allowance program provides that of the total of 56,928 ounces per year of mercury emissions available for emission limitation set-asides during Phase 1, 54,080 ounces will be allocated to existing affected EGUs and the remaining five (5) percent will be set-aside for use by new affected EGUs. The Statewide mercury nontradable allowance program further provides that of the 22,464 ounces per year of mercury emissions available for emission limitation set-asides during Phase 2, 21,790 ounces will be allocated to existing affected coal-fired EGUs and the remaining three (3) percent will be set aside for new affected coal-fired EGUs.

The Statewide mercury nontradable allowance program provides that the annual nontradeable allowances set aside for owners and operators of new affected coal-fired EGUs shall be placed in an annual emission limitation supplement pool administered by the State. Upon petition by owners or operators of new affected EGUs, Pennsylvania may grant annual nontradeable allowances for the new affected coal-fired EGUs from this annual emission limitation supplement pool.

Under the Statewide mercury nontradable allowance program owners or operators of new affected coal-fired EGUs that do not yet have a baseline heat input will be allocated allowances in accordance with the requirements of an approved State permit. The Statewide mercury nontradable allowance program specifies that after a new affected coal-fired EGU has commenced operation and completed three control periods of operation, the EGU will become an existing EGU. The Statewide mercury nontradable allowance program provides that a new affected EGU will continue to receive annual nontradeable mercury allowances from the new unit set-aside until the new affected EGU is eligible for annual nontradable mercury allowances allocated from the set-aside for existing EGUs. Under the allowance program when a new affected EGU is eligible to receive annual nontradable mercury allowances from the set-aside for existing affected EGUs, new maximum allowance levels for all existing affected EGUs will be established, and the State will publish these new allocation levels in the Pennsylvania Bulletin for comment by May 31 of the year that is two years prior to the affected control period.

The Statewide mercury nontradable allowance program provides for determining the maximum number of annual nontradeable allowances set aside for the owners or operators of all existing affected coal-fired EGUs, except for owners or operators of existing circulating fluidized bed (CFB) units, by multiplying the EGU's baseline heat input fraction of the State's total baseline annual heat input from all affected EGUs by the State's annual mercury allowance set-aside for existing affected EGUs for each Phase.

The Statewide mercury nontradable allowance program provides for determining the maximum number of annual nontradable mercury allowances set aside for owners or operators of existing affected CFB units by multiplying the affected CFB's baseline heat input fraction of the State's total baseline annual heat input for all EGUs by the State's Phase 2 annual mercury allowance for existing EGUs.

The Statewide mercury nontradable allowance program provides that the State will publish for comment in the *Pennsylvania Bulletin,* by May 31, 2008, the maximum number of annual nontradeable allowances set aside for ''the owner or operator of each existing affected CFB and EGU other than CFB for Phase 1 of the Statewide mercury allowance program,'' and that it will publish for comment in the *Pennsylvania Bulletin,* by May 31, 2013, the maximum number of annual nontradeable allowances set aside for ''the owner or operator of each existing affected CFB and EGU other than CFB for Phase 2 of the Statewide mercury allowance program.''

The Statewide mercury nontradable allowance program specifies that the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system shall be based on the actual emissions reported to the State. The Statewide mercury nontradable allowance program further specifies that the actual number of annual nontradable mercury allowances awarded to the owner or operator of the EGU, facility, or system may not exceed the maximum number of annual nontradeable mercury allowances assigned to the owner or operator of the EGU, facility, or system, except in cases where the owner or operator has petitioned for and been granted supplemental allowances. Under the Statewide mercury nontradable allowance program the State could provide such allowances from its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program provides that by March 31 of the year following each reporting year, Pennsylvania will notify the owner or operator of each affected EGU, facility, or system, in writing, of the actual number of annual nontradable mercury allowances awarded to the owner or operator of the affected EGU, facility, or system for the control period.

The Statewide mercury nontradable allowance program provides that the owner or operator of one or more affected mercury allowance program EGUs shall demonstrate compliance either on: (1) A unit-by-unit basis, (2) a facility-wide basis, or (3) a system-wide basis. Under the Statewide mercury nontradable allowance program, each ounce of mercury emitted in excess of the maximum number of annual nontradable mercury allowances set aside for the owner or operator of an EGU, facility, or system constitutes a violation of the program and of Pennsylvania's Air Pollution Control Act, unless the owner or operator has petitioned for and has been granted supplemental allowances.

Under the Statewide mercury nontradable allowance program if the actual emissions of mercury reported to the State for an EGU, facility, or system are less than the maximum number of annual nontradeable mercury allowances set aside for the owner or operator of the EGU, facility, or system, the State will place the unused portion of the allowances in its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program specifies that the unused portion of annual nontradeable mercury emission allowances assigned

to the owner or operator of an affected EGU, facility, or system for any year may not be added to the maximum number of annual nontradable mercury allowances assigned to the owner or operator of the affected EGU, facility, or system for use in future years. Under the Statewide mercury nontradable allowance program annual nontradable mercury allowances may not be banked for use in future years.

The Statewide mercury nontradable allowance program does not apply to the owner or operator of an EGU that will be permanently shutdown no later than December 31, 2009. The allowance program provides that annual nontradable mercury allowances will not be set aside for the owner or operator of an existing affected EGU that is already shut down or scheduled for shutdown unless the owner or operator of the EGU obtains a plan approval for the construction of a new EGU, or is on ''standby'' as of the effective date of each set-aside Phase. When a standby unit is ready for normal operation, the owner or operator may petition the State for annual nontradeable allowances. Under the regulation's allowance program the State could provide such allowances from its annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program specifies that an owner or operator of an existing affected EGU who enters into an enforceable agreement with the State, by December 31, 2007, to shutdown that existing EGU and to replace it, by December 31, 2012, with a new Integrated Gasification Combined Cycle (IGCC) unit, is eligible to request annual nontradable mercury allowances from the annual emission limitation supplement pool.

The Statewide mercury nontradable allowance program provides that the State may revise the percentage of set-aside used to determine the number of ounces of mercury set-aside for future annual mercury emission limitations to accommodate the emissions from new EGUs, or changes in the calculation of baseline heat input, so that the total number of ounces of mercury emissions in the Statewide mercury nontradable allowance program is not exceeded.

Pennsylvania's regulation requires owners or operators of EGUs not only to keep the emissions of their EGUs at or below levels consistent with their allowances for their EGUs, but also to meet emission limits. The emission limits for EGUS vary depending upon whether or not the EGU qualifies as a new or existing unit and on the type of EGU.

The regulation defines a new EGU as ''[a]n EGU which commenced construction modification, or reconstruction, as defined under 40 CFR Part 60 (relating to standards of performance for new stationary sources), on or after January 30, 2004, and has less than three complete control periods of heat input data as of December 31 of the preceding control period.'' The regulation defines an existing EGU as ''[a]n EGU which commenced construction, modification or reconstruction on or before January 30, 2004, or which has three complete control periods of heat input data as of December 31 or the preceding control period.''

For new EGUs, Pennsylvania's regulation requires the owner or operator to comply at the commencement of operation on a rolling 12 month basis with one of the following standards:

(1) Pulverized Coal Fired (PCF) EGU. The owner or operator of a PCF EGU shall comply with either or the following:

(i) A mercury emission standard of 0.011 pound of mercury per Gigawatt-hour (GWh).

(ii) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by Pennsylvania.

(2) Circulating Fluidized Bed (CFB) EGU. The owner or operator of a CFB EGU shall comply with the following applicable provisions:

(i) CFB EGUs burning 100% coal refuse as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(ii) CFB EGU's burning 100% coal as the only solid fossil fuel shall comply with either of the following:

(A) A mercury emission standard of 0.011 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(iii) CFB EGUs burning multiple fuels shall comply with a prorated emission standard based on the percentage of heat input from the coal and the percentage of heat input from the coal refuse.

(3) Integrated Gasification Combined Cycle (IGCC) EGU. The owner or operator of an IGCC EGU shall comply with one of the following:

(i) A mercury emission standard of 0.0048 pound of mercury per GWh.

(ii) A minimum 95% control of total mercury as measured from the mercury content in the coal, either as processed or as approved in writing by the State.

Pennsylvania's regulation notifies owners or operators of new EGUs that they are also required to comply with the New Source Performance Standards (NSPS) found at 40 CFR Part 60, Subpart Da. In addition, the regulation indicates that the State's emission standards will serve as the baseline the State uses for review and approval of case-by-case best available technology determinations in accordance with the State's requirements relating to construction, modification, reactivation and operation of sources.

For existing EGUs, the regulation requires the owner or operator to comply on a rolling 12-month basis with one of the following standards:

(1) Phase 1—Effective from January 1, 2010 through December 31, 2014:

(i) PCF EGU—The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.024 pound of mercury per GWh.

(B) A minimum 80% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the State.

(ii) CFB EGU—The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

(2) Phase 2—Effective beginning January 1, 2015, and each subsequent year:

(i) PCF EGU—The owner or operator of a PCF shall comply with one of the following:

(A) A mercury emission standard of 0.012 pound of mercury per GWh.

(B) A minimum 90% control of total mercury as measured from the mercury content in the coal, either as fired or as approved in writing by the State.

(ii) CFB EGU—The owner or operator of a CFB burning coal refuse shall comply with one of the following:

(A) A mercury emission standard of 0.0096 pound of mercury per GWh.

(B) A minimum 95% control of total mercury as measured from the mercury content in the coal refuse, either as fired or as approved in writing by the State.

The regulation also provides that the owner or operator of an EGU may request, in writing, credit for the mercury removal efficiency resulting from the pretreatment of coal or coal refuse towards the minimum specified percent control efficiency of the total mercury requirements.

The regulation provides that the owner or operator of one or more EGUs subject to the mercury emissions standards shall demonstrate compliance on: (1) A unit-by-unit basis, or (2) a facility-wide basis.

Pennsylvania's regulation requires owners or operators of coal-fired EGUs to comply with the monitoring, recordkeeping, and reporting provisions of 40 CFR part 75 concerning mercury mass emissions. The regulation provides that the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75 Subpart I (relating to mercury mass emission provisions) apply, as well as other monitoring, recordkeeping and reporting provisions which are Pennsylvania-specific, as discussed in detail above. The regulation further indicates that Pennsylvania has adopted by reference the provisions entitled ''Mercury Designated Representative for Mercury Budget Sources,'' found in EPA's model rule, 40 CFR part 60, Subpart HHHH, at sections 60.4110 through 60.4114. In addition, the regulation provides that, for purposes of complying with its requirements, the definitions in 40 CFR 72.2 shall apply.

The regulation also includes provisions pertaining to initial certification and recertification procedures for emissions reporting, provisions for out-of-control periods for emissions monitors, provisions pertaining to monitoring of gross electrical output, provisions pertaining to coal sampling and analysis for input mercury levels, and provisions pertaining to general recordkeeping and reporting.

The regulation provides that owners or operators of new or existing affected EGUs will be issued a State plan approval or operating permit (including Title V permits) in which the applicable mercury control requirements will be specified. The regulation specifies that these plan approvals or permits will be issued before the later of January 1, 2010 or the date on which the affected EGU commences operation.

The regulation further provides, at § 123.206, that the State's Department of Environmental Protection (the Department) ''may approve in a plan approval or operating permit, or both, an alternate mercury emission standard or compliance schedule, or both, if the owner or operator of an EGU subject to the emission standards of § 123.205 demonstrates in writing to the Department's satisfaction that the mercury reduction requirements are economically or technologically infeasible. The Department's approval of such an alternative emission standard or compliance schedule does not relieve the owner or operator of the EGU from complying with the other requirements of §§ 123.201–123.205 and 123.207–123.215.''

The State Plan also contains required non-regulatory elements. The State Plan includes an inventory of the existing designated coal-fired EGUs in the State, and provides data regarding the mercury emissions of these EGUs. The Plan also provides documentation of the State's public participation process, including copies of public notices announcing public hearings and the opportunity to comment, a certification that three public hearings were held, and a summary of comments received by the State and of the State's responses. Further, the Plan includes a legal opinion of the Chief Counsel of the Pennsylvania Department of Environmental Protection which demonstrates that the State has the legal authority to adopt emission standards and compliance schedules necessary for attainment and maintenance of the State's annual EGU mercury budget and to require the owners and operators of coal-fired EGUs in the State to meet the monitoring, recordkeeping, and reporting requirements of 40 CFR part 75.

VI. Statutory and Executive Order Reviews

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

This proposal also does not have Tribal implications because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This proposed action also does not have Federalism implications because it would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a State rule implementing a Federal standard. It does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. EPA guidance [3] states that EPA is to assess whether minority or low-income populations face risk or a rate of exposure to hazards that is significant and that ''appreciably exceed[s] or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group.'' (EPA, 1998) Because this rule merely proposes to approve a state rule implementing the Federal standard established by CAMR, EPA lacks the discretionary authority to modify today's regulatory decision on the basis of environmental justice considerations. However, EPA has already considered the impact of CAMR, including this Federal standard, on minority and low-income populations. In the context of EPA's CAMR published in the **Federal Register** on May 18, 2005, in accordance with EO 12898, the Agency has considered whether CAMR may have disproportionate negative impacts on minority or low income populations and determined it would not.

In reviewing State Plan submissions, EPA's role is to approve State choices,

[3] U.S. Environmental Protection Agency, 1998. Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses. Office of Federal Activities, Washington, DC, April, 1998.

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

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Mercury, Reporting and recordkeeping requirements.

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

Dated: September 4, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–18057 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2007–0384; FRL–8467–3]

RIN 2060–AO28

Protection of Stratospheric Ozone: Extension of Global Laboratory and Analytical Use Exemption for Essential Class I Ozone-Depleting Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to extend the global laboratory and analytical use exemption for production and import of class I ozone-depleting substances beyond December 31, 2007, contingent upon and consistent with future anticipated actions by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The exemption allows persons in the United States to produce and import controlled substances for laboratory and analytical uses that have not been already identified by EPA as nonessential. EPA also is proposing to add, for specific laboratory uses, the applicability of the laboratory and analytical use exemption to production and import of methyl bromide.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before November 13, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–0384, 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:* 202–343–2338, attn: Staci Gatica.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Air Docket, EPA West 1301 Constitution Avenue, NW., Room B108, Mail Code 6102T, Washington, DC 20460. 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 –2007–0384. EPA's policy is that all comments received by the docket 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 through *www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. If you would like the Agency to consider comments that include CBI, EPA recommends that you submit the comments to the docket that exclude the CBI portion but that you provide a complete version of your comments, including the CBI, to the person listed under **ADDRESSES** above. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility 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: Staci Gatica by regular mail: U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460; by courier service or overnight express: 1301 L Street, NW., Washington, DC 20005, Workstation 1047B, by telephone: 202–343–9469; or by e-mail: *gatica.staci@epa.gov*.

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I. General Information

A. What should I consider when preparing my comments?

1. *Confidential Business Information*. 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.

II. Extension of the Global Laboratory and Analytical Use Exemption

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) is the international agreement to reduce and eventually eliminate the production and consumption [1] of all stratospheric ozone-depleting substances (ODSs). The elimination of production and consumption of ODSs has been accomplished through adherence to phaseout schedules for specific ODSs. Section 604 of the Clean Air Act, as amended in 1990 and 1998, requires EPA to promulgate regulations implementing the Montreal Protocol's phaseout schedules in the United States. Those regulations are codified at 40 CFR part 82 Subpart A. As of January 1, 1996, production and import of most class I ODSs—including chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform [2]—were phased out in developed countries, including the United States.

However, the Montreal Protocol provides exemptions that allow for the continued import and/or production of ODSs for specific uses. Under the Montreal Protocol, for most class I ODSs, the Parties may collectively grant exemptions to the ban on production and import of ODSs for uses that they determine to be ''essential.'' For example, with respect to CFCs, Article 2A(4) provides that the phaseout will apply ''save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential.'' Similar language appears in the control provisions for halons (Art. 2B), carbon tetrachloride (Art. 2D), methyl chloroform (Art. 2E), hydrobromofluorocarbons (Art. 2G), and chlorobromomethane (Art. 2I). As defined by Decision IV/25 of the Parties, use of a controlled substance is essential only if (1) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects), and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.

Decision X/19 (taken in 1998) allowed a general exemption for essential laboratory and analytical uses through December 31, 2005. EPA included this exemption in our regulations at 40 CFR part 82, subpart A. While the Clean Air Act does not specifically provide for this exemption, EPA determined that an exemption for essential laboratory and analytical uses was allowable under the Act as a *de minimis* exemption. EPA addressed the *de minimis* exemption in the final rule of March 13, 2001 (66 FR 14760–14770).

Decision X/19 also requested the Montreal Protocol's Technology and Economic Assessment Panel (TEAP), a group of technical experts from various Parties, to report annually to the Parties to the Montreal Protocol on procedures that could be performed without the use of controlled substances. It further stated that at future Meetings of the Parties (MOPs), the Parties would decide whether such procedures should no longer be eligible for exemptions. Based on the TEAP's recommendation, the Parties to the Montreal Protocol decided in 1999 (Decision XI/15) that the general exemption no longer applied to the following uses: Testing of oil and grease and total petroleum hydrocarbons in water; testing of tar in road-paving materials; and forensic finger-printing. EPA incorporated this exclusion at Appendix G to Subpart A of 40 CFR part 82 on February 11, 2002 (67 FR 6352).

Most recently, in its 2006 Assessment Report, the Chemicals Technical Options Committee (CTOC) (a subgroup that reports to the TEAP), explained that while it was brought to their attention that some opportunities for substitution exist, there has been only slow progress in replacing ODSs that are being used in laboratory and analytical procedures with substances that are less harmful to the ozone layer (p. 31, Air Docket EPA–HQ–OAR–2007–0384). The TEAP has not recommended any additional procedures to exclude from the exemption for existing approved ODSs. Members of the CTOC will continue to monitor possible alternatives and report back to the Parties.

However, at the Eighteenth MOP the Parties acknowledged the need for methyl bromide for laboratory and analytical procedures, and added methyl bromide to the approved ODSs under the essential laboratory and analytical use exemption. Decision XVIII/15 outlines specific uses and exclusions for methyl bromide under the exemption. Section III of this preamble provides further discussion of the inclusion of methyl bromide in the essential laboratory and analytical use exemption.

Based on (1) The CTOC's recognition that new non-ODS methods are not available for existing exempted laboratory and analytical uses and (2) the recent decision by the Parties to include methyl bromide under the exemption, EPA believes it is very likely that the Parties plan to extend the

[1] ''Consumption'' is defined as the amount of a substance produced in the United States, plus the amount imported into the United States, minus the amount exported to Parties to the Montreal Protocol (*see* Section 601(6) of the Clean Air Act).

[2] Class I ozone depleting substances are listed at 40 CFR part 82 subpart A, appendix A.

existing exemption, which is currently set to expire on December 31, 2007. EPA expects this decision to be made during the nineteenth MOP in September 2007, as the current agenda includes the discussion to extend the essential laboratory and analytical use exemption.

Anticipating extension of the essential laboratory and analytical use exemption, EPA is proposing in this rulemaking to extend the applicability of the exemption beyond December 31, 2007. Specifically, EPA is proposing to extend the exemption through December 31, 2015; however, based on comments and the anticipated Decision by the Parties to the Protocol, EPA would amend the date in the final rule to be consistent with the Parties' Decision if a date other than December 31, 2015 is chosen. Until a Decision is adopted by the Parties the Agency does not know exactly what date will be decided upon by the Parties. EPA considered proposing an extension date of 2009, since the previous extension for this exemption was two years, from December 31, 2005 through December 31, 2007. But based on recent discussions by technical experts, such as the CTOC (p. 31, Air Docket EPA–HQ–OAR–2007–0384), EPA believes that the exemption for essential laboratory and analytical uses will be necessary for some time longer than two years and that the Parties may decide upon an extension beyond two years. Therefore, EPA is proposing to extend the exemption through December 31, 2015 based on when it may be reasonable to assume that an exemption would no longer be necessary. EPA intends to finalize this rulemaking using the actual extension date decided upon by the Parties to ensure consistency, noting that the Parties will have considered the most recent technical review and analysis conducted by the CTOC and the TEAP. Furthermore, the overall finalization of the rule is contingent upon the Parties' extension of the exemption under the Montreal Protocol. EPA is interested in any comments the public may have on the proposed extension date, including our rationale for finalizing a date different from the proposed date of December 31, 2015, based on the anticipated future decision by the Parties of the Montreal Protocol.

EPA's regulations regarding this exemption at 40 CFR 82.8(b) currently state, ''A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2007 subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at Sec. 82.13(u) through (x). There is no amount specified for this exemption.'' Because certain laboratory procedures continue to require the use of class I substances in the United States, because non-ODS replacements for the class I substances have not been identified for all uses, and because EPA anticipates the Parties will extend this exemption under the Montreal Protocol, EPA is proposing to revise 40 CFR 82.8(b) to reflect the extension of the exemption to December 31, 2015. For a more detailed discussion of the reasons for the exemption, refer to the March 13, 2001, **Federal Register** notice. As discussed in the March 2001 notice, the controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental damage will result from the handling and disposal of the small amounts of class I ODS used in such applications. In addition, the 2006 CTOC Assessment Report shows a general decrease from 2002 through 2005 in the amount of phased-out class I substances being supplied to laboratories under this exemption (p. 33, EPA–HQ–OAR–2007–0384).

III. Applicability of the Global Laboratory and Analytical Use Exemption to Methyl Bromide

As of January 1, 2005, production and import of methyl bromide has been disallowed in the United States, except for limited exemptions (40 CFR 82.4(d)). Methyl bromide is a class I controlled substance used chiefly as a fumigant for soil treatment and pest control. EPA created a system of allowances to permit continued production and import of methyl bromide for critical uses after January 1, 2005 (see 69 FR 76981, December 23, 2004). This exemption does not include provisions for continued production of methyl bromide to supply laboratories. However, the phaseout of methyl bromide production and import does not currently restrict inventories of methyl bromide produced prior to January 1, 2005, from being used for laboratory and analytical applications, as described in the Framework rule (69 FR 76982).

Methyl bromide (also known as bromomethane) does have laboratory uses, for example, as a chemical intermediate and methylating agent. EPA regulations allow for methyl bromide to be produced after the January 1, 2005, phaseout date if production is covered by ''essential use allowances or exemptions.'' (40 CFR 82.4(b)(1)) The regulations list the laboratory and analytical use exemption as a ''global exemption for class I controlled substances,'' subject to the restrictions in appendix G (40 CFR 82.4(n)(1)(iii), 82.8(b)). EPA did not originally address the issue of whether the exemption should apply to methyl bromide, but EPA did propose to include methyl bromide in the 2005 rulemaking that extended the exemption through December 31, 2007 (see 70 FR 25727). EPA received one comment on the proposed inclusion of methyl bromide, and it was general in nature. Nonetheless, EPA recognized that further discussion of whether the global laboratory exemption should include methyl bromide might occur at a future MOP and deferred final action on the issue.

In November of 2006, during the meeting of the Parties to the Montreal Protocol, the Parties included methyl bromide in the essential laboratory and analytical use exemption via Decision XVIII/15. Specifically, the Decision XVIII/15 allows methyl bromide be used: (1) As a reference or standard (a) to calibrate equipment which uses methyl bromide; (b) to monitor methyl bromide emission levels; (c) to determine methyl bromide residue levels in goods, plants, and commodities; (2) in laboratory toxicological studies; (3) to compare the efficacy of methyl bromide and its alternatives inside a laboratory; (4) as a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock. Furthermore, Decision XVIII/15 specifically disallows classifying field trials using methyl bromide as essential laboratory and analytical uses and indicates that entities wishing to carry out such field trials could submit critical use nominations for that purpose (p. 43, EPA–HQ–OAR–2007–0384).

Furthermore, we believe that extending the essential laboratory and analytical uses exemption to include methyl bromide is fully consistent with allowing this exemption under the Clean Air Act as a *de minimis* exemption. EPA addressed the *de minimis* exemption in a final rule dated March 13, 2001 (66 FR 14760–14770). EPA believes only a very small amount of methyl bromide will produced under the laboratory and analytical use exemption. To date, very few companies have approached EPA about extending the laboratory and analytical use exemption to include methyl bromide. EPA does not believe that there is a large demand for methyl bromide for laboratory and analytical uses, and there is no indication that there has been significant use of the pre-phaseout inventories (that is, methyl bromide

produced prior to January 1, 2005) for such uses.

One interested company provided EPA with an estimate of annual methyl bromide sales for laboratory and analytical use, if allowed under the current exemption. That company anticipated only 0.14 metric tons in sales. Considering that 27 metric tons of ODSs were produced in 2005 and reported to the UNEP under the current laboratory and analytical use exemption, and considering that EPA has no reason to believe that large amounts of methyl bromide will be demanded and produced under the laboratory and analytical exemption, EPA, in accordance with Decision XVIII/15, proposes to add language regarding methyl bromide inclusion under the global laboratory exemption rule in Appendix G to Subpart A of Part 82. EPA is seeking public comment on the proposed inclusion of methyl bromide in the essential laboratory and analytical use exemption.

IV. Minor Technical Correction

EPA is proposing to revise three paragraphs in the reporting requirements at § 82.13 to correct two sets of minor typographical errors. The first set addresses incorrect paragraph references. Under § 82.13(v), distributors of laboratory supplies who purchased controlled substances under the essential global laboratory and analytical use exemption must report on a quarterly basis the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor, and refers to the provisions of paragraph (y). The reference to paragraph (y) is erroneous and should be a reference to paragraph (w), which describes annual certifications provided by laboratory customers. The same paragraph (§ 82.13(v)) also refers to § 82.4(z), but should actually reference § 82.13(x).

Similarly, § 82.13(x) (applicable to distributors who only sell controlled substances as reference standards for calibrating laboratory analytical equipment) incorrectly refers to paragraph (y) and should refer to paragraph (w). Further, the reference to reports required under paragraph (x) should be corrected to refer to reports required under (v).

The second set of corrections addresses the inaccurate terminology that is used to refer to the essential laboratory and analytical use exemption. In § 82.13(v), (w), and (x), the exemption is referred to as the ''global laboratory essential-use exemption.'' This is not consistent with the rest of the regulation. EPA proposes to replace the reference to ''global laboratory essential-use exemption'' with ''global essential laboratory and analytical use exemption'' found in § 82.13(v), (w), and (x).

EPA seeks comment on these proposed corrections.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not propose any new information collection burden. The recordkeeping and reporting requirements included in this action are already included in an existing information collection burden and this action does not propose any changes that would affect the burden. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR 82.8(a) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170, EPA ICR number 1432.25. 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 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 a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, small entity is defined as: (1) Pharmaceutical preparations manufacturing businesses (NAICS code 325412) that have less than 750 employees; (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.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This action, once finalized, will provide an otherwise unavailable benefit to those companies that obtain ozone-depleting substances under the essential laboratory and analytical use exemption. We have therefore concluded that today's proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impact of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act 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 a small government agency plan under section 203 of the UMRA. 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.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector, since it merely provides an essential laboratory and analytical use exemption from the 1996 and 2005 phase outs of Class I ODSs (including methyl bromide). Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments, because this rule merely extends the essential laboratory and analytical use exemption.

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 proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

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 proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's proposed rule affects only the companies that requested essential use allowances. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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'' under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such as the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it implements Section 604(d)(2) of the Clean Air Act which states that the Agency shall authorize essential use exemptions should the Food and Drug Administration determine that such exemptions are necessary.

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

This proposed rule is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 Fed. Reg. 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule affects only the pharmaceutical companies that requested essential use allowances.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 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 proposed rule does not involve technical standards. Therefore, EPA did not consider 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 (EO) 12898 (59 FR 7629 (Feb. 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 proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The controls in place for laboratory and analytical uses provide adequate assurance that very little, if any, environmental damage will result from the handling and disposal of the small amounts of class I ODS used in such applications. Furthermore, the 2006 CTOC Assessment Report shows a general decrease from 2002 through 2005 in the amount of phased-out class I substances being supplied to laboratories under this exemption.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Chlorofluorocarbons, Imports, Methyl chloroform, Ozone, Reporting and recordkeeping requirements.

Dated: September 7, 2007.

Stephen L. Johnson,

Administrator.

40 CFR part 82 is proposed to be amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

2. Section 82.8 is amended by revising paragraph (b) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(b) A global exemption for class I controlled substances for essential laboratory and analytical uses shall be in effect through December 31, 2015, subject to the restrictions in appendix G of this subpart, and subject to the record keeping and reporting requirements at § 82.13(u) through (x). There is no amount specified for this exemption.

* * * * *

3. Section 82.13 is amended by revising paragraphs (v), (w) introductory text, and (x) to read as follows:

§ 82.13 Recordkeeping and reporting requirements for class I controlled substances.

* * * * *

(v) Any distributor of laboratory supplies who purchased controlled substances under the global essential laboratory and analytical use exemption must submit quarterly (except distributors following procedures in paragraph (x) of this section) the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragraph (w) of this section.

(w) A laboratory customer purchasing a controlled substance under the global essential laboratory and analytical use exemption must provide the producer, importer or distributor with a one-time-per-year certification for each controlled substance that the substance will only be used for essential laboratory and analytical uses (defined at appendix G of this subpart) and not be resold or used in manufacturing. The certification must also include:

* * * * *

(x) Any distributor of laboratory supplies, who purchased class I controlled substances under the global essential laboratory and analytical use exemption, and who only sells the class I controlled substances as reference standards for calibrating laboratory analytical equipment, may write a letter to the Administrator requesting permission to submit the reports required under paragraph (v) of this section annually rather than quarterly. The Administrator will review the request and issue a notification of permission to file annual reports if, in the Administrator's judgment, the distributor meets the requirements of this paragraph. Upon receipt of a notification of extension from the Administrator, the distributor must submit annually the quantity of each controlled substance purchased by each laboratory customer whose certification was previously provided to the distributor pursuant to paragraph (w) of this section.

* * * * *

4. Appendix G to Subpart A of Part 82 is amended by adding paragraph 5 to read as follows:

Appendix G to Subpart A of Part 82—UNEP Recommendations for Conditions Applied to Exemptions and Essential Laboratory and Analytical Uses

* * * * *

5. Pursuant to Decision XVIII/15 of the Parties to the Montreal Protocol, effective November 2006, Methyl Bromide is exempted for the following approved essential laboratory and analytical purposes:

a. As a reference standard to calibrate equipment which uses methyl bromide, to monitor methyl bromide emission levels, to determine methyl bromide residue levels in goods, plants and commodities;

b. In laboratory toxicological studies;

c. To compare the efficacy of methyl bromide and its alternatives inside a laboratory; and

d. As a laboratory agent which is destroyed in a chemical reaction in the manner of feedstock.

Use of methyl bromide for field trials is not an approved use under the global laboratory and analytical use exemption. The provisions of Appendix G, paragraphs (1), (2), (3), and (4), regarding purity, mixing, container, and reporting requirements for other exempt ODSs, also apply to the use of methyl bromide under this exemption.

[FR Doc. E7–18095 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–3622; MB Docket No. 07–175; RM–11380]

Radio Broadcasting Services; Cuba, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by KM Communications, Inc. (''Petitioner'') proposing: (1) To substitute Channel 252A for vacant Channel 292A at Cuba, Illinois at current reference coordinates 40–25–50 NL and 90–14–05 WL with a site restriction of 7.9 km (4.9 miles) southwest of the community and (2) as already reflected in the Media Bureau Consolidated Data Base System, change the reference coordinates of vacant Channel 253A at Augusta, Illinois to 40–08–34 NL and 91–02–51 WL with a site restriction of 12.8 km (7.9 miles) southwest of the community. Petitioner proposes the channel substitution at Cuba to accommodate its pending construction permit application (file no. BNPH–20070502AAU) to substitute Channel 291A for Channel 252A at Abingdon, Illinois which will be considered separately.

DATES: Comments must be filed on or before October 15, 2007, and reply comments on or before October 30, 2007.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to

filing comments with the FCC, interested parties should serve the Petitioner's counsel, as follows: Jeffrey L. Timmons, Esquire, 1400 Buford Highway, Suite G–5, Sugar Hill, Georgia 30518–8727.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 07–175, adopted August 22, 2007, and released August 24, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, 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*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 292A and by adding Channel 252A at Cuba.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–17866 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 07–2855; MB Docket No. 07–124; RM–11378]

Radio Broadcasting Services; Dallas and Waldport, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Radio Beam, LLC. Petitioner proposes the allotment of Channel 253A at Waldport, Oregon, as a first local service. In order to accommodate the proposed allotment, petitioner further requests the substitution of noncommercial educational Channel 236C3 for vacant noncommercial educational Channel 252C3 at Dallas, Oregon. In order to accommodate those two proposed changes in the FM Table of Allotments, petitioner also proposes the substitution of Channel 252C3 for Channel 236C3 at Monmouth, Oregon, and the modification of the license for Station KSND (FM) accordingly. Channel 253A can be allotted at Waldport in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.3 km (5.2 miles) north of Waldport. The proposed coordinates for Channel 253A at Waldport are 44–30–06 North Latitude and 124–04–30 West Longitude. Channel 236C3 can be allotted at Dallas in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.9 km (10.5 miles) southwest of Dallas. The proposed coordinates for Channel 236C3 at Dallas are 44–50–43 North Latitude and 123–30–07 West Longitude. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before October 22, 2007, and reply comments on or before November 6, 2007.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the designated petitioner as follows: Earnest R. Hopseker, Member and Manager, Radio Beam, LLC, 4524 132nd Avenue, SE., Bellevue, Washington 98006.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 07–124, adopted June 27, 2007, released June 29, 2007, and corrected August 31, 2007. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(C)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

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.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel *252C3 and by adding Channel *236C3 at Dallas, and adding Channel 253A at Waldport.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E7–17892 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 070809454–7459–01]

RIN 0648–AV82

Marine Mammals; Advance Notice of Proposed Rulemaking

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

ACTION: Advance notice of proposed rulemaking (ANPR); request for comments.

SUMMARY: NMFS is considering proposing changes to its implementing regulations, and criteria governing the issuance of permits for scientific research and enhancement activities under section 104 of the Marine Mammal Protection Act (MMPA), and is soliciting public comment to better inform the process. Permits to take marine mammal species are governed by the MMPA and NMFS implementing regulations at 50 CFR part 216. For threatened and endangered marine mammal species, permits are also governed by the Endangered Species Act (ESA) and 50 CFR part 222. On May 10, 1996, a final rule was published establishing requirements for issuing permits to take, import, or export marine mammals (including endangered and threatened marine mammals) and marine mammal parts under NMFS jurisdiction for purposes of scientific research and enhancement, photography, and public display (for captures and initial imports), and providing procedures for determining the disposition of rehabilitated stranded marine mammals. NMFS intends to streamline and clarify general permitting requirements and requirements for scientific research and enhancement permits, simplify procedures for transferring marine mammal parts, possibly apply the General Authorization (GA) to research activities involving Level A harassment of non-ESA listed marine mammals, and implement a 'permit application cycle' for application submission and processing of all marine mammal permits. NMFS intends to write regulations for photography permits and is considering whether this activity should be covered by the GA. Any other recommendations received in response to this ANPR regarding regulations at 50 CFR part 216 will be considered prior to proposed rulemaking.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. local time on November 13, 2007.

ADDRESSES: Written comments should be sent to: Chief, Permits, Conservation and Education Division, Attn: Permit Regulations ANPR, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Permit Regulations ANPR, or

The Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Amy Sloan, Fishery Biologist, Office of Protected Resources, NMFS, at (301) 713–2289.

SUPPLEMENTARY INFORMATION: NMFS has authority, delegated from the Secretary of Commerce, to issue permits for research and enhancement activities under Section 104 of the MMPA (16 U.S.C. 1361 *et seq.*) and section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*). Permits to take marine mammal species are governed by the MMPA, ESA, and NMFS implementing regulations at 50 CFR parts 216 and 222. As a Federal agency, issuance of permits by NMFS is also governed by the procedural requirements and provisions of the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA).

The APA is the law under which federal regulatory agencies, including NMFS, create the rules and regulations necessary to implement and enforce major legislative acts such as the MMPA and ESA. Under the APA, NMFS is required to publish in the **Federal Register** descriptions of rules of procedure, substantive rules of general applicability, and make available to the public statements of policy and interpretation, administrative staff manuals and instructions. NEPA requires Federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. The requirements of NEPA apply to NMFS ''decision-making process'' for issuance of permits. The NOAA Administrative Order No. 216–6 (NAO 216–6), Environmental Review Procedures for Implementing the National Environmental Policy Act, is also an agency guidance document for applying the requirements of NEPA to agency actions, including permit issuance.

The following paragraphs provide some possible regulatory changes being considered by NMFS. The changes being considered are found in 50 CFR part 216, most in subpart D, although comments or recommendations regarding any of the subparts will be considered. The sections identified are either followed by recommendations from NMFS on possible alternatives or changes to the current language, or a general solicitation by NMFS to the public for comments pertaining to that section. Several of the regulatory changes would require an amendment or change to the MMPA before implementation could be effective.

Part 216, Regulations Governing the Taking and Importing of Marine Mammals

Subpart A - Introduction

NMFS does not have any recommended changes for § 216.1 (Purpose) or 216.2 (Scope). Do either of these sections require further consideration or clarification?

§ 216.3 Definitions: Are there existing definitions relevant to the marine mammal permitting process that need clarification? Are there any other definitions that need clarification, or definitions that need to be added to these regulations?

Are there any other sections in Subpart A whose language requires further consideration or clarification?

Subpart B - Prohibitions

§ 216.14 Marine mammals taken before the MMPA: Should we add provisions to authorize export in addition to import under § 216.14 (c)?

§ 216.15 Depleted species: Should we clarify that any species or population stock listed as endangered or threatened under the ESA is automatically listed as depleted under the MMPA?

Do any of the remaining sections in Subpart B require further consideration or clarification?

Subpart C - General Exceptions

Several regulatory changes are being considered by NMFS in this subpart and include, but are not limited to, the following:

§ 216.23 Native exceptions: Does NMFS need to clarify sections regarding transfer of marine mammal parts? Do we need to include provisions for authorizing transfers of marine mammal parts for research purposes? If so, be explicit on how this should occur and whether this should be combined with transfers of other marine mammal parts legally taken, or kept under this section.

§ 216.25 Exempted marine mammals and marine mammal products: Should this section be consolidated with other sections (e.g., incorporate this § 216.25 into §§ 216.14 and 216.12; remove § 216.25)? Do we then reserve this section (or use another section) for a consolidated parts transfer section (for parts taken legally under §§ 216.22, 216.26, and 216.37) if possible? Subpart C is a substantial component of part 216. Therefore, any comments or recommendations regarding whether the language in other sections in subpart C require further consideration or clarification would be appreciated.

Subpart D - Special Exceptions

§ 216.31 Definitions: Are there any definitions relevant to marine mammal permitting procedures that need to be added?

§ 216.32 Scope: Does the scope of this subpart need to be modified or clarified in any manner?

§ 216.33 Permit application submission, review, and decision procedures: Generally, NMFS is considering reorganizing and/or consolidating permitting regulation §§ 216.33 (Permit application, submission, review, and decision procedures), 216.34 (Issuance criteria), 216.35 (Permit restrictions), 216.36 (Permit conditions), and 216.41 (Permits for scientific research and enhancement) where possible. We have included some specific recommendations; however any recommendations where regulations need consolidation or simplification in the following sections, and how this might be achieved, would be considered.

§ 216.33 (c) Initial review: NMFS regulations currently require the agency to determine that a proposed permit is categorically excluded from the need to prepare further environmental documentation, or to prepare an environmental assessment (EA) with a finding of no significant impact (FONSI) or a final environmental impact statement (EIS), during initial review of the application and prior to making it available for public comment and review pursuant to § 216.33(d). This sequence precludes public input on the application that may influence NMFS' determination regarding whether the activity requires an EA or EIS. Therefore, NMFS is considering a revision to this section, and the corresponding language at 216.33(d) such that NEPA documentation is not required at the time an application is made available for public review and comment. NMFS Administrative Order 216–6 stipulates that issuance of scientific research, enhancement, photography, and public display permits pursuant to the MMPA and issuance of research permits pursuant to the ESA are, in general, categorically excluded from the need to prepare further environmental documentation because, as a class, they do not have significant environmental impacts. With this recommended change NMFS would continue to evaluate the potential environmental impacts of permits, but could conduct this assessment after the close of the comment period on the application, when comments from the public and other agencies could be considered in that assessment.

§ 216.33(d) Notice of receipt and application review: Consistent with the proposed changes to § 216.33(c) regarding NEPA, NMFS proposes to revise the requirements for including a NEPA statement in the notice of receipt of an application. Where NMFS believes a permit would be categorically excluded from the need to prepare further environmental documentation, the notice will so state. If that determination is based on information in an existing EA/FONSI or Final EIS, that document will be referenced in the notice and made available simultaneously with the application. When no previous NEPA documentation relevant to the proposed activity is available, the notice will solicit public input on the appropriate level of NEPA documentation concurrent with review of the application. After the close of the comment period on the application, NMFS would determine the appropriate level of NEPA documentation for the activity, in consideration of comments received, information presented in the application, and the best available information. NMFS' final NEPA determination on a specific application would be published in the **Federal Register** prior to or concurrent with notice of permit issuance or denial pursuant to § 216.33(e).

§ 216.33(e) Issuance or denial procedures: Consistent with MMPA section 104(d), the current regulations state that ''within 30 days of the close of the public comment period the Office Director will issue or deny a special exception permit.'' NMFS is considering revising this section to reconcile the ESA section 7 and NEPA compliance timelines with statutory requirements for when permit decisions must be made relative to the close of the comment period. For example, when NMFS determines, subsequent to the public comment period on an application, that issuance of a proposed permit requires preparation of an EA or EIS, processing of the application cannot be completed within 30 days of the close of the comment period. Under the current regulations, NMFS would have to deny the permit because the appropriate NEPA documentation could not be completed in time to support a decision to issue. Rather than deny such permits, NMFS proposes to defer a decision on the application until the appropriate NEPA documentation is completed. Similarly, when formal consultation is required under section 7 of the ESA, which allows 135 days or more for consultation and completion of a Biological Opinion, processing of the application cannot be completed within 30 days of the close of the comment period. Rather than deny such permits, NMFS proposes to defer a decision on the application until the section 7 consultation is completed. In both cases NMFS would publish a notice in the FR within 30 days of the close of the comment period announcing that a decision on the specific application has been deferred pending completion of the appropriate NEPA and ESA section 7 analyses.

§ 216.33(e)(4): For permits involving marine mammals listed as endangered or threatened under the ESA, NMFS is required to determine whether the permit is consistent with the requirements of section 10(d) of the ESA. NMFS would appreciate comments on how to determine whether an applicant has applied for a permit ''in good faith'' and whether the permit

''will operate to the disadvantage of such endangered or threatened species.''

§ 216.34 Issuance criteria: NMFS would appreciate any recommendations on whether or how this section should be clarified or consolidated with other sections. In support of the applicant's demonstration that the proposed activity is humane, NMFS is considering requiring proof of Institutional Animal Care and Use Committee approval of the proposed activity where such approval would be required pursuant to the Animal Welfare Act. Any comments on this would be appreciated.

§ 216.35 Permit restrictions: One consideration by NMFS is to provide for only minor amendments to original permits (see § 216.39), not major vs. minor as currently exists, which would require modifying language in this section. Any proposed change resulting in the need for an increased level of take or risk of adverse impact above those authorized in the original permit would no longer be considered under an amendment, and would require a new permit application. Since the current regulatory process for reviewing and issuing major amendments requires a public comment and review period, the time it takes to issue a major amendment is consistent with the time it takes to process a new application. Amendments would be issued that only covered those activities that are currently consistent with a minor amendment. One exception to this would be that proposed changes in location, species, and numbers where no take is involved (e.g., import of parts or specimens legally acquired by a foreign institution) would be a minor amendment. Similarly, NMFS is considering removing the part in § 216.35(b) that provides for a 1 year extension of the original permit. If this change were implemented neither the life of the original permit nor any subsequent amendment would exceed five years from the effective date of the permit. NMFS would appreciate any comments on this recommendation.

The regulations require individuals conducting permitted activities to possess qualifications commensurate with their duties and responsibilities, or be under the direct supervision of a person with such qualifications. NMFS is seeking input on whether it should promulgate regulations specifying minimum standards for such qualifications or specific criteria by which applicants' qualifications and those of other personnel listed in the application could be evaluated.

§ 216.36 Permit conditions: NMFS is considering consolidating this section with other sections of permit regulations (e.g., § 216.35, Permit restrictions) that also contain conditions pertinent to marine mammal permits. NMFS would appreciate any recommendations on how this might best be achieved.

§ 216.37 Marine mammal parts: This section of the regulations is the subject of much confusion in interpretation and implementation. This section is similar to the transfer requirements in § 216.22. NMFS is interested in clarifying and consolidating this section with other sections (§§ 216.22 and 216.26) involving the transfer of parts legally taken, such that the same provisions would apply to the subsequent transfer of any marine mammal part that was already legally taken under the MMPA and/or ESA. Should there be different requirements for the transfer of parts legally taken from an ESA-listed versus a non ESA-listed marine mammal? Does there need to be any clarification on how to apply or receive authorization for a transfer, and for determining who can be authorized to receive marine mammal parts and what documentation is required? Are the reporting requirements adequate and necessary, and should they be modified in any way? Does the language in § 216.37(d) regarding export and re-import need to be clarified, and if so, how?

NMFS seeks recommendations for developing regulatory language to streamline and govern the issuance of research permits involving collection, receipt, import, export, and archiving marine mammal parts for future opportunistic research. Currently marine mammal parts taken or obtained under permit may be transferred to another person pursuant to this section of the regulations, but there is no mechanism for facilitating the initial collection of marine mammal parts by institutions for eventual use for research purposes where the bona fide criteria required in section 104(c)(3) of the MMPA cannot be met for each and every part obtained by the institution. We are considering establishing guidelines in this section for determining when such activities would satisfy the bona fide scientific purpose requirement when the purpose of the initial receipt of the part may be unknown. We are also considering establishing standardized documentation and reporting requirements for permits involving marine mammal parts to demonstrate that the parts are taken legally and in a humane manner and that all requirements for applicable domestic and foreign laws have been met regarding importation and exportation.

NMFS is also considering adding to this section requirements and procedures governing the development, use, distribution or transfer, and prohibited sale of cell lines derived from marine mammal tissues. We are also considering similar regulations pertaining to gametes used by the public display industry and research community in assisted reproductive techniques of captive marine mammals. Any recommendations or comments on these topics would be appreciated.

§ 216.39 Permit amendments: One consideration already mentioned (in § 216.35) is to provide for only one amendment type, not major vs. minor. This would require consolidating this section considerably. Under this change the language in this section would be consistent with the following:

(a) General. Special exception permits may be amended by the Office Director. Amendments may be made to permits in response to, or independent of, a request from the permit holder. Amendments must be consistent with the Acts and comply with the applicable provisions of this subpart. Special exception permits may be amended by the Office Director without need for further public review or comment.

(1) An amendment means any change to the permit specific conditions under Sec. 216.36(a) provided that the amendment does not result in any of the following:

(i) An increase in the number and species of marine mammals that are authorized to be taken, imported, exported, or otherwise affected;

(ii) A change in the manner in which these marine mammals may be taken, imported, exported, or otherwise affected, where such change would result in an increased level of take or risk of adverse impact; and

(iii) A change in the location(s) in which the marine mammals may be taken, from which they may be imported, and to which they may be exported, as applicable.

(2) A request involving changes to the location, species, and number of marine mammal parts or specimens received, imported, or exported, where no take is involved, would qualify as an amendment.

(b) Amendment requests and proposals.

(1) Requests by a permit holder for an amendment must be submitted in writing and include the following:

(i) The purpose and nature of the amendment;

(ii) Information, not previously submitted as part of the permit application or subsequent reports, necessary to determine whether the

amendment satisfies all issuance criteria set forth at Sec. 216.34, and, as appropriate, Sec. 216.41, Sec. 216.42, and Sec. 216.43.

(iii) Any additional information required by the Office Director for purposes of reviewing the proposed amendment.

(2) If an amendment is proposed by the Office Director, the permit holder will be notified of the proposed amendment, together with an explanation.

(c) Review of proposed amendments.

(i) After reviewing all appropriate information, the Office Director will provide the permit holder with written notice of the decision on a proposed or requested amendment, together with an explanation for the decision.

(ii) An amendment will be effective upon a final decision by the Office Director.

§ 216.40 Penalties and permit sanctions: NMFS is considering specifying criteria and procedures for the suspension, revocation, modification, and denial of scientific research or enhancement permits, in addition to, but consistent with, the provisions of subpart D of 15 CFR part 904. For example, NMFS is considering promulgating specific regulations for suspension, revocation, modification, and denial of scientific research and enhancement permits for reasons not related to enforcement actions.

§ 216.41 Permits for scientific research and enhancement: Should NMFS attempt to streamline, clarify and consolidate this large section with existing general permitting requirements? If so, any specific language toward that end would be considered. One change we are considering is the requirements for public display of marine mammals held under a scientific research permit in § 216.41(c)(1)(vi)(A) such that marine mammals may be on display if necessary to address the research objectives or if authorized by the Office Director, in addition to the existing requirements in § 216.41(c)(1)(vi)(B) and (C). We would appreciate any comments on if this should be changed. We are also considering adding a new section, § 216.41(c)(3), to authorize via an enhancement permit the long-term captive maintenance and incidental public display of ESA-listed species originally obtained under a research or enhancement permit when such activities have been completed or are not able to be carried out and the animals cannot be returned to the wild. Such permits would require that an appropriate educational program is established and approved by Office Director and that the animals are made available for research or enhancement activities at the request of the Office Director. In addition, if we implemented the General Authorization changes (see § 216.45), then those changes would also apply to this section for non-strategic marine mammals.

§ 216.42 Photography [Reserved]: NMFS may propose regulations similar to those for the General Authorization (§ 216.45). We are also considering limiting the number of personnel that may be involved in order to eliminate potential problems with permit holders using such authorization for ecotourism, since the MMPA does not provide exemptions for harassment of marine mammals via ecotourism permits. Any specific recommendations as to what these regulations should or should not include would be considered.

§ 216.45 General Authorization for Level B harassment for scientific research: NMFS is considering modifications to this section that would make General Authorizations (GAs) available based on the status of the target stock, rather than strictly based on the level of harassment. The recommended change would make a GA available for all Level A and Level B research on all non-strategic stocks of MMPA species. A GA would also be available for stocks defined as strategic under the MMPA, but only for Level B research activities. Under this suggested change a GA would not be appropriate for Level A research on ESA listed species, or depleted and strategic stocks under the MMPA. A number of paragraphs throughout this section would have to change as a result of this recommendation. This change, prior to implementation, would require a similar change in section 104(c)(3)(C) of the MMPA.

Regardless of whether changes are made to allow the GA to apply to level A harassment, NMFS proposes to modify this section to clarify that the description of methods in the letter of intent must specify the number of marine mammals, by species or stock, that would be taken, including a justification for such sample sizes.

NMFS is also considering revising the terms and conditions of the GA regulations to clarify that any activity conducted incidental to the research, such as commercial or educational filming or photography, would require prior written approval from NMFS, and such activities would be subject to the same conditions as those specified at § 216.41(c)(1)(vii) for scientific research and enhancement permits, i.e., the conduct of such incidental activities must not involve any taking of marine mammals beyond what is necessary to conduct the research.

Other considerations: NMFS is also considering adding new sections to the regulations. One such consideration would place the permit application and amendment process on a cycle. One option would be to accept permit applications and amendment requests quarterly (i.e., during any one of four three-month cycles per year). Applicants would have firmly established deadlines (made known through FR notification, mailings, and web site) to assist them in planning the submission of their application relative to the proposed start of their research. Another option would be to accept applications and amendments only twice a year, during one of two six-month cycles

One possible disadvantage for applicants under either alternative is that if a submission deadline were missed an applicant would have to wait three (option 1) to six (option 2) additional months for their permit. Applicants are used to requesting amendments at any time. They too would be affected by this modification and a request for an amendment could only happen once a permit cycle. However, a permit cycle ultimately makes receipt of permits predictable and helps researchers plan the submission of their applications with respect to proposed initiation of their work.

For applications to conduct research on non-ESA listed species, NMFS would aim for an average processing time of 90 days such that processing an application submitted by the deadline for one cycle could be completed by the end of the next cycle (three months later). Another advantage to this is that the average processing time of applications involving ESA-listed marine mammal species would likely be reduced because we would be able to conduct batched consultations and analyses under the ESA and NEPA. In cases where programmatic NEPA documents and corresponding ESA section 7 consultations have been completed, an average processing time of 90 to 120 days could be possible for those research activities covered by the documents.

Public Involvement

NMFS invites the public to submit comments on the current regulations, recommended changes to the current regulations that might be considered in a new set of proposed regulations, and any relevant issues pertaining to the permitting process that might be considered as part of future proposed

rulemaking. Be as specific as possible including providing draft language if appropriate. NMFS does not intend to convene public meetings under this ANPR. Comments and recommendations received under this ANPR will be reviewed as part of a proposed rulemaking which will be the next step in this regulatory process.

Dated: September 7, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–18106 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 72, No. 177

Thursday, September 13, 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

Notice of Proposed New Fee Sites on the Shasta-Trinity National Forest Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: USDA Forest Service, Shasta-Trinity National Forest.

ACTION: Notice of new fee sites on the Shasta-Trinity National Forest.

SUMMARY: The Shasta-Trinity National Forest is proposing to charge fees for overnight camping at three campgrounds and eight popular day use sites in 2008. The proposed fees include:

Overnight Camping

1. Big Bar Campground: $8.00/night/site plus a $5.00/night extra vehicle fee.
2. Ripstein Campground: $10.00/night/site plus a $5.00/night extra vehicle fee.
3. Scott Flat Campground: $10.00/night/site plus a $5.00/night extra vehicle fee.

Extra vehicle fees are being proposed at several campgrounds where space is at a premium. If all camp sites at these locations are full and everyone brings an extra vehicle, there isn't enough room to park and resources are impacted.

Day Use Sites

1. Fisherman's Point: $3.00/vehicle/day.

2–8. Day use sites within the following seven campgrounds: Big Bar, Big Flat, Burnt Ranch, Hayden Flat, Pigeon Point, Ripstein and Skunk Point: $5.00/vehicle/day or $50.00 annually for the use of any of the day use sites at these seven campgrounds.

The proposed fees are based on the level of amenities and services provided, an operational analysis identifying the cost of operating and maintaining these sites and market research.

Visitors appreciate and enjoy the availability of these outdoor opportunities with a scenic backdrop on the Shasta-Trinity National Forest. The overall goal of charging fees is to provide better services for the recreating public and to protect the investments that have been made at these sites. Fee revenue would be used to repair and improve facilities, including replacing some restrooms; installing bear-proof receptacles to facilitate recycling glass, aluminum and plastic; improving water systems and roads; replacing degraded picnic tables; reducing fuels; and increasing the frequency of restroom cleanings and garbage collection activities.

DATES: New fees will be implemented after March 1, 2008.

ADDRESSES: J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, California 96002.

FOR FURTHER INFORMATION CONTACT: Brenda Tracy, Assistant Public Use Staff Officer, at 3644 Avtech Parkway, Redding, CA 96002. Information about proposed fees can also be found on the Shasta-Trinity National Forest Web site: *http://www.fs.fed.us/r5/shastatrinity/.*

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, Pub. L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. These new fees will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation.

Dated: September 6, 2007.

Scott G. Armentrout,

Deputy Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. 07–4494 Filed 9–12–07; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, September 21, 2007; 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Rm. 540, Washington, DC 20425.

Meeting Agenda

I. Approval of Agenda.
II. Approval of Minutes of August 24 Meeting.
III. Program Planning.
- Record for Minority Children in State Foster Care and Adoption.
- Briefing Book on Minority Children in State Foster Care and Adoption.

IV. Briefing on Minorities in Foster Care and Adoption.
- Introductory Remarks by Chairman.
- Speakers' Presentation.
- Questions by Commissioners and Staff Director.

V. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Manuel Alba, Press and Communications, (202) 376–8582.

Dated: September 11, 2007.

David Blackwood,

General Counsel.

[FR Doc. 07–4578 Filed 9–11–07; 3:51 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–867]

Certain Automotive Replacement Glass Windshields from The People's Republic of China: Notice of Decision of the Court of International Trade Not in Harmony

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

SUMMARY: On June 28, 2007, the United States Court of International Trade (''Court'') entered a final judgment in *Xinyi Automotive Glass v. United States* sustaining the third remand results made by the Department of Commerce (''the Department'') pursuant to the Court's remand of the final determination with respect to *Certain Automotive Replacement Glass Windshields from the People's Republic of China* (''PRC'') in Slip Op. 06–21 (CIT February 15, 2006). *See Xinyi Automotive Glass v. United States*, Ct. No. 02–00321, Judgment (Ct. Int'l Trade June 28, 2007) (''*Xinyi*''). This case arises out of the Department's *Antidumping Duty Order on Certain*

Automotive Replacement Glass Windshields from the People's Republic of China, 67 FR 16087 (April 4, 2002) (''Order''). The final judgment in this case was not in harmony with the Department's *Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002) (''*Final Determination*''), and accompanying Issues and Decisions Memorandum (''*Decision Memo*''), as amended at 67 FR 11670 (March 15, 2002), covering the period of investigation (''POI''), July 1, 2000 through December 31, 2000.

EFFECTIVE DATE: July 8, 2007.

FOR FURTHER INFORMATION CONTACT: Gene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0414.

SUPPLEMENTARY INFORMATION:

Background

Plaintiffs, Fuyao Glass Industry Group Co., Ltd. (''Fuyao'') and Xinyi Automotive Glass Co., Ltd. (''Xinyi''), initially in separate lawsuits, contested several aspects of the *Final Determination*, including the Department's decision to disregard certain market economy inputs. On August 6, 2002, all law suits challenging the Final Determination, including Xinyi's lawsuit, were consolidated into *Fuyao Glass Industry Group Co., Ltd. v. United States*, Consol. Court No. 02–00282, 2006 Ct. Int'l Trade Lexis 21, Slip Op. 2006–21 (CIT February 15, 2006) (''*Fuyao Glass III*''). On February 15, 2006, while the cases were still consolidated, the court remanded the Department's decision regarding certain market economy inputs to the Department. In its remand to the Department, the Court concluded with respect to the standard applied in the Department's analysis, that the Department must conduct its analysis ''in accordance with the court's finding with respect to the use of the word 'are' rather than 'may be' when applying its subsidized price methodology.'' *Fuyao Glass III*, Slip Op. P. 9. The Court further directed the Department to either (1) ''concur with the court's conclusions with respect to substantial evidence, or (2) re–open the record . . .'' *Fuyao Glass III*, Slip Op. p. 7. The Court concluded that it does not find the Department's determination, that prices from Korea and Indonesia are subsidized, is supported by substantial record evidence. *See Fuyao Glass III*, Slip Op. p. 16. Pursuant to the Court's ruling, and under respectful protest, the Department concurred that the record evidence does not contain substantial evidence to support a conclusion that prices from Korea and Indonesia are subsidized. *See Viraj Group v. United States*, 343 F.3d 1371, 1376 (Fed. Cir. 2003). Because the Court found that the evidence on the record does not support the Department's determination to disregard prices from Korea and Indonesia, in the remand results, the Department determined to calculate the dumping margin for Fuyao and Xinyi based upon prices the plaintiffs actually paid to suppliers located in Korea and Indonesia.

On January 8, 2007, Xinyi's action was severed from the consolidated action. See Court Order of January 8, 2007, in Ct. No. 02–00282. On June 28, 2007, the court issued a final judgment, wherein it affirmed the Department's third remand results with respect to Xinyi's action.

Timken Notice

In its decision in *Timken Co., v. United States*, 893 F.2d 337, 341 (Fed. Cir. 1990) (''*Timken*''), the United States Court of Appeals for the Federal Circuit held that, pursuant to section 516A(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination. The Court's decision in *Xinyi* on June 28, 2007, constitutes a final decision of that court that is not in harmony with the Department's *Final Determination*. This notice is published in fulfillment of the publication requirements of *Timken*. Accordingly, the Department will issue revised instructions to U.S. Customs and Border Protection if the Court's decision is not appealed or if it is affirmed on appeal.

This notice is issued and published in accordance with section 516A(c)(1) of the Act.

Dated: September 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–18069 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–858]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine From the Republic of Korea

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

DATES: *Effective Date:* September 13, 2007.

SUMMARY: We preliminarily determine that imports of glycine from the Republic of Korea are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on glycine from the Republic of Korea. See *Glycine from India, Japan, and the Republic of Korea: Initiation of Antidumping Duty Investigations*, 72 FR 20816 (April 26, 2007) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. See *Initiation Notice*. We did not receive comments regarding product coverage from any interested party.

On May 21, 2007, we selected Korea Bio-Gen Co., Ltd. (Korea Bio-Gen) as the mandatory respondent in this investigation. See the Memorandum to Laurie Parkhill entitled ''Antidumping Duty Investigation Glycine from the Republic of Korea—Respondent Selection,'' dated May 21, 2007.

On May 25, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of glycine from the Republic of Korea.

See *Glycine from India, Japan, and Korea*, 72 FR 29352 (May 25, 2007).

Period of Investigation

The period of investigation is January 1, 2006, through December 31, 2006.

Scope of Investigation

The merchandise covered by this investigation is glycine, which in its solid (*i.e.*, crystallized) form is a free-flowing crystalline material. Glycine is used as a sweetener/taste enhancer, buffering agent, reabsorbable amino acid, chemical intermediate, metal complexing agent, dietary supplement, and is used in certain pharmaceuticals. The scope of this investigation covers glycine in any form and purity level. Although glycine blended with other materials is not covered by the scope of this investigation, glycine to which relatively small quantities of other materials have been added is covered by the scope. Glycine's chemical composition is $C_2H_5NO_2$ and is normally classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation also covers precursors of dried crystalline glycine, including, but not limited to, glycine slurry (*i.e.*, glycine in a non-crystallized form) and sodium glycinate. Glycine slurry is classified under the same HTSUS subheading as crystallized glycine (2922.49.4020) and sodium glycinate is classified under subheading HTSUS 2922.49.8000.

While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Issuance of Questionnaire

On June 21, 2007, we issued Sections A, B, C, D, and E [1] of the antidumping questionnaire to Korea Bio-Gen. We did not receive a response from Korea Bio-Gen by the close of business on July 16, 2007, the established deadline.

On July 19, 2007, we issued a letter to Korea Bio-Gen extending the deadline for submission of the antidumping questionnaire response to July 26, 2007, thereby affording it additional time to respond. We have not received any response to our questionnaire or any other communication from Korea Bio-Gen since we issued the questionnaire to it.

In our July 19, 2007, letter to Korea Bio-Gen, we also informed it that any submissions that were not filed in accordance with 19 CFR 351.303 and 304 of our regulations would be deemed untimely filed pursuant to 19 CFR 351.302 and that we may use facts otherwise available for Korea Bio-Gen's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act).

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Korea Bio-Gen.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Korea Bio-Gen did not provide pertinent information we requested that is necessary to calculate an antidumping margin for the preliminary determination. Specifically, Korea Bio-Gen failed to respond to our questionnaire entirely, thereby withholding, among other things, home-market and U.S. sales information that is necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Act. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based the dumping margin on facts otherwise available for Korea Bio-Gen.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, and Postponement of Final Determination: Certain Circular Welded Carbon-Quality Line Pipe From Mexico*, 69 FR 59892 (October 6, 2004).

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol.1 (1994) at 870 (*SAA*). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). Although the Department provided Korea Bio-Gen with notice informing it of the consequences of its failure to respond adequately to the questionnaire in this case, pursuant to section 782(d) of the Act, Korea Bio-Gen did not respond to the questionnaire. This constitutes a failure on the part of Korea Bio-Gen to cooperate to the best of its ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because Korea Bio-Gen did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that Korea Bio-Gen failed to cooperate to the best of its ability and,

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. See, *e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the *SAA* at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to Korea Bio-Gen the highest margin alleged in the petition, as recalculated in the *Initiation Notice*, of 138.83 percent (see *Petition for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan, and the Republic of Korea* filed on March 30, 2007 (*Petition*), and April 3, 12, 13, 17, and 18, 2007, supplements to the *Petition* filed on behalf of Geo Specialty Chemicals, Inc. (the petitioner)), as recalculated in the April 19, 2007, ''Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Glycine from the Republic of Korea'' (*Initiation Checklist*) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. We included the range of margins we re-calculated in the *Initiation Checklist* in the notice of initiation of this investigation. See *Initiation Notice*, 72 FR at 20819.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably available at its disposal.

The *SAA* clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. See *SAA* at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the *SAA* at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the *Petition* during our pre-initiation analysis and for purposes of this preliminary determination. See *Initiation Checklist*. We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as AFA for purposes of this preliminary determination. During our pre-initiation analysis, we examined the key elements of the export-price and normal-value calculations used in the *Petition* to derive margins. During our pre-initiation analysis, we also examined information from various independent sources provided either voluntarily in the *Petition* or, based on our requests, in supplements to the Petition, that corroborates key elements of the export-price and normal-value calculations used in the *Petition* to derive estimated margins.

Specifically, the petitioner calculated an export price using the U.S. price quote it obtained for food-grade glycine from the Republic of Korea for sale to a large customer in the United States during 2006. We obtained affidavits from persons who obtained the U.S. price quote. See *Initiation Checklist* at 6–8. The petitioner also calculated a second export price using the average monthly Customs Unit Values (AUVs) 'F.O.B. foreign port,' of glycine imports from the Republic of Korea for consumption in the United States, classified under HTSUS number 2922.49.4020 for year 2006, gathered from the Bureau of the Census IM145 import statistics. The petitioner used information from PIERS Global Intelligence Services to demonstrate that most, if not all, entries of glycine during 2006 were of the food-grade glycine. U.S. official import statistics are sources that we consider reliable. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and applicable Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' dated August 11, 2005 (*Chromium from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). We then compared the U.S. price quote to the AUVs for 2006 and confirmed that the value of the U.S. price quote was consistent with 2006 U.S. import prices. See *Initiation Checklist* at 6–8. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

The petitioner adjusted export prices for foreign inland freight, international freight, U.S. inland freight, distributor mark-up, and credit charges. The petitioner used publicly available data, such as PIERS Global Intelligence Services, information at *http://www.freightcenter.com*, data queries from USITC Interactive Tariff and Trade DataWeb, etc., to estimate charges for foreign inland freight, international freight, and U.S. inland freight. See *Initiation Checklist* at 6–8. These are sources of information that we consider reliable. Further, we obtained no other information that would make us

question the reliability of the adjusted information provided in the *Petition*. In addition, because the petitioner reported that there were no credit expenses in the home market, our regulations at 19 CFR 351.410(c) do not require an adjustment for differences in circumstances of sale in the instant case. Therefore, the net U.S. prices we re-calculated in the *Initiation Checklist* did not include an adjustment for U.S. credit expenses. As such, it was not necessary to corroborate the petitioner's calculation of U.S. credit expenses. The petitioner estimated the distributor mark-up based on GEO Specialty Chemicals, Inc.'s sales personnel's knowledge of distributor mark-ups in the domestic glycine industry. The petitioner provided an affidavit from persons attesting to the validity of the distributor mark-up value the petitioner used in the calculation of net U.S. price. See *Initiation Checklist* at 6–8.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

With respect to normal value, the petitioner claimed that, despite extensive efforts to determine prices in the Republic of Korea, it was not able to obtain usable price information for the year 2006 either for sales of glycine in the Republic of Korea or for sales of the Korean-origin glycine in third markets. The petitioner provided an affidavit from an economic consultant attesting to this fact. See *Initiation Checklist* at 8. We also examined the efforts that were made to obtain pricing information of the Korean-origin glycine. See Memorandum to the File entitled ''Telephone Call to Market Research Firm Regarding the Antidumping Petition on Glycine from Korea,'' dated April 19, 2007. Consequently, the petitioner based normal value for the Korean sales of a certain grade glycine on constructed value.

Pursuant to section 773(b)(3) of the Act, the cost of production consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, financial expenses, and packing expenses. As we stated in the *Initiation Notice*, to calculate the COM, the petitioner multiplied the usage quantity of each input needed to produce one metric ton of glycine by the value of that input. The petitioner obtained all of the quantity and value data it used to calculate the COM from public sources. Specifically, the petitioner obtained the input-usage factors from the public record of the 1997–1998 administrative review of antidumping duty order on glycine from the People's Republic of China. See *Initiation Notice*, 72 FR 20819. The producer in the 1997–1998 review produced glycine by the same production method utilized by producers in the Republic of Korea. In exhibit O of its April 13, 2007, supplement to the *Petition*, the petitioner provided a declaration from a chemist and a director of technology at Specialty Chemicals, Inc., who acknowledged that, once the particular production process is chosen, the consumption quantities of inputs are dictated by the particular steps and chemistry of the process. As such, the petitioner claimed, the input-consumption factors it had used in its cost-of-production/constructed-value build-up that were reported by a Chinese glycine producer in the 1997–1998 administrative review are equally valid as a basis for estimating the inputs needed during the current period of investigation and, thus, for developing an accurate cost of producing glycine. See April 13, 2007, supplement to the *Petition* at page 2 and exhibit O.

The petitioner obtained the values for the inputs from various public sources. Specifically, the petitioner valued raw materials using import statistics in the World Trade Data Atlas for the year 2006, exclusive of imports from non-market and heavily subsidized economies, which is the latest Korean import data available. See *Initiation Checklist* at 8–9. The petitioner valued labor costs using year 2004 average per-hour wages for the Republic of Korea using the International Labour Organization's Yearbook of Labour Statistics and per-capita gross national income obtained from the World Bank. The petitioner did not adjust labor data for wage inflation. See *Initiation Checklist* at 8. The petitioner valued electricity and water consumption using data from page 43 of the Key World Energy Statistics 2003, published by the International Energy Agency. The petitioner did not adjust electricity data for inflation. See *Initiation Checklist* at 8–9. The petitioner calculated average factory overhead, SG&A, and the financial-expense ratios based on current audited financial statements of a publically traded Korean producer of lysine and threonine which are amino acids similar to glycine. See *Initiation Checklist* at 10–12. Because the petitioner used constructed value to determine normal value, it added an amount for profit calculated using the same financial statements. See *Initiation Checklist* at 10–12. The petitioner did not report a home-market interest rate or a home-market credit expense. Thus, we did not make an adjustment to normal value for home-market credit expenses.

Because the petitioner had demonstrated, and we confirmed, the validity of the input-usage quantities it used in its cost-of-production/constructed-value build-up, used public sources of information, such as official import statistics that we confirmed were accurate to value inputs of production, and used audited current financial statements of a publicly traded Korean producer of amino acids similar to glycine to compute factory overhead, SG&A, financial expense, and profit that we confirmed were accurate, we consider the petitioner's calculation of normal value, based on constructed value, corroborated. Further, we consider the petitioner's calculation of normal value corroborated because the bulk of the calculations relied on publicly available information or import statistics which do not require further corroboration. See, *e.g., Chromium from Japan*. Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the *Petition* by examining source documents as well as publically available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs.* v. *United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the adverse facts-available rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre-initiation stage of this investigation, we confirmed that the calculation of margins in the *Petition* reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the

investigation that calls into question the relevance of this information. As such, we preliminarily determine that the highest margin in the *Petition*, which we determined during our pre-initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts-available rate for Korea Bio-Gen in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Korea Bio-Gen, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre-initiation stage of this investigation and preliminarily determined to be relevant to Korea Bio-Gen in this investigation, we have corroborated the adverse facts-available rate ''to the extent practicable.'' See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd.* v. *United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating, ''pursuant to the 'to the extent practicable' language * * * the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 138.83 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Korea Bio-Gen, we have applied the margin rate of 138.83 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice.*

All-Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all-others rate, the simple average of the margins in the petition. See *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 31, 1999). Consistent with our practice we calculated a simple average of the rates in the *Petition*, as recalculated in the *Initiation Checklist* at Attachment VI and as listed in the *Initiation Notice*, and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Dmitry Vladimirov to File entitled ''Antidumping Duty Investigation on Glycine from the Republic of Korea—Analysis Memo for All-Others Rate,'' dated September 6, 2007.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of glycine from the Republic of Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer or exporter	Margin (percent)
Korea Bio-Gen Co., Ltd.	138.83
All Others	138.60

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 6, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–18071 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–868]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Glycine from Japan

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

EFFECTIVE DATE: September 13, 2007.

SUMMARY: We preliminarily determine that imports of glycine from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination. We will make our final determination within 75 days after the date of this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0665 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 26, 2007, the Department of Commerce (the Department) published in the **Federal Register** the initiation of an antidumping investigation on glycine from Japan. *See Glycine from India, Japan, and the Republic of Korea: Initiation of Antidumping Duty Investigations*, 72 FR 20816 (April 26, 2007) (*Initiation Notice*). The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice. We did not receive comments regarding product coverage from any interested party.

On May 18, 2007, we sent Quantity and Value (Q&V) questionnaires to all companies identified in the petition as well as to companies for which we obtained public information indicating that the companies produced and/or exported glycine. See the June 22, 2007, Memorandum to the File Re: Issuance of Quantity and Value Questionnaires to Potential Japanese Respondents. We received responses from eleven companies. We did not receive responses from the following companies: Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., Chelest Corporation. On June 1, 2007, we issued a letter to companies from which we did not receive Q&V responses extending the deadline for submission to June 8, 2007. In that letter we notified parties that failure to respond to our June 1, 2007, request for information may result in the application of facts available, including an adverse inference, to the companies in question in accordance with sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act). On June 26, 2007, we selected Nu–Scaan Nutraceuticals Ltd. (Nu–Scaan) and Yuki Gosei Co., Ltd. (Yuki Gosei) as mandatory respondents. See the Memorandum to Laurie Parkhill entitled ''Antidumping Duty Investigation Glycine from Japan - Respondent Selection,'' dated June 26, 2007.

On May 25, 2007, the International Trade Commission (ITC) issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of glycine from Japan. *See Glycine from India, Japan, and Korea*, 72 FR 29352 (May 25, 2007).

Period of Investigation

The period of investigation is January 1, 2006, through December 31, 2006.

Scope of Investigation

The merchandise covered by this investigation is glycine, which in its solid (*i.e.*, crystallized) form is a free–flowing crystalline material. Glycine is used as a sweetener/taste enhancer, buffering agent, reabsorbable amino acid, chemical intermediate, metal complexing agent, dietary supplement, and is used in certain pharmaceuticals. The scope of this investigation covers glycine in any form and purity level. Although glycine blended with other materials is not covered by the scope of this investigation, glycine to which relatively small quantities of other materials have been added is covered by the scope. Glycine's chemical composition is C2H5NO2 and is normally classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).

The scope of this investigation also covers precursors of dried crystalline glycine, including, but not limited to, glycine slurry (*i.e.*, glycine in a non–crystallized form) and sodium glycinate. Glycine slurry is classified under the same HTSUS subheading as crystallized glycine (2922.49.4020) and sodium glycinate is classified under subheading HTSUS 2922.49.8000.

While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Issuance of Questionnaire

On June 26, 2007, we issued sections A, B, C, D, and E[1] of the antidumping questionnaire to Nu–Scaan and Yuki Gosei.

[1] Section A of the antidumping duty questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all of the company's home-market sales of the foreign like product or, if the home market is not viable, of sales of the foreign like product in the most appropriate third-country market. Section C requests a complete listing of the company's U.S. sales of subject merchandise. Section D requests information of the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further-manufacturing activities.

Nu–Scaan

On July 17, 2007, we received a letter from Nu–Scaan requesting an extension of the July 16, 2007, deadline to respond to section A of our questionnaire. Nu–Scaan's extension request was filed one day past the deadline for responding to section A, as established in our questionnaire. Nu–Scaan's extension request was also not filed in accordance with 19 CFR 351.303 and 304 of our regulations. Specifically, Nu–Scaan's submission lacked the proper markings at the top right–hand corner of the cover letter required under 19 CFR 351.303(d), it was not served to parties on the service list for this proceeding pursuant to 19 CFR 351.303(f), it did not contain a certificate of service pursuant to 19 CFR 351.303(f)(2), and it did not contain a certification of completeness and accuracy by the official responsible for presentation of the factual information pursuant to 19 CFR 351.303(g). On July 17, 2007, despite Nu–Scaan's late and improperly filed extension request, we accepted it as a timely filing and granted Nu–Scaan's request for an extension in full, thus extending the deadline for Nu–Scaan to respond to section A of our questionnaire to July 26, 2007. In our July 17, 2007, letter replying to Nu–Scann's extension request, we described the various filing deficiencies that we had identified, informed Nu–Scaan that any further submissions from it that are not filed in accordance with 19 CFR 351.303 and 304 of our regulations would be deemed untimely filed pursuant to 19 CFR 351.302, and that we would return such submissions without considering or retaining any information contained therein as part of the official record. We also informed Nu–Scaan that we may use facts otherwise available for Nu–Scaan's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Act.

On July 31, 2007, in order to provide Nu–Scaan with another opportunity to respond, we issued a letter to Nu–Scaan extending voluntarily the deadline for submission of the antidumping questionnaire response to August 7, 2007. On July 31, 2007, we received Nu–Scaan's section A response. Nu–Scaan's July 31, 2007, submission was not filed in accordance with 19 CFR 351.303 and 304. Specifically, it did not contain the proper markings at the top right–hand corner of the cover letter required under 19 CFR 351.303(d), it was not served to parties on the service list for this proceeding pursuant to19 CFR 351.303(f), it did not contain a certificate of service pursuant to 19 CFR 351.303(f)(2), it did not provide an

explanation as to why certain bracketed information is entitled to business–proprietary treatment and lacked an agreement permitting disclosure under an administrative protective order pursuant to 19 CFR 351.304(b)(1), it did not provide a full explanation of the reasons as to why certain information in double brackets was claimed to be exempt from disclosure under administrative protective order pursuant to 19 CFR 351.304(b)(2), and no public versions of the submission were filed as required by 19 CFR 351.304(c). In our August 14, 2007, letter to Nu–Scaan we described the specific filing deficiencies that we had identified with respect to its July 31, 2007, submission and informed Nu–Scaan that its section A response was an untimely filing pursuant to 19 CFR 351.302 and that we were returning the submission without considering or retaining any information contained therein as part of the official record. We did not receive a response (or a request for extension to respond) from Nu–Scaan to sections B, C, and D, of our questionnaire by the close of business on August 7, 2007, the date of the extended deadline.

Yuki Gosei

On July 11, 2007, we received Yuki Gosei's response to section A of our questionnaire. Yuki Gosei's July 11, 2007, submission was not filed in accordance with 19 CFR 351.303 and 304 of the regulations. Specifically, it lacked the requisite number of copies pursuant to 19 CFR 351.303(c), it did not contain the proper markings at the top right–hand corner of the cover letter pursuant to19 CFR 351.303(d), it was not served on parties on the service list for this proceeding pursuant to 19 CFR 351.303(f), it did not contain a certificate of service as required under 19 CFR 351.303(f)(2), and it did not contain a certification of completeness and accuracy by the official responsible for presentation of the factual information pursuant to 19 CFR 351.303(g). In a July 16, 2007, letter to Yuki Gosei, we described these specific filing deficiencies, we rejected the submission in question, and we requested Yuki Gosei to re–file its section A response properly by July 30, 2007, in accordance with 19 CFR 351.303 and 304. In our July 16, 2007, letter to Yuki Gosei, we also informed it that any further submissions that were not filed in accordance with 19 CFR 351.303 and 304 would be deemed untimely filed pursuant to 19 CFR 351.302, that we would return such submissions without considering or retaining any information contained therein as part of the official record, and that we may use facts otherwise available for Yuki Gosei's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Act.

On July 26, 2007, we received Yuki Gosei's re–submission of its section A response to our questionnaire, but it was not filed in accordance with 19 CFR 351.303. Specifically, it lacked a certificate of service and was not served on interested parties, as required by 19 CFR 351.303(f). In our July 31, 2007, letter to Yuki Gosei, we informed it that, despite yet another round of filing deficiencies on its part, we would accept Yuki Gosei's July 26, 2007, submission as timely filed, provided that Yuki Gosei file a letter with us confirming that it had served its section A response upon all interested parties by August 8, 2007. In our July 31, 2007, letter to Yuki Gosei, we reiterated that, absent Yuki Gosei's fulfillment of the requested service requirements, we would reject its July 26, 2007, submission as untimely filed pursuant to 19 CFR 351.302, that we would return such submissions without considering or retaining any information contained therein as part of the official record, and that we may use facts otherwise available for Yuki Gosei's antidumping margin in this investigation pursuant to sections 776(a) and (b) of the Act.

We did not receive a letter from Yuki Gosei attesting that it had served its section A response upon interested parties. We also confirmed with interested parties that they were not served Yuki Gosei's section A response. On August 7, 2007, in order to provide Yuki Gosei with another opportunity to respond, we issued a letter to Yuki Gosei extending voluntarily the deadline for submitting a response to sections B, C, and D of the antidumping questionnaire to August 14, 2007. We did not receive a response (or a request for extension to respond) from Yuki Gosei to sections B, C, and D of our questionnaire by the close of business on August 14, 2007, the date of the extended deadline. In our August 17, 2007, letter to Yuki Gosei we informed it that its July 26, 2007, section A response is an untimely filing pursuant to 19 CFR 351.302, and that we were returning the submission without considering or retaining any information contained therein as part of the official record.

Use of Facts Otherwise Available

For the reasons discussed below, we determine that the use of adverse facts available (AFA) is appropriate for the preliminary determination with respect to Nu–Scaan and Yuki Gosei.

A. Use of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information requested by the administering authority, fails to provide such information by the deadlines for submission of the information and in the form or manner requested, subject to subsections (c)(1) and (e) of section 782, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in 782(i), the administering authority shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(d) of the Act provides that, if the administering authority determines that a response to a request for information does not comply with the request, the administering authority shall promptly inform the responding party and provide an opportunity to remedy the deficient submission. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

In this case, Nu–Scaan and Yuki Gosei did not provide pertinent information we requested that is necessary to calculate respective antidumping margins for the preliminary determination. Specifically, Nu–Scaan and Yuki Gosei failed to respond to all sections of our questionnaire, thereby withholding, among other things, home–market and U.S. sales information necessary for reaching the applicable determination, pursuant to section 776(a)(2)(A) of the Act. In addition, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation did not respond to our Q&V questionnaire and, thus, they failed to provide pertinent information we requested that was needed in the consideration and selection of mandatory respondents, thus significantly impeding this proceeding. Thus, in reaching our preliminary determination, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, we have based dumping margins on the facts otherwise available for the

following firms: Nu–Scaan, Yoki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation.

B. Application of Adverse Inferences for Facts Available

In applying the facts otherwise available, section 776(b) of the Act provides that, if the administering authority finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information from the administering authority, in reaching the applicable determination under this title, the administering authority may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, vol.1 (1994) at 870 (*SAA*). Further, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997). Although the Department provided the mandatory respondents with several notices informing them of the consequences of their failure to respond adequately to the questionnaire in this case, pursuant to section 782(d) of the Act, Nu–Scaan and Yuki Gosei did not respond properly to the questionnaire. Similarly, although the Department provided Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation with notices informing them of the consequences of their failure to respond adequately to our Q&V questionnaire, the companies in question did not respond to our Q&V questionnaire. This constitutes a failure on the part of Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation to cooperate to the best of their ability to comply with a request for information by the Department within the meaning of section 776(b) of the Act. Because these companies did not provide the information requested, section 782(e) of the Act is not applicable. Based on the above, the Department has preliminarily determined that the companies in question failed to cooperate to the best of their ability and, therefore, in selecting from among the facts otherwise available, an adverse inference is warranted. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total AFA where the respondent failed to respond to the antidumping questionnaire).

C. Selection and Corroboration of Information Used as Facts Available

Where the Department applies AFA because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record. See also 19 CFR 351.308(c) and the SAA at 829–831. It is the Department's practice to use the highest calculated rate from the petition in an investigation when a respondent fails to act to the best of its ability to provide the necessary information and there are no other respondents. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Purified Carboxymethylcellulose From Finland*, 69 FR 77216 (December 27, 2004) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Purified Carboxymethylcellulose From Finland*, 70 FR 28279 (May 17, 2005)). Therefore, because an adverse inference is warranted, we have assigned to Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation the highest margin alleged in the petition, as recalculated in the Initiation Notice, of 280.57 percent (see *Petition for the Imposition of Antidumping Duties on Imports of Glycine from India, Japan, and the Republic of Korea* filed on March 30, 2007 (*Petition*), and April 3, 12, 13, 17, and 18, 2007, supplements to the *Petition* filed on behalf of Geo Specialty Chemicals, Inc., (the petitioner)), as recalculated in the April 19, 2007, ''Office of AD/CVD Operations Initiation Checklist for the Antidumping Duty Petition on Glycine from Japan'' (*Initiation Checklist*) on file in Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. We included the range of margins we re–calculated in the *Initiation Checklist* in the notice of initiation of this investigation. See *Initiation Notice*, 72 FR at 20819.

When using facts otherwise available, section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) rather than on information obtained in the course of an investigation, it must corroborate, to the extent practicable, that information from independent sources that are reasonably available at its disposal.

The *SAA* clarifies that ''corroborate'' means the Department will satisfy itself that the secondary information to be used has probative value. See *SAA* at 870. As stated in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825, 11843 (March 13, 1997)), to corroborate secondary information, the Department will examine, to the extent practicable, the reliability and relevance of the information used. The Department's regulations state that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. See 19 CFR 351.308(d) and the *SAA* at 870.

For the purposes of this investigation, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the \ during our pre–initiation analysis and for this preliminary determination. See *Initiation Checklist*. We examined evidence supporting the calculations in the *Petition* to determine the probative value of the margins alleged in the *Petition* for use as adverse facts available for purposes of this preliminary determination. During our pre–initiation analysis, we examined the key elements of the export–price

and normal–value calculations used in the *Petition* to derive margins. During our pre–initiation analysis, we also examined the information from various independent sources provided either in the *Petition* or in supplements to the *Petition*, that corroborates key elements of the export–price and normal–value calculations used in the *Petition* to derive estimated margins.

Specifically, the petitioner calculated export prices using two price quotes it obtained for glycine from Japan for sales to large customers in the United States during 2006. We obtained affidavits from persons who obtained the U.S. price quotes. See *Initiation Checklist* at 7. The petitioner then compared the value of the U.S. price quotes with the average monthly Customs Unit Values (AUVs) 'F.O.B. foreign port' of glycine imports from Japan for consumption in the United States, classified under HTSUS number 2922.49.4020 for year 2006, gathered from the Bureau of the Census IM145 import statistics. See *Initiation Checklist* at 6–7. U.S. official import statistics are sources that we consider reliable. See, *e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 48538 (August 18, 2005), and applicable Memorandum to the File from Dmitry Vladimirov entitled ''Preliminary Determination in the Antidumping Duty Investigation of Superalloy Degassed Chromium from Japan: Corroboration of Total Adverse Facts Available Rate,'' dated August 11, 2005 (*Chromium from Japan*) (unchanged in *Notice of Final Determination of Sales at Less Than Fair Value: Superalloy Degassed Chromium from Japan*, 70 FR 65886 (November 1, 2005)). We confirmed that the AUVs were consistent with the range of values of the U.S. price quotes. Further, we obtained no other information that would make us question the reliability of the pricing information provided in the *Petition*.

The petitioner adjusted U.S. prices for foreign inland freight, international freight, U.S. inland freight, distributor mark–up, and credit charges. The petitioner used publicly available data, such as PIERS Global Intelligence Services, information at www.freightcenter.com, data queries from USITC Interactive Tariff and Trade DataWeb, etc., to estimate charges for foreign inland freight, international freight, and U.S. inland freight. See *Initiation Checklist* at 6–7. These are sources that we consider reliable. Further, we obtained no other information that would make us question the reliability of the adjusted information provided in the *Petition*. In addition, because the petitioner reported that there were no credit expenses in the home market, the regulations at 19 CFR 351.410(c) do not require an adjustment for differences in circumstances of sale in the instant case. Therefore, the net U.S. prices we re–calculated in the *Initiation Checklist* excluded an adjustment for U.S. credit expenses. As such, it was not necessary to corroborate the petitioner's calculation of U.S. credit expenses. The petitioner estimated the distributor mark–up based on GEO Specialty Chemicals, Inc.'s sales personnel's knowledge of distributor mark–ups in the domestic glycine industry. The petitioner provided an affidavit from persons attesting to the validity of the distributor mark–up value the petitioner used in the calculation of net U.S. price. See *Initiation Checklist* at 6–7.

Based on our examination of the aforementioned information, we consider the petitioner's calculation of net U.S. prices corroborated.

To calculate normal value, the petitioner determined domestic Japanese prices, obtained by an economic consultant, for USP–grade glycine based on price quotations obtained from Japanese glycine manufacturers. These price quotations identified specific terms of sale and payment terms. See *Initiation Checklist* at 7–8. The petitioner provided an affidavit from an economic consultant attesting to the validity of the value of the Japanese price quotations that the petitioner used in the calculation of net foreign value. See *Initiation Checklist* at 7–8. See also Memorandum to the File entitled ''Telephone Call to Market Research Firm Regarding the Antidumping Petition on Glycine from Japan,'' dated April 19, 2007. The petitioner did not report a home–market interest rate or a home–market credit expense. Thus, we did not make an adjustment to normal value for home–market credit expenses. The petitioner did not make any adjustments to normal value. Based on our examination of the aforementioned information, we consider the petitioner's calculation of normal value, based on price quotations, corroborated.

In the *Initiation Notice*, we stated that the petitioner provided information demonstrating reasonable grounds to believe or suspect that certain sales of glycine in Japan were made at prices below the fully absorbed cost of production, within the meaning of section 773(b) of the Act. See *Initiation Notice*, 72 FR at 20818. As we stated in the *Initiation Notice*, based upon a comparison of price quotations for sales of that same grade glycine in Japan and the country–specific cost of production of the product, we found reasonable grounds to believe or suspect that sales of glycine in Japan were made below the cost of production, within the meaning of section 773(b)(2)(A)(i) of the Act. See *Initiation Notice*, 72 FR at 2018. Accordingly, as we stated in the *Initiation Notice*, we initiated a country–wide cost investigation with regard to Japan. *Id.* As we stated further, because it alleged sales below cost, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioner also based normal value for Japanese sales of a certain grade glycine on constructed value when the home–market prices for a certain grade glycine used in the cost comparisons fell below the cost of production. *Id.*

Pursuant to section 773(b)(3) of the Act, the cost of production consists of the cost of manufacturing (COM), selling, general and administrative (SG&A) expenses, financial expenses, and packing expenses. As we stated in the *Initiation Notice*, to calculate the COM, the petitioner multiplied the usage quantity of each input needed to produce one metric ton of glycine by the value of that input. The petitioner obtained all of the quantity and value data it used to calculate the COM from public sources. The petitioner obtained the input–usage factors from the public record of the 1997–1998 administrative review of the antidumping duty order on glycine from the People's Republic of China. See *Initiation Notice*, 72 FR at 20819. The producer in the 1997–1998 review produced glycine by the same production method utilized by producers in Japan. In exhibit O of its April 13, 2007, supplement to the *Petition*, the petitioner provided a declaration from a chemist and a director of technology at Specialty Chemicals, Inc., who acknowledged that, once the particular production process is chosen, the consumption quantities of inputs are dictated by the particular steps and chemistry of the process. As such, the petitioner claimed, the input–consumption factors it had used in its cost–of-production/constructed–value build–up that were reported by a Chinese glycine producer in the 1997–1998 administrative review are equally valid as a basis for estimating the inputs needed during the current period of investigation and, thus, for developing an accurate cost of producing glycine. See April 13, 2007, supplement to the *Petition* at page 2 and exhibit O.

The petitioner obtained the values for the inputs for the production of glycine from various public sources. *Id.* Specifically, the petitioner valued raw

materials using import statistics in the World Trade Data Atlas for the year 2006, exclusive of imports from non–market and heavily subsidized economies, which is the latest Japanese import data available. See *Initiation Checklist* at 8–9. The petitioner valued labor costs using year 2004 average per-hour wages for Japan using the International Labour Organization's Yearbook of Labour Statistics and per–capita gross national income obtained from the World Bank. The petitioner did not adjust labor data for wage inflation. See *Initiation Checklist* at 9–10. The petitioner valued electricity and water consumption using data from page 43 of the Key World Energy Statistics 2003, published by the International Energy Agency. The petitioner did not adjust electricity data for inflation. See *Initiation Checklist* at 9. The petitioner calculated average factory overhead, SG&A, and the financial–expense ratios based on the current audited financial statements of a publically traded Japanese producer of glycine. See *Initiation Checklist* at 9–11.

Where the petitioner used constructed value to determine normal value, it added an amount for profit calculated using the same financial statements. See *Initiation Checklist* at 9–11. Because the petitioner had demonstrated, and we confirmed, the validity of the input–usage quantities it used in its cost–of-production/constructed value build–up, used public sources of information, such as official import statistics that we confirmed were accurate to value inputs of production, and used audited current financial statements of a publicly traded Japanese glycine producer to compute factory overhead, SG&A, financial expense, and profit that we confirmed were accurate, we consider the petitioner's calculation of normal value based on constructed value corroborated. Further, we consider the petitioner's calculation of normal value corroborated because the bulk of calculations encompassed publicly available information or import statistics which do not require further corroboration. See, *e.g., Chromium from Japan*.

Therefore, because we confirmed the accuracy and validity of the information underlying the derivation of margins in the *Petition* by examining source documents as well as publically available information, we preliminarily determine that the margins in the *Petition* are reliable for the purposes of this investigation.

In making a determination as to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Duty Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin as ''best information available'' (the predecessor to ''facts available'') because the margin was based on another company's uncharacteristic business expense that resulted in an unusually high dumping margin.

In *Am. Silicon Techs. v. United States*, 273 F. Supp. 2d 1342, 1346 (CIT 2003), the court found that the adverse facts–available rate bore a ''rational relationship'' to the respondent's ''commercial practices,'' and was, therefore, relevant. In the pre–initiation stage of this investigation, we confirmed that the calculation of margins in the *Petition* reflects commercial practices of the particular industry during the period of investigation. Further, no information has been presented in the investigation that calls into question the relevance of this information. As such, we preliminarily determine that the highest margin in the *Petition*, which we determined during our pre–initiation analysis was based on adequate and accurate information and which we have corroborated for purposes of this preliminary determination, is relevant as the adverse facts–available rate for Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation in this investigation.

Similar to our position in *Polyethylene Retail Carrier Bags from Thailand: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 53405 (September 11, 2006) (unchanged in *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review*, 72 FR 1982 (January 17, 2007)), because this is the first proceeding involving Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation, there are no probative alternatives. Accordingly, by using information that was corroborated in the pre–initiation stage of this investigation and preliminarily determined to be relevant to Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation in this investigation, we have corroborated the AFA rate ''to the extent practicable.'' See section 776(c) of the Act, 19 CFR 351.308(d), and *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1336 (CIT 2004) (stating that, ''pursuant to the 'to the extent practicable' language the corroboration requirement itself is not mandatory when not feasible''). Therefore, we find that the estimated margin of 280.57 percent in the *Initiation Notice* has probative value. Consequently, in selecting AFA with respect to Nu–Scaan, Yuki Gosei, Showa Denko K.K., Hayashi Pure Chemical Industries Co. Ltd., CBC Co., Ltd., Seino Logix Co. Ltd., Estee Lauder Group Companies K.K., and Chelest Corporation, we have applied the margin rate of 280.57 percent, the highest estimated dumping margin set forth in the notice of initiation. See *Initiation Notice*.

All–Others Rate

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted–averaged dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated all–others rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the all–others rate, the simple average of the margins in the petition. See *Notice of Final Determinations of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From Argentina, Japan and Thailand*, 65 FR 5520, 5527–28 (February 4, 2000); see also *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada*, 64 FR 15457 (March 31, 1999), and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy*, 64 FR 15458, 15459 (March 31, 1999). Consistent with our practice we calculated a simple average of the rates in the Petition, as recalculated in the *Initiation Checklist* at Attachment VI and as listed in the *Initiation Notice*, and assigned this rate to all other manufacturers/exporters. For details of these calculations, see the memorandum from Dmitry Vladimirov to File entitled ''Antidumping Duty Investigation on Glycine from Japan - Analysis Memo for All–Others Rate,'' dated September 6, 2007.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of glycine from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the margins, as indicated in the chart below. These suspension–of-liquidation instructions will remain in effect until further notice. The dumping margins are as follows:

Manufacturer or Exporter	Margin (percent)
Nu–Scaan Nutraceuticals Co., Ltd.	280.57
Yuki Gosei Co., Ltd.	280.57
Showa Denko K.K.	280.57
Hayashi Pure Chemical Industries Co., Ltd.	280.57
CBC Co., Ltd.	280.57
Seino Logix Co., Ltd.	280.57
Estee Lauder Group Companies K.K.	280.57
Chelest Corporation	280.57
All Others	165.34

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination of sales at less than fair value. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threatening material injury to, the U.S. industry. The deadline for the Commission's determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than 30 days after the publication of this notice. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in an investigation, the hearing normally will be held two days after the deadline for submission of the rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. We will make our final determination within 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: September 6, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–18080 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China

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

EFFECTIVE DATE: September 13, 2007.

SUMMARY: On May 10, 2007, the Department of Commerce (''Department'') published its preliminary results in the antidumping duty administrative review of petroleum wax candles from the People's Republic of China (''PRC''). *See Petroleum Wax Candles from the People's Republic of China: Preliminary Results and Partial Rescission of the Eighth Administrative Review*, 72 FR 26595 (May 10, 2007) (''*Preliminary Results*''). We invited interested parties to comment on the *Preliminary Results*.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Case History

This administrative review covers one manufacturer/exporter of subject merchandise: Deseado International, Ltd. (''Deseado''). Petitioner is the National Candle Association (''NCA''). The *Preliminary Results* in this administrative review were published on May 10, 2007. On June 12, 2007, Petitioner and Deseado submitted comments. On June 18, 2007, Petitioner and Deseado submitted rebuttal comments. No interested parties requested a hearing.

Period of Review

The period of review (''POR'') covers August 1, 2005, through July 31, 2006.

Scope of the Order[1]

The products covered by *Notice of Antidumping Duty Order: Petroleum Wax Candles from the People's Republic of China*, 51 FR 30686 (August 28, 1986) (''*Candles Order*'') are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper–cored wicks. They are sold in the following shapes: tapers, spirals, and straight–sided dinner candles; round, columns, pillars, votives; and various wax–filled containers. The products were classified under the Tariff Schedules of the United States 755.25, Candles and Tapers. The products covered are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item 3406.00.00. Although the HTSUS subheading is provided for convenience purposes, our written description remains dispositive. *See Candles Order and Petroleum Wax Candles From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Review*, 69 FR 77990 (December 29, 2004).

Additionally, on October 6, 2006, the Department published its final determination of circumvention of the antidumping duty order on petroleum wax candles from the PRC. *See Later–Developed Merchandise Anticircumvention Inquiry of the Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 71 FR 59075 (October 6, 2006). The Department determined that candles composed of petroleum wax and over 50 percent or more palm and/or other vegetable oil–

[1] Final scope rulings on petroleum wax candles scope inquiries addressed by the Department can be found at: http://ia.ita.doc.gov/download/candles-prc-scope/index.html.

based waxes (mixed–wax candles) are later–developed products of petroleum wax candles. In addition, the Department determined that mixed–wax candles containing *any* amount of petroleum are covered by the scope of the antidumping duty order on petroleum wax candles from the PRC.

Partial Rescission of Administrative Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the administrative review with respect to thirteen companies[2] because all thirteen companies submitted timely withdrawals of their requests for an administrative review. *See Preliminary Results*, 72 FR at 26596. The Department received no comments on this issue, and we did not receive any further information since the issuance of the *Preliminary Results* that provides a basis for a reconsideration of this determination. Therefore, consistent with 19 CFR 351.213(d), we are rescinding this administrative review with respect to the thirteen companies named below in footnote 2.

Analysis of Comments Received

All issues raised in the comments submitted by Petitioner and Deseado are addressed in the ''Memorandum to the Assistant Secretary for Import Administration: Antidumping Duty Order on Petroleum Wax Candles from the People's Republic of China: Issues and Decision Memorandum for Final Results of the Eighth Administrative Review,'' (''Issues & Decision Memorandum''), which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the comments and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at http://www.trade.gov/ia/ . The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

There have been no changes since the *Preliminary Results*.

Separate Rates

In the *Preliminary Results*, we determined that a separate rate analysis was not necessary with respect to Deseado because it reported that it is owned wholly by an entity located and registered in a market economy (*i.e.*, Hong Kong).[3] Therefore, we assigned Deseado a separate rate. For the final results, we continue to find that the evidence placed on the record of this administrative review by Deseado demonstrates that a separate rate analysis is unnecessary to determine whether Deseado is under *de jure* or *de facto* control of the PRC government and we will continue to assign Deseado a separate rate. See Issues and Decision Memorandum at Comment 2.

Adverse Facts Available

For the reasons discussed in the Issues and Decision Memorandum, and in accordance with sections 776(a)(2)(A), (B), and (C), and 776(b) of the Tariff Act of 1930, as amended (''Act''), for the final results, we continue to determine that the application of adverse facts available (''AFA'') is appropriate for Deseado because it failed to cooperate by not acting to the best of its ability to comply with the Department's multiple requests for sales and cost data and significantly impeded this proceeding. See Issues and Decision Memorandum at Comment 1. As AFA, we will continue to apply the rate of 108.30 percent, the highest calculated rate from any segment of this proceeding, as described in the *Preliminary Results*.

Final Results of Review

We determine that the following percentage weighted–average margins exist for the POR:

Manufacturer/Exporter	Margin (Percent)
Deseado International, Ltd.	108.30 %

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries. For these final results, Deseado received a dumping margin based upon total AFA. We will, therefore, instruct CBP to liquidate entries manufactured or exported by Deseado, according to the AFA rate listed above. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Deseado will be the rate indicated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash–deposit rate will be the PRC–wide rate of 108.30 percent; and (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC supplier of that exporter. These cash deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

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 the review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

[2] Amstar Business Company Limited, Apex Enterprises International Ltd. and Apex's producer, Golden Industrial Co., Ltd., Fuzhou Eastown Arts Co., Ltd., Gift Creative Company, Ltd., Maverick Enterprise Co., Ltd. and Maverick's producer Great Founder International Co., Qingdao Kingking Applied Chemistry Co., Ltd., Shantou Jinyuan Mingfeng Handicraft Co., Shanghai Shen Hong Arts and Crafts Co., Ltd. and Shen Hong's producer Shanghai Changran Enterprise, Ltd ., Shenzhen Sam Lick Manufactory (and affiliated exporter Prudential (HK) Candles Manufacturing Co., Ltd)., and Transfar International Corp.

[3] *See Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 44331 (August 23, 2001), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of Fifth New Shipper Review*, 66 FR 29080-1 (May 29, 2001) (where the respondent was wholly owned by a U.S. registered company); *Brake Rotors From the People's Republic of China: Final Results and Partial Rescission of Fourth New Shipper Review and Rescission of Third Antidumping Duty Administrative Review*, 66 FR 27063 (May 16, 2001) (where the respondent was wholly owned by a company located in Hong Kong), results unchanged from *Brake Rotors From the People's Republic of China: Preliminary Results and Partial Rescission of the Fourth New Shipper Review and Rescission of the Third Antidumping Duty Administrative Review*, 66 FR 1303-6 (January 8, 2001); and *Notice of Final Determination of Sales at Less Than Fair Value: Creatine Monohydrate From the People's Republic of China*, 64 FR 71104-5 (December 20, 1999) (where the respondent was wholly owned by persons located in Hong Kong).

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative protective order itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: September 7, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix I

Comment 1: Total Adverse Facts Available (''AFA'')

*Comment 2:*Separate Rate Status

Comment 3: Scope of the Antidumping Duty Order

Comment 4: Retroactive Application of the Anti–Circumvention Determination

[FR Doc. E7–18068 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board; Notice of Charter Renewal

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of charter renewal.

SUMMARY: The Department of Commerce's Chief Financial Officer and Assistant Secretary for Administration has renewed the charter for the Science Advisory Board (SAB) for a 2-year period, through August 8, 2009. The SAB is a federal advisory committee under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: Renewed through August 8, 2009.

SUPPLEMENTARY INFORMATION: The charter has evolved since the SAB's inception in 1997 so as to accurately describe the SAB's purpose, membership, and administrative provisions. To more fully align the charter with the current state of the SAB and NOAA, the renewal charter has been modified as follows: (1) The term of the Chairperson has been specified to be until the end of the selected member's term on the SAB. (2) Members whose terms on the SAB have expired may remain on at the specific request of the Under Secretary for a period of time not to exceed one year beyond the original end date of the final term. (3) Members of the SAB's task forces and working groups shall be appointed by the Under Secretary or his designee in accordance with applicable Department of Commerce appointment procedures for members of advisory committees.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, E-mail: *Cynthia.Decker@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: September 5, 2007.

Mark E. Brown,

Chief Financial Officer and Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E7–18097 Filed 9–12–07; 8:45 am]

BILLING CODE 3510–KD–P

COMMODITY FUTURES TRADING COMMISSION

Global Markets Advisory Committee Meeting

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(a), that the Commodity Futures Trading Commission's Global Markets Advisory Committee will conduct a public meeting on Tuesday, October 2, 2007. The meeting will take place in the first floor hearing room of the Commission's Washington, DC headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 from 1 to 4 p.m. The purpose of the meeting is to discuss global markets-related issues in the financial services and commodity markets. The meeting will be chaired by Walter L. Lukken, who is Acting Chairman of the Commission and Chairman of the Global Markets Advisory Committee.

The agenda will consist of the following:

(1) Call to order and introductions.

(2) Report on activities of CFTC Office of International Affairs.

(3) Cross-border clearing issues.

(4) Other business.

(5) Discussion of future meetings and topics.

(6) Adjournment.

The meeting is open to the public. Any member of the public who wishes to file a written statement with the committee should mail a copy of the statement to the attention of: Global Markets Advisory Committee, c/o Acting Chairman Walter L. Lukken, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should inform Acting Chairman Lukken in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for oral presentations of no more than five minutes each in duration.

For further information concerning this meeting, please contact Erin Shaw at 202–418–5078.

Issued by the Commission in Washington, DC on September 10, 2007.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E7–18090 Filed 9–12–07; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Termination of Federal Advisory Committee

AGENCY: DoD.

ACTION: Notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, (5 U.S.C. appendix, as amended), the government in the sunshine Act of 1976 (5 U.S.C. 552b, as amended),k and 41 CFR 102–3.55, the Department of Defense gives notice that it will terminate the charter for the U.S. Southern Command Advisory Group on September 30, 2007.

The committee's charter was filed April 2, 2007; however, changing priorities within the U.S. Southern Command have negated the need for this advisory committee. The Department of Defense did not expend any funds on this committee nor did it approve the appointment of any committee members.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, DoD Committee

Management Office, 703–601–2554, extension 128.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4500 Filed 9–12–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training—Rehabilitation Counseling; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129B.

Dates: Applications Available: September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Deadline for Intergovernmental Review: December 27, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Training: Rehabilitation Long-Term Training program provides financial assistance for projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages, provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages, or provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: This notice contains one absolute priority and two invitational priorities.

Absolute Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on January 15, 2003 (68 FR 2166).

For FY 2008, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Partnership With the State VR Agency

This priority supports projects that will increase the knowledge of students of the role and responsibilities of the VR counselor and of the benefits of counseling in State VR agencies. This priority focuses attention on and intends to strengthen the unique role of rehabilitation educators and State VR agencies in the preparation of qualified VR counselors by increasing or creating ongoing collaboration between institutions of higher education and State VR agencies.

Projects funded under this priority must include within the degree program information about and experience in the State VR system. Projects must include partnering activities for students with the State VR agency including experiential activities, such as formal internships or practicum agreements. In addition, experiential activities for students with community-based rehabilitation service providers are encouraged.

Projects must include an evaluation of the impact of project activities.

Within this absolute priority, we are particularly interested in applications that address the following invitational priorities.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

Distance Learning

We are especially interested in projects that include a distance learning component to enable outreach to non-traditional students and students from a broad geographic area. We establish this invitational priority in order to help prepare more students for careers in State vocational rehabilitation agencies.

Recruitment and Placement

Because of personnel shortages in State VR agencies, we are especially interested in projects that develop a plan for the recruitment of students, especially those who may be interested in working in State VR agencies, and a plan for placement of graduates in such agencies.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations in 34 CFR parts 385 and 386.

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: The Administration has requested $38,438,000 for the Rehabilitation Training program for FY 2008, of which we intend to use an estimated $2,850,000 for this Rehabilitation Counseling competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $100,000–$150,000.

Estimated Average Size of Awards: $137,500.

Maximum Award: We will reject any application that proposes a budget exceeding $150,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training: Rehabilitation Long-Term Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

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 package from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129B.

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 the application narrative (Part III) to the equivalent of no more than 45 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 (character per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you apply these standards and exceed the page limit; or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** 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: December 27, 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training—Rehabilitation Counseling competition, CFDA Number 84.129B, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training program—Rehabilitation Counseling 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 84.129, not 84.129B).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Beverly Steburg, U.S. Department of Education, 400 Maryland Avenue, SW., room 5049, PCP, Washington, DC 20202–2550. *FAX:* (202) 245–7607.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.129B), 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 84.129B), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.129B), 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 34 CFR 75.210 and 34 CFR 386.20 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 expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also 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:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel working in State VR agencies or related agencies. A grantee must use at least 75 percent of all grant funds for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars; program completion data for each scholar; dates each scholar's work begins and is completed with regard to the scholar's payback agreement, specifically the remaining number of years of work the scholar is obligated to complete; current home address; and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data using the RSA Grantee Reporting Form, OMB# 1820–0617, an electronic reporting system. The RSA Grantee Reporting Form collects specific data including the number of RSA scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (e.g., State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR agencies or related agencies.

VII. Agency Contact

For Further Information Contact: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., room 5049, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7607.

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: September 10, 2007.

William W. Knudsen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–18087 Filed 9–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

(Catalog of Federal Domestic Assistance (CFDA) Number: 84.129E, F, H, L, P, Q, and R.)

DATES: *Applications Available:* September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Deadline for Intergovernmental Review: December 27, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Training: Rehabilitation Long-Term Training program provides financial assistance for projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages, provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages, and provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 386.1).

Absolute Priorities: For FY 2008, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that propose to provide training in the priority areas of personnel shortages listed in the following chart.

CFDA Nos.	Priority area (maximum number of awards in parentheses)	Maximum award amount
84.129E	Rehabilitation Technology (2)	$100,000
84.129F	Vocational Evaluation And Work Adjustment (3)	100,000
84.129H	Rehabilitation of Individuals Who Are Mentally Ill (2)	100,000
84.129L	Undergraduate Education in the Rehabilitation Services (6)	75,000
84.129P	Specialized Personnel for Rehabilitation of Individuals Who Are Blind or Have Vision Impairments (7).	100,000
84.129Q	Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (5)	100,000
84.129R	Job Development And Job Placement Services to Individuals With Disabilities (4)	100,000

Within these absolute priorities, we are particularly interested in applications that address the following invitational priority.

Invitational Priority: Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Distance Learning: We are especially interested in projects that include a distance learning component to enable outreach to non-traditional students and students from a broad geographic area. We establish this invitational priority in order to help prepare more students for careers in State vocational rehabilitation agencies.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

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.

Estimate Available Funds: The Administration has requested $38,438,000 for the Rehabilitation Training: Rehabilitation Long-Term Training program for FY 2008, of which we intend to use an estimated $2,750,000 for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $70,000–$100,000.

Estimated Average Size of Awards: $95,000.

Maximum Award: We will reject any application that proposes a budget exceeding $100,000 for Rehabilitation Training: Rehabilitation Long-Term Training (84.129E, F, H, P, Q, and R) for a single budget period of 12 months. We will reject any application that proposes a budget exceeding $75,000 for Undergraduate Education in the Rehabilitation Services (84.129L) for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 29.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training: Rehabilitation Long-Term Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

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 84.129E, F, H, L, P, Q, and R.

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 the application narrative [Part III] to the equivalent of no more than 45 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.
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- 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. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (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: September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** 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: December 27, 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training competition, CFDA Number 84.129E, F, H, L, P, Q, and R must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement*.

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training 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 84.129, not 84.129E, F, H, L, P, Q, or R).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).
- You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to the Grants.gov system; and
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marilyn Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5029, Potomac Center Plaza (PCP), Washington, DC 20202–2550. FAX: (202) 245–7607.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129E, F, H, L, P, Q, or R), 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 84.129E, F, H, L, P, Q, or R), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129E, F, H, L, P, Q, or R), 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 34 CFR 75.210 and and 34 CFR 386.20 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 expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also 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:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel working in State VR agencies or related agencies. A grantee must use at least 75 percent of all grant funds for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars; program completion data for each scholar; dates each scholar's work begins and is completed with regard to the scholar's payback agreement, specifically the remaining number of years of work the scholar is obligated to complete; current home address; and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data using the RSA Grantee Reporting Form, OMB# 1820–0617, an electronic reporting system. The RSA Grantee Reporting Form collects specific data including the number of RSA scholars entering the rehabilitation workforce, the rehabilitation field each student enters, and the type of employment setting each scholar chooses (e.g., State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR agencies or related agencies.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marilyn Fountain, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., Room 5029, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7346.

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: September 10, 2007.

William W. Knudsen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–18089 Filed 9–12–07; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2008

Catalog of Federal Domestic Assistance (CFDA) Number: 84.129W.

Dates: Applications Available: September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Deadline for Intergovernmental Review: December 27, 2007.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The Rehabilitation Training: Rehabilitation Long-Term Training program provides financial assistance for projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages, provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages, or provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Priority: This priority is from the notice of final priority for this program, published in the **Federal Register** on October 16, 1998 (63 FR 55764).

Absolute Priority: For FY 2008, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Comprehensive System of Personnel Development

Projects must—

(1) Provide training leading to academic degrees or academic certificates to current vocational rehabilitation (VR) counselors, including counselors with disabilities, ethnic minorities, and those from diverse backgrounds, toward meeting designated State unit (DSU) personnel standards required under section 101(a)(7) of the Rehabilitation Act of 1973, as amended, Public Law No. 93–112, 87 Stat. 394 (Sept. 26, 1973), commonly referred to as the Comprehensive System of Personnel Development (CSPD);

(2) Address the academic degree and academic certificate needs specified in the CSPD plans of those States with which the project will be working; and

(3) Develop innovative approaches (e.g., distance learning, competency-based programs, and other methods) that would maximize participation in, and the effectiveness of, project training.

Multi-State projects and projects that involve consortia of institutions and agencies are also authorized, although other projects will be considered.

The regulations in 34 CFR 386.31(b) require that a minimum of 75 percent of project funds be used to support student scholarships and stipends. The regulations also provide that the Secretary may waive this requirement under certain circumstances, including new training programs.

Finally, the Secretary intends to approve a wide range of approaches for providing training and different levels of funding, based on the quality of individual projects. The Secretary takes these factors into account in making grants under this priority.

Note: Background and other supplemental material from the notice of final priority can be found in the **Federal Register**, published on October 16, 1998 (63 FR 55764).

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 386.

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: The Administration has requested $38,438,000 for awards for the Rehabilitation Training program for FY 2008, of which we intend to use an estimated $700,000 for this Comprehensive System of Personnel Development competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

2. *Cost Sharing or Matching:* Cost sharing of at least 10 percent of the total cost of the project is required of grantees under the Rehabilitation Training: Rehabilitation Long-Term Training program (34 CFR 386.30).

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

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 84.129W.

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 the application narrative (Part III) to the equivalent of no more than 45 pages, using the following standards:

- A ''page'' is 8.5″ × 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 (character per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: September 13, 2007.

Deadline for Transmittal of Applications: October 29, 2007.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6., *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** 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: December 27, 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 must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.* Applications for grants under the Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development competition, CFDA Number 84.129W, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Rehabilitation Training: Rehabilitation Long-Term Training—Comprehensive System of Personnel Development competition at *http://www.Grants.gov*. You must search for the downloadable application package for this program or competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.129, not 84.129W).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date and time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this 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 qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. Please note that two of these forms—the SF 424 and the Department of Education Supplemental Information for SF 424—have replaced the ED 424 (Application for Federal Education Assistance).

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, 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.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., Room 5049, Potomac Center Plaza (PCP), Washington, DC 20202–2550. FAX: (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service:
U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.129W),
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
84.129W), 7100 Old Landover Road,
Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.129W), 550 12th Street, SW., Room 7041, PCP, 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 34 CFR 75.210 and 34 CFR 386.20 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 expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also 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:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Rehabilitation Services Administration's (RSA) Rehabilitation Training: Rehabilitation Long-Term Training program is to increase the number of qualified VR personnel working in State VR agencies or related agencies. A grantee must use at least 75 percent of all grant funds for direct payment of student scholarships. Each grantee is required to track students receiving scholarships and must maintain information on the cumulative support granted to RSA scholars; program completion data for each scholar; dates each scholar's work begins and is completed with regard to the scholar's payback agreement, specifically the remaining number of years of work the scholar is obligated to complete; current home address; and the place of employment of individual scholars.

Grantees are required to report annually to RSA on these data using the RSA Grantee Reporting Form, OMB# 1820–0617, an electronic reporting system. The RSA Grantee Reporting Form collects specific data including the number of RSA scholars entering the rehabilitation workforce, the rehabilitation field each scholar enters, and the type of employment setting each scholar chooses (e.g., State agency, nonprofit service provider, or practice group). This form allows RSA to measure results against the goal of increasing the number of qualified VR personnel working in State VR agencies or related agencies.

VII. Agency Contact

For Further Information Contact: Beverly Steburg, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., Room 5049, PCP, Washington, DC 20202–2800. Telephone: (202) 245–7607.

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 Service 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: September 10, 2007.

William W. Knudsen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E7–18092 Filed 9–12–07; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8467–9; Docket ID No. EPA–HQ–ORD–2007–0925]

Integrated Science Assessment for Carbon Monoxide

AGENCY: Environmental Protection Agency.

ACTION: Notice; call for information.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Office of Research and Development's National Center for Environmental Assessment (NCEA) is preparing an Integrated Science Assessment (ISA) as part of the review of the National Ambient Air Quality Standards (NAAQS) for Carbon Monoxide (CO). This is intended to update and revise, where appropriate, the scientific assessment presented in the Air Quality Criteria for Carbon Monoxide (EPA 600/P–99/001F), published in June 2000. Interested parties are invited to assist the EPA in developing and refining the scientific information base for the review of the CO NAAQS by submitting research studies that have been published, accepted for publication, or presented at a public scientific meeting.

DATES: All communications and information should be received by EPA by December 14, 2007.

ADDRESSES: Information may be submitted electronically, by mail, by

facsimile, or by hand delivery/courier. Please follow the detailed instructions as provided in the section of this notice entitled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: For details on the period for submission of research information from the public, contact the Office of Environmental Information (OEI) Docket; telephone: 202–566–1752; facsimile: 202–566–1753; or e-mail: *ORD.Docket@epa.gov.* For technical information, contact Paul Reinhart, PhD, NCEA, telephone, 919–541–1456; facsimile: 919–541–1818 or e-mail: *reinhart.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About the Project

Section 108(a) of the Clean Air Act directs the Administrator to identify certain pollutants, emissions of which ''may reasonably be anticipated to endanger public health and welfare'' and whose presence ''in the ambient air results from numerous or diverse mobile or stationary sources,'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air * * *.'' Under section 109 of the Act, EPA is then to establish National Ambient Air Quality Standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109 (d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Carbon monoxide is one of six principal (or ''criteria'') pollutants for which EPA has established NAAQS. Periodically, EPA reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA), formerly called an Air Quality Criteria Document (AQCD). The ISA and supplementary annexes are the scientific basis for the additional technical and policy assessments that form the basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. Early steps in this process include announcing the beginning of this periodic NAAQS review and the development of the ISA, and NCEA requesting that the public submit scientific literature that they want to bring to the attention of the Agency as it begins this process. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee mandated by the Clean Air Act and part of the EPA's Science Advisory Board (SAB), is charged with independent expert scientific review of EPA's draft ISAs. As the process proceeds, the public will have opportunities to review and comment on draft CO ISAs. These opportunities will also be announced in the **Federal Register**.

The Agency is interested in obtaining additional new information, particularly concerning toxicological studies of effects of controlled exposure to CO on laboratory animals, humans and in vitro systems as well as epidemiologic (observational) studies of health effects associated with ambient exposures of human populations to CO. EPA also seeks recent information in other areas of CO research such as chemistry and physics, sources and emissions, analytical methodology, transport and transformation in the environment, ambient concentrations and effects on public welfare or the environment. This and other selected literature relevant to a review of the NAAQS for CO will be assessed in the forthcoming CO ISA. As part of this review of the CO NAAQS, EPA intends to sponsor a workshop in January 2008 to highlight significant new and emerging CO research, and to make recommendations to the Agency regarding the design and scope of the review for the primary (health-based) CO standards to ensure that it addresses key policy-relevant issues and considers the new science that is relevant to informing our understanding of these issues. In addition, other opportunities for submission of new peer-reviewed, published (or in-press) papers will be possible as part of public comment on the additional draft documents that will be reviewed by CASAC.

II. How To Submit Technical Comments to the Docket at *www.regulations.gov*

Submit your comments, identified by Docket ID No. EPA–HQ–ORD 2007–0925, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *ORD.Docket@epa.gov.*
- Fax: 202–566–1753.
- Mail: Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- Hand Delivery: The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2007–0925. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *www.regulations.gov,* including any personal information provided, unless a 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: 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 materials, such as copyrighted material, are 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 in the EPA Headquarters Docket Center.

Dated: September 6, 2007.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. E7–18100 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8467–6]

National Drinking Water Advisory Council: Request for Nominations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) invites all interested persons to nominate qualified individuals to serve a three-year term as members of the National Drinking Water Advisory Council (Council). This 15 member Council was established by the Safe Drinking Water Act (SDWA) to provide practical and independent advice, consultation, and recommendations to the Agency on the activities, functions, policies, and regulations required by the SDWA. The terms of five (5) members expire in December 2007. To maintain the representation required in the statute, nominees for the 2008 Council should represent State and local officials concerned with public water supply and public health protection (3 vacancies), the general public (1 vacancy) and interest groups (1 vacancy). All nominations will be fully considered, but applicants need to be aware of the specific representation needed as well as geographical balance so that all major areas of the U.S. (East, Mid-West, South, Mountain, South-West, and West) will be represented. The current list of members is available on the EPA Web site at *http://www.epa.gov/safewater/ndwac.*

DATES: Submit nominations via U.S. mail on or before October 15, 2007.

ADDRESSES: Address all nominations to Veronica Blette, Designated Federal Officer, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (Mail Code 4601–M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: E-mail your questions to Veronica Blette, Designated Federal Officer, *blette.veronica@epa.gov* or call 202–564–4094.

SUPPLEMENTARY INFORMATION: *National Drinking Water Advisory Council:* The Council consists of 15 members, including a Chairperson, appointed by the Deputy Administrator. Five members represent the general public; five members represent appropriate State and local agencies concerned with public water supply and public health protection; and five members represent private organizations or groups demonstrating an active interest in the field of public water supply and public health protection. The SDWA requires that at least two members of the Council represent small, rural public water systems. Additionally, members may be asked to serve on one of the Council's workgroups that are established on an as-needed basis to assist EPA in addressing specific program issues. On December 15 of each year, some members complete their appointment. Therefore, this notice solicits nominations to fill five vacancies with terms ending on December 15, 2010.

Persons selected for membership will receive compensation for travel and a nominal daily compensation (if appropriate) while attending meetings. The Council holds two face-to-face meetings each year, generally in the spring and fall. Conference calls will be scheduled if needed.

Nomination of a Member: Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. To be considered, all nominations must include a current resume, providing the nominee's background, experience and qualifications.

Dated: September 7, 2007.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. E7–18065 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8467–7]

Science Advisory Board Staff Office; Notification of Two Public Teleconferences of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to discuss components of a draft report related to valuing the protection of ecological systems and services.

DATES: The SAB will conduct two public teleconferences. The public teleconference on October 15, 2007 will begin at 11:30 p.m. and end at 1 p.m. (eastern daylight time). The public teleconference on October 16, 2007 will begin at 1 p.m. and end at 3 p.m. (eastern daylight time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202) 343–9981 or e-mail at: *nugent.angela@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: Background on the SAB C–VPESS and its charge was provided in 68 FR 11082 (March 7, 2003). The purpose of the teleconference is for the SAB C–VPESS to discuss components of a draft advisory report calling for expanded and integrated approach for valuing the protection of ecological systems and services. These activities are related to the Committee's overall charge: to assess Agency needs and the

state of the art and science of valuing protection of ecological systems and services and to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Meeting Materials: Agendas and materials in support of the teleconferences will be placed on the SAB Web site at: *http://www.epa.gov/sab* in advance of each teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider during the public teleconference and/or meeting. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Angela Nugent, DFO, in writing (preferably via e-mail) 5 business days in advance of each teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office 5 business days in advance of each teleconference above so that the information may be made available to the SAB for their consideration prior to each teleconference. Written statements should be supplied to the DFO in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format).

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact Dr. Nugent preferably at least ten days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: September 6, 2007.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–18059 Filed 9–12–07; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U. S.

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and Request for Comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the paper 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 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.

DATES: Comments due on or before November 13, 2007.

ADDRESSES: Direct all written comments and requests for additional information to Mimi Tesser, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, *Mimi.Tesser@exim.gov*, (202) 565–3778, or (800) 565–3946, extension 3778.

OMB Number: 3048–0012.

Titles and Form Numbers: Export-Import Bank of the U.S. Foreign Content Report, EIB 01–02 and Export-Import Bank of the U.S. Cause Report, EIB 01–02–A.

Type of Review: Regular.

Need and Use: The information requested creates less of a burden on our exporters who previously certified foreign content for each shipment of goods. With the use of the forms, Ex-Im Bank documents the amount of foreign content in transactions through up-front reporting and back-end verification.

Affected Public: Business and other for-profit/not-for-profit institutions.

Respondents: Entities involved in the export of U.S. good and services, including exporters, banks and other non-financial lending institutions that act as facilitators.

Estimated Annual Respondents: 600.

Estimated Time per Respondent: 2 hours.

Estimated Annual Burden: 1,200 hours.

Frequency of Response: On occasion.

Dated: September 6, 2007.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 07–4489 Filed 9–12–07; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 5, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written PRA comments should be submitted on or before November 13, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, send them to Jerry Cowden, Federal Communications Commission, Room 1–B135, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Jerry

Cowden via e-mail at *PRA@fcc.gov* or call (202) 418–0447.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0698.

Title: Radio Astronomy Coordination Zone in Puerto Rico, §§ 23.20(f), 25.203(i), and 73.1030(a)(2).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 200 respondents; 1,000 responses.

Estimated Time per Response: Approximately 8.5 minutes.

Frequency of Response: Third party disclosure.

Obligation To Respond: Required to obtain or retain benefits.

Total Annual Burden: 142 hours.

Total Annual Costs: None.

Privacy Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: On October 15, 1997, the FCC released a Report and Order, ET Docket No. 96–2, RM–8165, FCC 97–347, that established a coordination zone for new and modified radio facilities in various communications services that cover the islands of Puerto Rico, Desecheo, Mona, Vieques, and Culebra within the Commonwealth of Puerto Rico. The coordination zone and notification procedures enable the Arecibo Radio Astronomy Observatory to receive information needed to assess whether an applicant's proposed operations will cause harmful interference to the Arecibo Observatory's operations, which also promotes efficient resolution of coordination problems between the applicants and the Arecibo Observatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–17861 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 6, 2007.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

FOR FURTHER INFORMATION CONTACT: Thomas Butler, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *thomas.butler@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0853.

OMB Approval Date: 8/10/2007.

Expiration Date: 4/30/2010.

Titles: Receipt of Service Confirmation Form; Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries; Adjustment to Funding Commitment and Modification to Receipt of Service Confirmation Form.

Form Nos.: FCC Forms 479, 486 and 500.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; and state, local, or tribal government.

Number of Respondents: 45,000.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion, annual reporting requirement, and third party disclosure requirement.

Total Annual Burden: 62,500 hours.

Total Annual Cost: N/A.

Privacy Act Assessment: N/A.

Needs and Uses: Schools and libraries receiving Internet access and internal connection services supported by the schools and libraries universal service support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure in compliance with the Children's Internet Protection Act (CIPA). Administrative Authorities for Billed Entities and their consortia generally must submit signed certifications on FCC Form 479 to the Billed Entity, or to their consortium, certifying as to the status of the Billed Entity in its compliance with CIPA. Billed Entities must use the FCC Form 486 to authorize payment of invoices from service providers, indicate approval of technology plans, and indicate compliance with CIPA. Billed Entities use the FCC Form 500 to make adjustments to previously filed forms. The FCC forms in this collection have been revised to reflect the most current information available, added updated language to the forms and instructions, and reflect the most current burden information. In addition, the FCC Form 486 has added a certification that the technology plan was approved before the receipt of services (Schools and Libraries Fifth Report and Order in FCC 04–190). The revised forms as approved by OMB are available for use and are posted on the Web site of the Universal Service Administrative Company under ''Required Forms'' at *http://www.usac.org.*

OMB Control No.: 3060–0856.

OMB Approval Date: 4/26/2007.

Expiration Date: 4/30/2010.

Titles: Billed Entity Applicant Reimbursement Form; Service Provider Annual Certification Form; Service Provider Invoice Form.

Form Nos.: FCC Forms 472, 473 and 474.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions; and state, local, or tribal government.

Number of Respondents: 21,200.

Estimated Time per Response: 1–1.5 hours.

Frequency of Response: On occasion, annual reporting requirement, and third party disclosure requirement.

Total Annual Burden: 133,650 hours.

Total Annual Cost: N/A.

Privacy Act Assessment: N/A.

Needs and Uses: Schools and libraries receiving Internet access and internal connection services supported by the schools and libraries universal service support mechanism must certify that they are enforcing a policy of Internet safety and enforcing the operation of a technology prevention measure in compliance with the Children's Internet Protection Act (CIPA). Administrative Authorities for Billed Entities and their consortia generally must submit signed certifications on FCC Form 479 to the Billed Entity, or to their consortium, certifying as to the status of the Billed Entity in its compliance with CIPA. Billed Entities must use the FCC Form 486 to authorize payment of invoices from service providers, indicate approval of technology plans, and indicate compliance with CIPA. Billed Entities use the FCC Form 500 to make adjustments to previously filed forms. The FCC forms in this collection have been revised to reflect the most current information available, added updated language to the forms and instructions, and reflect the most current burden information. In addition, the FCC Form 486 has added a certification that the technology plan was approved before the receipt of services (Schools and Libraries Fifth Report and Order in FCC

04–190). The revised forms as approved by OMB are available for use and are posted on the Web site of the Universal Service Administrative Company under ''Required Forms'' *at http://www.usac.org.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18054 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 7, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 15, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser of Office of Management and Budget (OMB), via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC.

If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918 or via the Internet at P*RA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1089.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities; Emergency Access Notice of Proposed Rulemaking (NPRM) and Internet-Protocol (IP) Relay/Video Relay Service (VRS) Fraud Further Notice of Proposed Rulemaking (FNPRM); and Interoperability Declaratory and FNPRM, CG Docket No. 03–123.

Form No.: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; State, Local or Tribal Government.

Number of Respondents: 8—(6 of which provides VRS and IP Relay service; 2 of which provides VRS).

Estimated Time per Response: 4 to 1,000 hours.

Frequency of Response: Annual reporting requirement; One-time reporting requirement; On occasion reporting requirement; Recordkeeping requirement; Monthly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 34,688 hours.

Total Annual Costs: None.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: **Note:** The Commission is revising information collection 3060–1089 to consolidate/merge the information collection requirements of 3060–1091 into this collection per the Office of Management and Budget's (OMB) request. Presently, the Commission concludes that these two proposed information collections are similar because these collections involve same respondents and contain similar data of identifiable information in order: (1) To facilitate 911 emergency calls; (2) to improve interoperability for VRS and IP Relay services; and (3) to curtail misuse of VRS and IP Relay services. The Commission does not collect this information. The Commission requires respondents to collect this information. Once OMB approval is received for the consolidated/merged information collection requirements, the Commission will eliminate OMB information collection No. 3060–1091.

On November 30 2005, the Commission released a Notice of Proposed Rulemaking (*NPRM*), CG Docket No. 03–123, which addressed the issue of access to emergency services for Internet-based forms of Telecommunications Relay Services (TRS), namely VRS and IP Relay Service. The Commission sought to adopt means to ensure that such calls promptly reach the appropriate emergency service provider. By doing so, the *NPRM* sought comment on various issues: (1) Whether the Commission should require VRS and IP Relay service providers to establish a registration process in which VRS and IP Relay service users provide, in advance, the primary location from which they will be making VRS or IP Relay service calls (the Registered Location), so that a communication assistant (CA) can identify the appropriate Public Safety Answering Point (PSAP) to contact; (2) should VRS and IP Relay providers be required to register their customers and obtain a Registered Location from their customers so that they will be able to make the outbound call to the appropriate PSAP; (3) whether there are other means by which VRS and IP Relay service providers may obtain Registered Location information, for example, by linking the serial number of the customer VRS or IP Relay service terminal or equipment to their registered location; (4) any privacy considerations that might be raised by requiring VRS and IP Relay service users to provide location information as a prerequisite to using these services; (5) whether, assuming some type of location registration requirement is adopted, the Commission should require specific information or place limits on the scope of information that providers should be able to obtain; (6) whether the Commission should require VRS and IP Relay providers to provide appropriate warning labels for installation on customer premises equipment (CPE) used in connection with VRS and IP Relay services; (7) whether the Commission should require

VRS and IP Relay providers to obtain and keep a record of affirmative acknowledgement by every subscriber of having received and understood the advisory that E911 service may not be available through VRS and IP Relay or may be in some way limited by comparison to traditional E911 service; and (8) how the Commission may ensure that providers have updated location information, and the respective obligations of the providers and the consumers in this regard.

On May 8, 2006, the Commission released the *Misuse of IP Relay Service and VRS Further Notice of Proposed Rulemaking, (IP Relay Fraud FNPRM*), CG Docket No. 03–123, FCC 06–58 which contained the following information collection requirements involving user registration, *e.g.*, callers register to use VRS and IP Relay and provide their requisite information as necessary: The *IP Relay Fraud FNPRM* sought comment on: (1) Whether IP Relay and VRS providers should be required to implement user registration system in which users provide certain information to their providers, in advance, as a means of curbing illegitimate IP Relay and VRS calls; (2) what information should be required of the user; (3) whether there are steps that could be taken, or technology implemented, to prevent the wrongful use of registration information; and (4) whether the Commission should require VRS and IP Relay providers to maintain records of apparently illegitimate calls that were terminated by the providers.

On May 9, 2006, the Commission released the *VRS Interoperability Declaratory Ruling and Further Notice of Proposed Rulemaking (Interoperability FNPRM*), In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for individuals with Hearing and Speech Disabilities, CG Docket No. 03–123, FCC 06–57. In the *Interoperability FNPRM*, the Commission sought comment on the feasibility of establishing a single, open, and global database of proxy numbers for VRS users that would be available to all service providers, so that a hearing person can call a VRS user through any VRS provider, and without having first to ascertain the VRS user's current IP address. The Commission also sought comment on nature of the proxy numbers that might be used and how they might be administered. The Commission sought comment on the role of the Commission in creating and maintaining the database. In the *Interoperability FNPRM*, the Commission recognized: (a) That when a hearing person contact a VRS user by calling a VRS provider, the calling party has to know in advance the IP address of the VRS user so that the calling party can give that address to the VRS CA (b) that because most consumers' IP addresses are dynamic, the VRS consumer may not know the IP address of his or her VRS equipment at a particular time; (c) that some VRS providers have created their own database of ''proxy'' or ''alias'' numbers that associate with the IP address of their customers, even if a particular person's IP address is dynamic and changes; (d) that databases are maintained by the service provider and, generally, are not shared with other service providers; and (e) that a person desiring to call a VRS consumer via the consumer's proxy number can only use the services of the VRS provider that generates the number.

The *Interoperability FNPRM* contained the following information collection requirements involving an open, global database of VRS proxy numbers. The *Interoperability FNPRM* sought comment on: (1) Whether VRS providers should be required to provide information to populate an open, global database of VRS proxy numbers and to keep the information current; (2) whether the Interstate TRS Fund administrator, a separate entity, or a consortium of service providers should be responsible for the maintenance and operation of an open, global database of VRS proxy numbers; (3) whether Deaf and hard of hearing individuals using video broadband communication need uniform and static end-point numbers should be linked to the North American Numbering Plan (NANP) that would remain consistent across all VRS providers so that they can contact one another and be contacted to the same extent that Public Switched Telephone Network (PSTN) and VoIP users are able to identify and call one another; (4) whether participation by service providers should be mandatory so that all VRS users can receive incoming calls.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18058 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

September 7, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 15, 2007. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas A. Fraser@omb.eop.gov* and to *Judith-B. Herman@fcc.gov*, Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov*. If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith

B. Herman at 202–418–0214 or via the Internet at *Judith- B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1039.

Title: Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act—Review Process, WT Docket No. 03–128.

Form Nos.: FCC Forms 620 and 621.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 12,000 respondents; 12,000 responses.

Estimated Time per Response: 1–10 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 123,888 hours.

Total Annual Cost: $9,225,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality for respondents. On a case by case basis, the Commission may be required to withhold from disclosure certain information about the location, character, or ownership of historic property, including traditional religious sites.

Needs and Uses: The Commission will submit this information collection to the OMB as an extension (no change in reporting, recordkeeping or third party disclosure requirements) during this comment period to obtain the full three-year clearance from them. There is no change in the estimated number of respondents/responses, burden hours or annual costs.

This data is used by FCC staff, State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and the Advisory Council of Historic Preservation (ACHP) to take such action as may be necessary as to ascertain whether a proposed action may affect historic properties that are listed or eligible for listing in the National Register as directed by Section 106 of the National Historic Preservation Act (NHPA), and the Commission's rules. FCC Form 620, New Tower (NT) Submission Packet is to be completed by or on behalf of applicants to construct new antenna support structures by or for the use of licensees of the FCC. The Packet is to be submitted to the State Historic Preservation Office (SHPO), or to the Tribal Historic Preservation Office (THPO), as appropriate, before any construction or other installation activities on the site begin. Failure to provide the Submission Packet and complete the review process under Section 106 of the National Historic Preservation Act (NHPA) prior to beginning construction may violate the NHPA and the Commission's rules.

FCC Form 621, Collocation (CO) Submission Packet is to be completed by or on behalf of applicants who wish to collocate an antenna or antennas on an existing communications tower or non-tower structure by or for the use of licensees of the FCC. The Packet (including Form CO and attachments) is to be submitted to the SHPO or to the THPO, as appropriate, before any construction or other installation activities on the site begin. Failure to provide the Submission Packet and complete the review process under Section 106 of the National Historic Preservation Act prior to the beginning construction or other installation activities may violate the NHPA and the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18060 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 7, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Persons wishing to comment on this information collection should submit comments November 13, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), (202) 395–5887, or via fax at 202–395–5167, or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission (FCC), Room 1-B441, 445 12th Street, SW., Washington, DC 20554. To submit your comments by e-mail send them to: *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection after the 60 day comment period, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s) send an e-mail to *PRA@fcc.gov* or contact Judith B. Herman at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1000.

Title: Section 87.147, Authorization of Equipment.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion and one-time reporting requirements, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 25 hours.

Annual Cost Burden: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: This collection will be submitted as an extension (no change in recordkeeping requirements) after this 60 day comment period to Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. There is no change in the number of respondents/responses and the estimated burden hours.

Section 87.147 is needed to require applicants for aviation equipment certification to submit a Federal Aviation Administration (FAA) determination of the equipment's compatibility with the National Airspace System (NAS). This will ensure that radio equipment operating in certain frequencies is compatible with the NAS, which shares system components with the military. The notification must describe the equipment, give the manufacturer's identification, antenna characteristics, rated output power, emission type and characteristics, the frequency or frequencies of operation, and essential receiver characteristics if protection is required. The information is used by FCC engineers to determine the interference potential of the proposed operation.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18062 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comment Requested

September 7, 2007.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to review (PRA) of 1995 (PRA), Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (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 estimate; (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.

DATES: Written PRA comments should be submitted on or before November 13, 2007. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0332.

Title: Section 76.614, Cable Television System Regular Monitoring, and Section 76.1706, Signal Leakage Logs and Repair Records.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 6,800.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Total Annual Burden: 4,763 hours.

Total Annual Cost: 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: 47 CFR 76.1706 requires cable operators shall maintain a log showing the date and location of each leakage source identified pursuant to 47 CFR 76.614, the date on which the leakage was repaired, and the probable cause of the leakage. The log shall be kept on file for a period of two years and shall be made available to authorized representatives of the Commission upon request.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–18063 Filed 9–12–07; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items From September 11, 2007, Open Meeting

September 10, 2007.

The following items have been deleted from the list of Agenda items scheduled for consideration at the September 11, 2007, Open Meeting and previously listed in the Commission's Notice of September 4, 2007. Item No. 8 has been adopted by the Commission.

Item No.	Bureau	Subject
7	Wireline Competition	*Title:* Petition of AT&T Inc. for Forbearance Under 47 U.S.C. 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services; Petition of BellSouth Corporation for Forbearance Under section 47 U.S.C. 160(c) from Title II and *Computer Inquiry* Rules with Respect to Its Broadband Services (WC Docket No. 06–125); Qwest Petition for Forbearance Under 47 U.S.C. 160(c) from Title II and *Computer Inquiry* Rules with Respect to Broadband Services; Petition of the Embarq Local Operating Companies for Forbearance Under 47 U.S.C. 160(c) from Application of *Computer Inquiry* and Certain Title II Common-Carriage Requirements (WC Docket No. 06–147); and Petition of the Frontier and Citizens ILECs for Forbearance Under section 47 U.S.C. 160(c) from Title II and *Computer Inquiry* Rules with Respect to Their Broadband Services. *Summary:* The Commission will consider a Memorandum Opinion and Order concerning requests for forbearance from Title II and *Computer Inquiry* requirements with respect to certain broadband services.

Item No.	Bureau	Subject
8	Wireless Telecommunications	*Title:* Amendment of Part 101 of the Commission's Rules to Modify Antenna Requirements for the 10.7–11.7 GHz Band (WT Docket No. 07–54, RM–11043); Nextlink Wireless, Inc.; First Avenue Networks, Inc.; Telecom Transport Management Inc.; Conterra Ultra Broadband, LLC; and Petitions for Waiver of sections 101.103 and 101.115 of the Commission's Rules for the Use of Smaller Antennas in the 10.7–11.7 GHz Band. *Summary:* The Commission will consider a Report and Order concerning rules governing the use of antennas by Fixed Service operators in the 10.7–11.7 GHz.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 07–4559 Filed 9–11–07; 12:42 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 9, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Smith Associates Florida Banking Fund LLC; Smith Associates Bank Fund Management LLC, and Florida Shores Bancorp, Inc., all of Pompano Beach, Florida; to acquire 60 percent of the voting shares of Florida Shores Bank – Southwest, Venice, Florida (in organization).

B. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Century Financial Services Corporation, to become a bank holding company by acquiring 100 percent of the voting shares of Century Bank, upon its conversion from a federal savings bank, Century Bank, FSB, all of Santa Fe, New Mexico, to a commercial bank.

2. Equity Bancshares, Inc., Andover, Kansas, to acquire up to 100 percent of the voting shares of Signature Bancshares, Inc., Spring Hill, Kansas, and thereby indirectly acquire voting shares of Signature Bank KC, Haddam, Kansas.

In connection with this application, Equity Bancshares, Inc., also has applied to acquire Citizens Agency, Inc., Haddam, Kansas, and thereby engage in general insurance activities in a town of less than 5,000, pursuant to section 225.28(b)(11)(iii)(A) of Regulation Y.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. JLL Associates G. P. FCH, L.L.C.; JLL Associates FCH, L.P.; JLL Partners Fund FCH, L.P.; and JLL/FCH Holdings I, LLC, all of New York, New York; to become bank holding companies by acquiring 54.7 percent of the voting shares of FC Holdings, Inc., Houston, Texas, and thereby indirectly acquiring FC Holdings of Delaware, Inc., Wilmington, Delaware; First Community Bank, The Woodlands, N.A., Tomball, Texas; First Community Bank Central Texas, N.A., Meridian, Texas; First Community Bank, Fort Bend, N.A., Sugar Land, Texas; and First Community Bank San Antonio, N.A., San Antonio, Texas.

Board of Governors of the Federal Reserve System, September 10, 2007.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E7–18044 Filed 9–12–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Population Health and Clinical Care Connections Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 19th meeting of the American Health Information Community Population Health and Clinical Care Connections Workgroup [formerly Biosurveillance Workgroup] in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 11, 2007, from 1 p.m. to 4 p.m. [Eastern time].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/populaton/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to facilitate the flow of reliable health information among population health and clinical care systems necessary to protect and improve the public's health.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/population/pop_instruct.html.*

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4502 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Quality Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 12th meeting of the American Health Information Community Quality Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 3, 2007, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/quality/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how health information technology can provide the data needed for the development of quality measures that are useful to patients and others in the health care industry, automate the measurement of reporting of a comprehensive current and future set of quality measures, and accelerate the use of clinical decision support that can improve performance on those quality measures.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/quality/quality_instruct.html.*

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4503 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Confidentiality, Privacy, and Security Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 14th meeting of the American Health Information Community Confidentiality, Privacy, and Security Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 4, 2007, from 1 p.m. to 5 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090 (please bring photo ID for entry to a Federal building).

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/confidentiality/.*

SUPPLEMENTARY INFORMATION: The Workgroup Members will continue discussing and evaluating the confidentiality, privacy, and security protections and requirements for participants in electronic health information exchange environments.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/cps_instruct.html.*

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4504 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Consumer Empowerment Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 20th meeting of the American Health Information Community Consumer Empowerment Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 16, 2007, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/consumer/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on how to encourage the widespread adoption of a personal health record that is easy-to-use, portable, longitudinal, affordable, and consumer-centered.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/consumer/ce_instruct.html.*

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4505 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Electronic Health Records Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the 19th meeting of the American Health Information Community Electronic Health Records Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 23, 2007, from 1 p.m. to 4 p.m. [Eastern].

ADDRESSES: Mary C. Switzer Building (330 C Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthrecords/.*

SUPPLEMENTARY INFORMATION: The Workgroup will continue its discussion on ways to achieve widespread adoption of certified EHRs, minimizing gaps in adoption among providers.

The meeting will be available via Web cast. For additional information, go to:

http://www.hhs.gov/healthit/ahic/healthrecords/ehr_instruct.html.

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4506 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; American Health Information Community Personalized Healthcare Workgroup Meeting

ACTION: Announcement of meeting.

SUMMARY: This notice announces the ninth meeting of the American Health Information Community Personalized Healthcare Workgroup in accordance with the Federal Advisory Committee Act (Pub. L. No. 92–463, 5 U.S.C., App.)

DATES: October 25, 2007, from 2 p.m. to 5 p.m. [Eastern Time].

ADDRESSES: Mary C. Switzer Building (330 C. Street, SW., Washington, DC 20201), Conference Room 4090. Please bring photo ID for entry to a Federal building.

FOR FURTHER INFORMATION CONTACT: *http://www.hhs.gov/healthit/ahic/healthcare/.*

SUPPLEMENTARY INFORMATION: The Workgroup will discuss possible common data standards to incorporate interoperable, clinically useful genetic/genomic information and analytical tools into Electronic Health Records (EHR) to support clinical decision-making for the clinician and consumer.

The meeting will be available via Web cast. For additional information, go to: *http://www.hhs.gov/healthit/ahic/healthcare/phc_instruct.html.*

Dated: September 7, 2007.

Judith Sparrow,

Director, American Health Information Community, Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. 07–4507 Filed 9–12–07; 8:45 am]

BILLING CODE 4150–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date:

September 25, 2007, 9 a.m.–4 p.m.

September 26, 2007, 10 a.m.–2:45 p.m.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814, Phone: (301) 897–9400.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will hear updates from the Department, the Centers for Medicare and Medicaid Services, and the Office of the National Coordinator. They will also hear updates and status reports from Subcommittees and hold a discussion on secondary uses of health records data. This discussion will be continued in the afternoon and the Committee will hear an update from the Quality Workgroup.

On the morning of the second day the Committee will review its 2005–2006 report to Congress and take action on other products as needed. In the afternoon there will be a continuation of the discussion on secondary uses of health record data and the remainder of the time will be spent on Committee administrative operations.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: September 5, 2007.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 07–4508 Filed 9–12–07; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2007M–0174, 2007M–0259, 2007M–0161, 2007M–0160, 2007M–0151, 2007M–0152, 2007M–0153, 2007M–0188, 2007M–0156, 2007M–0154, 2007M–0180, 2007M–0189, 2007M–0190, 2007M–0253, 2007M–0255, 2007M–0254]

Medical Devices; Availability of Safety and Effectiveness Summaries for Premarket Approval Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval applications (PMAs) that have been approved. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMAs through the Internet and the agency's Division of Dockets Management.

ADDRESSES: Submit written requests for copies of summaries of safety and effectiveness data to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in Table 1 of this document when submitting a written request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the summaries of safety and effectiveness.

FOR FURTHER INFORMATION CONTACT: Samie Allen, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 240–276–4013.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule that revised 21 CFR 814.44(d) and 814.45(d) to discontinue individual publication of PMA approvals and denials in the **Federal Register**. Instead, the agency now posts this information on the Internet on FDA's home page at *http://www.fda.gov*. FDA believes that

this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(4) and (e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(4) and (e)(2)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30 day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30 day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30 day period will begin when the applicant is notified by FDA in writing of its decision.

The regulations provide that FDA publish a quarterly list of available safety and effectiveness summaries of PMA approvals and denials that were announced during that quarter. The following is a list of approved PMAs for which summaries of safety and effectiveness were placed on the Internet from April 1, 2007, through June 30, 2007. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1. LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMAS MADE AVAILABLE FROM APRIL 1, 2007, THROUGH JUNE 30, 2007.

PMA No./Docket No.	Applicant	TRADE NAME	Approval Date
P050049/2007M–0174	Abbott Laboratories	ABBOTT AXSYM HBSAG ASSAY	June 1, 2006
P040048/2007M–0259	Zimmer, Inc.	TRILOGY AB ACETBULAR SYSTEM	June 28, 2006
P060003/2007M–0161	Abbott Laboratories	AXSYM AUSAB REAGENT PACK, STANDARD CALIBRATORS, CONTROLS	August 7, 2006
P060009/2007M–0160	Abbott Laboratories	AXSYM CORE-M 2.0 & 2.0 CONTROLS	August 25, 2006
P050048/2007M–0151	Bio-Rad Laboratories, Inc.	MONOLISA ANTI-HBS EIA	August 25, 2006
P060007/2007M–0152	Abbott Laboratories	ARCHITECT HBSAG REAGENT KIT, CALIBRATORS, CONTROLS, CONFIRMATORY REAGENT KIT, CONFIRMATORY MANUAL DILUENT	September 7, 2006
P060012/2007M–0153	Abbott Laboratories	AXSYM CORE 2.0 & AXSYM CORE 2.0 CONTROLS	September 8, 2006
P990037(S24)/2007M–0188	Vascular Solutions, Inc.	VASCULAR SOLUTIONS D-STAT FLOWABLE HEMOSTAT	December 22, 2006
H060003/2007M–0156	EV3 Neurovascular	ONYX LIQUID EMBOLIC SYSTEM (ONYX HD–500, MODEL 105–8101–500)	April 11, 2007
P050046/2007M–0154	Guidant Corp.	ACUITY STEERABLE LEAD MODELS 4554, 4555, & 4556	April 13, 2007
P040024(S006)/2007M–0180	Medicis Aesthetics Holdings, Inc.	PERLANE INJECTABLE GEL	May 2, 2007
P060011/2007M–0189	Rayner Surgical, Inc.	C-FLEX MODEL 570C INTRAOCULAR LENS (IOL)	May 3, 2007
H060001/2007M–0190	Cordis Neurovascular, Inc.	ENTERPRISE VASCULAR RECONSTRUCTION DEVICE AND DELIVERY SYSTEM	May 8, 2007
P050004/2007M–0253	Electro Medical Systems (EMS) S.A.	EMS SWISS DOLORCLAST	May 8, 2007
P050012(S001)/2007M–0255	Dexcom, Inc.	STS–7 CONTINUOUS GLUCOSE MONITORING SYSTEM	May 31, 2007
P060034/2007M–0254	Bio-Rad Laboratories	BIO RAD MONOLISA ANTI-HBC IGM EIA	May 31, 2007

II. Electronic Access

Persons with access to the Internet may obtain the documents at *http://www.fda.gov/cdrh/pmapage.html*.

Dated: August 30, 2007.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. E7–18034 Filed 9–12–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S Customs and Border Protection

Agency Information Collection Activities: U.S-Jordan Free Trade Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: U.S.-Jordan Free Trade Agreement. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38092) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: U.S.-Jordan Free Trade Agreement.

OMB Number: 1651–0128.

Form Number: None.

Abstract: The U.S.-Jordan Free Trade Agreement was established to reduce and eliminate barriers, strengthen and develop economic relations, and to lay the foundations for further cooperation by reduced duty-treatment on imported goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 500.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18001 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S Customs and Border Protection

Agency Information Collection Activities: Haitian Hemispheric Opportunity Through Partnership Encouragement Act of 2006

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Haitian Hemispheric Opportunity Through Partnership Encouragement (''HOPE'') Act of 2006. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38092) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: Haitian Hemispheric Opportunity Through Partnership Encouragement (''HOPE'') Act of 2006.

OMB Number: 1651–0129.

Form Number: None.

Abstract: The Haiti HOPE Act is a trade program that provides for duty-free treatment of certain apparel articles and certain wire harness automotive components from Haiti.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 34.

Estimated Time per Respondent: 39.2 hours.

Estimated Total Annual Burden Hours: 1,333.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18002 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Free Trade Agreements

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Free Trade Agreements. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38093) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: Free Trade Agreements.

OMB Number: 1651–0117.

Form Number: None.

Abstract: Free Trade Agreements are established to reduce and eliminate barriers, strengthen and develop economic relations, and to lay the foundations for further cooperation. These Agreements establish free trade by reduced duty-treatment on imported goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 109,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 21,000.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18003 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Declaration by the Person Who Performed the Processing of Goods

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Declaration by the

Person Who Performed the Processing of Goods Abroad. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38093–38094) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: Declaration by the Person Who Performed the Processing of Goods Abroad.

OMB Number: 1651–0039.

Form Number: N/A.

Abstract: This declaration, which is prepared by the foreign processor and submitted by the filer with each entry, provides details on the processing performed abroad and is necessary to assist CBP in determining whether the declared value of the processing is accurate.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 1,880.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18004 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Articles Assembled Abroad With Textile Components Cut to Shape in the U.S.

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38094–38095) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/ Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: Articles Assembled Abroad with Textile Components Cut to Shape in the U.S.

OMB Number: 1651–0070.

Form Number: N/A.

Abstract: This collection of information enables CBP to ascertain whether the conditions and requirements relating to 9802.00.80, Harmonized Tariff Schedule (HTSUS), have been met.

Current Actions: This submission is being submitted to extend the expiration

date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 80 minutes.

Estimated Total Annual Burden Hours: 667.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18005 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S Customs and Border Protection

Agency Information Collection Activities: Importation Bond Structure

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Importation Bond Structure. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (72 FR 38094) on July 12, 2007, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 15, 2007.

ADDRESSES: 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. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

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

Title: Importation Bond Structure.

OMB Number: 1651–0050.

Form Number: CBP–301 and CBP–5297.

Abstract: Bonds are used to assure that duties, taxes, charges, penalties, and reimbursable expenses owed to the Government are paid. They are also used to provide legal recourse for the Government for noncompliance with CBP laws and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 590,250.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 147,596.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: September 6, 2007.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. E7–18007 Filed 9–12–07; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, September 14, 2007—1:30 p.m. to 4 p.m.

ADDRESSES: Emrick Technology Center, 2750 Hugh Moore Park Road, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Act Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 2750 Hugh Moore Park Road, Easton, PA 18042, (610) 923–3548.

Dated: September 7, 2007.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 07–4493 Filed 9–12–07; 8:45am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for the Carson Wandering Skipper (*Pseudocopaeodes eunus obscurus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the recovery plan for the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*). The plan includes recovery criteria and measures for the conservation of the Carson wandering skipper in California and Nevada.

ADDRESSES: You may obtain a copy of the plan by either of the following methods:

Internet: Download a copy at *http://endangered.fws.gov/recovery/index.html#plans,* or

U.S. mail: Send a request to U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

FOR FURTHER INFORMATION CONTACT: Marcy Haworth, Fish and Wildlife Biologist, at the above Reno address (telephone: 775–861–6300).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. To help guide the recovery effort, we are working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

Section 4(f) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires us to provide public notice and an opportunity for public review and comment during recovery plan development. We made the draft recovery plan for the Carson wandering skipper available for public comment from March 2, 2006, through May 31, 2006 (71 FR 10703). We considered information we received during the public comment period in our preparation of this final recovery plan, and also summarized that information in an appendix of the recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so they can take these comments into account in the course of implementing recovery actions.

The Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) is a small butterfly in the subfamily Hesperiinae (grass skippers). This subspecies is federally listed as endangered. Only four extant populations are known from Washoe County and Douglas County, Nevada, and Lassen County, California. A fifth known population of the subspecies, from Carson City, Nevada, is considered extirpated as of 1998.

Our goal for this subspecies is to recover it to the point where downlisting and eventually delisting would be appropriate. Recovery criteria include protection and management in perpetuity of the existing populations, without downward population trends; development and implementation of adaptive management plans; and discovery or establishment of one or more additional populations.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 6, 2007.

Ken McDermond,

Acting Manager, California/Nevada Operations Office, U.S. Fish and Wildlife Service.

[FR Doc. E7–18042 Filed 9–12–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WYW 0118976]

Public Land Order No. 7680; Revocation of Public Land Order No. 2695; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Public Land Order in its entirety insofar as it affects 1,205.42 acres of public lands in Carbon County, Wyoming, withdrawn on behalf of the Bureau of Reclamation for the Savery-Pot Hook Project. The Public Land Order has previously been revoked in part and the lands remaining are no longer needed for the purpose for which they were withdrawn.

DATES: *Effective Date:* October 15, 2007.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, 5353 North Yellowstone Road, Cheyenne, Wyoming 82003, 307–775–6124.

SUPPLEMENTARY INFORMATION: The Savery-Pot Hook Project was never developed and the lands are no longer needed for reclamation purposes. The lands will not be opened to surface entry or mining until completion of an analysis to determine if any of the lands need special designation. The lands have been and will remain open to mineral leasing.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

Public Land Order No. 2695 (27 FR 5708), which withdrew 1,485.45 acres on behalf of the Bureau of Reclamation for the Savery-Pot Hook Project, is hereby revoked in its entirety as to any remaining lands.

Dated: August 22, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

[FR Doc. E7–18055 Filed 9–12–07; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–957–07–1420–BJ-TRST]

Notice of Filing of Plats of Survey, Wyoming

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The Bureau of Land Management (BLM) is scheduled file to the plats of survey of the lands described below thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Indian Affairs and is necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 17, and the metes and bounds survey of Parcel A, section 17, Township 2 South, Range 1 East, of the Wind River Meridian,

Wyoming, Group No. 759, was accepted August 29, 2007.

The plat and field notes representing the dependent resurvey of portions of the Wind River Meridian, south boundary, subdivisional lines and adjusted meanders of the Wind River, and the survey of the subdivision of certain sections, and the metes and bounds survey of Parcel A, Section 29, Township 3 North, Range 1 East, of the Wind River Meridian, Wyoming, Group No. 761, was accepted August 29, 2007.

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines and portions of the subdivision of sections 10 and 15, and the survey of the subdivision of sections 10 and 15, Township 1 South, Range 4 East, of the Wind River Meridian, Wyoming, Group No. 760, was accepted September 4, 2007.

Copies of the preceding described plat and field notes are available to the public at a cost of $1.10 per page.

Dated: September 7, 2007.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. E7–18047 Filed 9–12–07; 8:45 am]

BILLING CODE 4467–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Alutiiq Museum and Archaeological Repository, Kodiak, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of Alutiiq Museum and Archaeological Repository, Kodiak, AK. The human remains were removed from unknown locations on Kodiak Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Alutiiq Museum and Archaeological Repository professional staff in consultation with representatives of Afognak Native Corporation; Native Village of Afognak (formerly the Village of Afognak); Native Village of Akhiok; Akhiok–Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak).

In 1995, human remains representing a minimum of one individual were transferred to the Alutiiq Museum and Archaeological Repository from Kodiak Area Native Association's Alutiiq Culture Center (number AM59). Information regarding the collection of the human remains is unknown, although it is reasonably believed that the human remains were removed from Kodiak Island. No known individual was identified. No associated funerary objects are present.

A review of the human remains suggests they are archeological. Humic staining on the bones and worn dentition with no evidence of modern dentistry suggests a prehistoric person, likely from one of Kodiak's many well preserved archeological sites.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown location on Kodiak Island, AK. In 1991, the human remains were turned over to the Alaska State Troopers by Dr. Keith Hediger. In 1992, the Alaska State Office of History and Archaeology examined the human remains and determined the human remains were Native American and most likely Alutiiq. The Alaska State Troopers transferred the human remains to the Kodiak Area Native Association's Alutiiq Culture Center. In 1995, the human remains were transferred to the Alutiiq Museum and Archaeological Repository (number AM62). No known individual was identified. No associated funerary objects are present.

Archeological data indicate that modern Alutiiqs evolved from archeologically documented societies of the Kodiak region and can trace their ancestry back over 7,500 years in the region. As such, the human remains are reasonably believed to be Native American and most closely affiliated with the modern Kodiak Alutiiq people. Specifically, the human remains are from an area traditionally used by the Afognak Native Corporation; Native Village of Afognak; Native Village of Akhiok; Akhiok–Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak.

Officials of the Alutiiq Museum and Archaeological Repository have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of the Alutiiq Museum and Archaeological Repository also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Afognak Native Corporation; Native Village of Afognak; Native Village of Akhiok; Akhiok–Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Sven Haakanson, Jr., Executive Director, Alutiiq Museum and Archaeological Repository, 215 Mission Rd., Suite 101, Kodiak, AK 99615, telephone (907) 486–7004, before October 15, 2007. Repatriation of the human remains to the Afognak Native Corporation; Native Village of Afognak; Native Village of Akhiok; Akhiok–Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak may proceed after that date if no additional claimants come forward.

Alutiiq Museum and Archaeological Repository is responsible for notifying the Afognak Native Corporation; Native Village of Afognak; Native Village of Akhiok; Akhiok–Kaguyak, Inc.; Native Village of Karluk; Natives of Kodiak, Inc.; Koniag, Inc.; Native Village of Larsen Bay; Lesnoi Village (aka Woody Island); Old Harbor Native Corporation; Village of Old Harbor; Ouzinkie Native Corporation; Native Village of Ouzinkie; Native Village of Port Lions; and Sun'aq Tribe of Kodiak that this notice has been published.

Dated: August 22, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18107 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Cincinnati Museum Center, Cincinnati, OH

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Cincinnati Museum Center, Cincinnati, OH that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1964, the Cincinnati Museum of Natural History, now part of the Cincinnati Museum Center, purchased three cultural items from Traders Exchange in Champaign, IL. The three items are one string of 23 rolled copper beads (CMC #A14673); one string of 58 small rolled copper beads (CMC #A14674); and one rolled copper bead (#A14675).

The cultural items are catalogued as ''originally excavated from Cayuse Indian graves near old Fort Walla Walla in the state of Washington.'' Old Fort Walla Walla was originally a Northwest Company trading post called Fort Nez Perces. It was along the banks of the Columbia River north of the mouth of the Walla Walla River in southeastern Washington around 1818 and was the site of the first Treaty Council in 1855. Based on museum records, the three cultural items are reasonably believed to be unassociated funerary objects. There is no information to indicate when or under what circumstances Traders Exchange acquired the cultural items, but it is known that a series of looting/excavation activities took place at old Fort Walla Walla from the 1880s through at least the 1950s.

Geographic, historic, and ethnological evidence indicate that Cayuse Indians occupied or utilized the area near Fort Walla Walla in historic times, and most likely for a considerably longer period before historic times. Geographically, the Cayuse, Umatilla, and Walla Walla traditionally covered a large percentage of eastern Oregon and southeastern Washington. The Cayuse or Waiilatpus, occupied the slopes of the Umatilla, Walla Walla, John Day, Upper Grande Ronde, Powder, and Burnt River drainages, as well as the Willow Creek branch of the Malheur River. There is a preponderance of evidence that a cultural continuity exists between the tribes known today as Cayuse, Umatilla, and Walla Walla and the occupants of the Fort Walla Walla area prior to contact. Descendants of the Cayuse are members of the Confederated Tribes of the Umatilla Reservation, Oregon.

Officials of the Cincinnati Museum Center have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the three cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Cincinnati Museum Center also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Jane MacKnight, Registrar, Cincinnati Museum Center, 1301 Western Avenue, Cincinnati, OH 45203, telephone (513) 287–7092, before October 15, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

Cincinnati Museum Center is responsible for notifying Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: August 20, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18105 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Fowler Museum of Cultural History, University of California, Los Angeles, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Fowler Museum of Cultural History (Fowler Museum at UCLA), University of California, Los Angeles, Los Angeles, CA. The human remains and associated funerary objects were removed from Tulare County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Fowler Museum at UCLA professional staff in consultation with representatives of the Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as the Tachi Yokut Tribe).

In August 1958, human remains representing a minimum of 11 individuals were removed from a site near the edge of the former Lake Tulare (CA–TUL–90) in Tulare County, CA, by C.N. Warren and M.B. McKusick. The collection was accessioned by the University of California, Los Angeles in 1958. No known individuals were identified. The 11 associated funerary objects are 6 animal bone, 2 land snail shell fragments, 1 basalt flake, and 2 sandstone net weights.

The artifacts are consistent with others documented as associated with the indigenous inhabitants of the area. The burial position and orientation along with numbers of grave goods and the presence of net weights associate the burials with the Middle Period (3,500 to 1,500 B.P). Lake Tulare is located within the traditional territory of the Yokut tribe. According to archeologists, the Yokut have occupied the territory around Tulare Lake and Buena Vista Lake for as long as two millennia.

Tribal representatives from Santa Rosa Indian Community of the Santa

Rosa Rancheria, California identified the site as being within the traditional territory of the Yokut people. Descendants of the Yokut are members of the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

Officials of the Fowler Museum at UCLA have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 11 individuals of Native American ancestry. Officials of the Fowler Museum at UCLA also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 11 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Fowler Museum at UCLA have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Wendy Teeter, Fowler Museum at UCLA, Box 951549, Los Angeles, CA 90095–1549, telephone (310) 825–1864, before October 15, 2007. Repatriation of the human remains and associated funerary objects to the Santa Rosa Indian Community of the Santa Rosa Rancheria, California may proceed after that date if no additional claimants come forward.

The Fowler Museum at UCLA is responsible for notifying the Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California; Table Mountain Rancheria of California; and Tule River Indian Tribe of the Tule River Reservation, California that this notice has been published.

Dated: August 22, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18101 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: School for Advanced Research, Santa Fe, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the School for Advanced Research, Santa Fe, NM, that meet the definition of ''objects of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

At an unknown date, Mary Cabot Wheelwright of Alcalde, NM, acquired four beads, one pendant, and one metal ''tinkler'' from the Finger Lakes region of New York. In 1941, Ms. Wheelwright donated the six cultural items to the School of Advanced Research (formerly the School of American Research), Santa Fe, NM.

The first bead is a carved, Catlinite, animal effigy bead with a drilled center hole, and approximately .87 cm wide and 2.2 cm long (IAF.M302). The second bead is a cylindrical, carved Catlinite bead with a hole drilled through its full length, and approximately 4.2 cm long and .4 cm in diameter (IAF.M304). The third bead is a carved shell bead that is triangular in shape with a hole drilled though its center, and approximately 1 cm wide and .3 cm deep (IAF.M305). The fourth bead is a tubular, animal bone bead that is approximately 5 cm long and .6 cm in diameter (IAF.M306).

The pendant is a carved, Catlinite pendant resembling a human face with a drilled hole at the top, and approximately 2 cm long and 1.6 cm wide (IAF.M303). The metal ''tinkler,'' or cone-shaped ornament, is approximately 5.6 cm long and .7 cm in diameter at the bottom (IAF.M307).

The six cultural items originated from the Finger Lakes region of New York, which is the aboriginal territory of the Haudenosaunee Confederacy, representing the six nations of Cayuga, Mohawk, Onondaga, Oneida, Seneca, and Tuscarora. Present day members of the Haudenosaunee Confederacy are represented by the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York); Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York. According to Haudenosaunee oral history, the Onondaga Nation is the keeper of the central hearth and fire where the Grand Council of the Confederacy meets. As the keeper of the central fire, the Onondaga Nation is responsible for the care of Haudenosaunee cultural patrimony that is not specifically affiliated with any one Haudenosaunee Nation, and for returning such objects to the particular Confederacy Nation as appropriate. Oral evidence presented during consultation by representatives of the Onondaga Nation of New York identifies the six cultural items as having ongoing historical, traditional, and cultural importance central to the Onondaga Nation of New York. Such items are considered ''precious,'' may be utilized in ceremony and other cultural events as items that are passed among members of the Confederacy for use within the Confederacy.

Officials of the Indian Arts Research Center, School for Advanced Research have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the six cultural items described above have ongoing historical, traditional, or cultural importance central to the Native American group of culture itself, rather than property owned by an individual. Officials of the Indian Arts Research Center, School for Advanced Research also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the objects of cultural patrimony and the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the items of cultural patrimony should contact Carolyn McArthur, Collections Manager/ NAGPRA Officer, Indian Arts Research Center, School for Advanced Research, P.O. Box 2188, Santa Fe, NM 87504,

telephone (505) 954–7270, before October 15, 2007. Repatriation of the objects of cultural patrimony to the Onondaga Nation of New York, as keepers of the central fire for the Haudenosaunee Confederacy, may proceed after that date if no additional claimants come forward.

The Indian Arts Research Center, School for Advanced Research is responsible for notifying the Cayuga Nation of New York; Oneida Nation of New York; Oneida Tribe of Indians of Wisconsin; Onondaga Nation of New York; Seneca Nation of New York; Seneca–Cayuga Tribe of Oklahoma; Saint Regis Mohawk Tribe, New York; Tonawanda Band of Seneca Indians of New York; and Tuscarora Nation of New York that this notice has been published.

Dated: August 20, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18099 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Southwest Museum of the American Indian, Autry National Center, Los Angeles, CA. The human remains were removed from Andrew County, MO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Southwest Museum of the American Indian, Autry National Center professional staff in consultation with representatives of the Absentee–Shawnee Tribe of Indians of Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kaw Nation, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Osage Tribe, Oklahoma; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Quapaw Tribe of Indians, Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe, Oklahoma; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

In 1939, human remains representing a minimum of one individual were removed from Amazonia mound (23AN37), 10 miles north of St. Joseph in southwest Andrew County, MO, by Mr. Oscar Branson, an amateur archeologist. In 1944, Mr. John George Braecklein, an architect and archeologist from Kansas City, MO, donated the human remains to the museum, which accessioned the human remains into the museum collection that same year. No known individual was identified. No associated funerary objects are present.

A letter written on February 14, 1944, by Mr. Braeklein to the Director of the Southwest Museum, Dr. Francis Hodge, states, ''the supposed Sac and Fox skull was exhumed by Oscar Branson, a curator for the St. Joseph, MO. Museum [while] he was working with the W.P.A. The location of the mound was about 10 miles North of St. Joseph.'' Mr. Branson, as an amateur archeologist, worked with the Works Projects Administration with Allen Heflin and Don Reynolds at Amazonia mound on the Missouri River bluffs. Several burials were uncovered, including isolated skulls; only one was donated to the Southwest Museum of the American Indian.

The skull has an inscription on the left parietal of the cranial vault that reads, ''From the Butts Collection, Dyer Museum, originally from Mayor Blakesly Coll. Savannah Mo. Note opening, killed with an arrow,'' signed ''J.G. Braecklein Coll.'' An inscription on the right parietal of the cranial vault reads, ''964.G.255A.Andrew Co. Mo Mound find 1914.'' According to these inscriptions, the human remains appear to have been first transferred from Mr. Branson to the Mayor Blakesly collection in Savannah, MO, then to the Butts collection at the Dyer Museum in St. Joseph, MO, and finally to Mr. Braecklein, the donor. The Southwest Museum of the American Indian has no record of the dates of the transfers prior to the donation by Mr. Braecklein to the museum.

Physical anthropological assessment of cranial and dental morphology is indicative of probable Native American ancestry. Osteological analysis did not reveal the age of the human remains. According to archeological evidence, northwestern Missouri has been occupied continuously since the Early Mississippian period (A.D. 900–1450). Evidence has been found to suggest a Central Plains tradition of Nebraska phase occupation during the Early Mississippian period. An occupation by the Oneota people began in the Late Mississippian period (A.D. 1450–1700) and lasted through the Historic period (post A.D. 1673). The Kanza people migrated to the area sometime prior to A.D. 1750. As early as A.D. 1760, the Meskawki tribes occupied the area. The presence of a possible arrow wound places the age of the human remains no earlier than A.D. 400. Therefore, the human remains may be culturally affiliated with the four tribes that occupied the area from A.D. 400 until the Historic period. A cultural continuum can be reasonably traced between the Central Plains tradition of Nebraska phase occupation and the Pawnee and Arikara tribes. Present–day descendants of the Pawnee and Arikara tribes are members of the Pawnee Nation of Oklahoma and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. A cultural continuum can also be reasonably traced between the Late Mississippian period occupation and the Oneota. Present–day descendants of the ancestral Oneota are the Otoe–Missouria Tribe of Indians, Oklahoma, as well as the Iowa Tribe of Kansas and Nebraska. A cultural continuum can be reasonably traced between the Kanza people and their present–day descendants whom are members of the Kaw Nation, Oklahoma. Finally, a cultural continuum can be reasonably traced to between the Historic period occupation and the Meskwaki, present–day descendants of whom are members of the Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa.

Officials of the Southwest Museum of the American Indian have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Southwest Museum of the American Indian also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Iowa Tribe of Kansas and Nebraska; Kaw

Nation, Oklahoma; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Duane H. King, Executive Director, or LaLena Lewark, Senior NAGPRA Coordinator, Southwest Museum of the American Indian, 234 Museum Drive, Los Angeles, CA 90065, telephone (323) 221–2164, extension 241, before October 15, 2007. Repatriation of the human remains to the Iowa Tribe of Kansas and Nebraska; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; and Sac & Fox Tribe of the Mississippi in Iowa may proceed after that date if no additional claimants come forward.

The Southwest Museum of the American Indian, Autry National Center is responsible for notifying the Absentee–Shawnee Tribe of Indians of Oklahoma; Chickasaw Nation, Oklahoma; Choctaw Nation of Oklahoma; Eastern Shawnee Tribe of Oklahoma; Iowa Tribe of Kansas and Nebraska; Iowa Tribe of Oklahoma; Jena Band of Choctaw Indians, Louisiana; Kaw Nation, Oklahoma; Mississippi Band of Choctaw Indians, Mississippi; Osage Tribe, Oklahoma; Otoe–Missouria Tribe of Indians, Oklahoma; Pawnee Nation of Oklahoma; Quapaw Tribe of Indians, Oklahoma; Sac & Fox Nation of Missouri in Kansas and Nebraska; Sac & Fox Nation, Oklahoma; Sac & Fox Tribe of the Mississippi in Iowa; Shawnee Tribe, Oklahoma; and Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: August 28, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18103 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Central Washington University, Department of Anthropology, Ellensburg, WA, and Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the Central Washington University, Department of Anthropology, Ellensburg, WA, and Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA. The human remains and associated funerary objects were removed from Grant and Kittitas Counties, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Burke Museum and Central Washington University professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

In 1920, human remains representing a minimum of 35 individuals were removed from the Pot Holes site or Hall Site #7 (later assigned 45–GR–131) located on the east bank of the Columbia River, south of Trinidad, Grant County, WA, by Dr. F.S. Hall of the Washington State Museum. The human remains were accessioned by the museum in later that same year. In 1974, the Burke Museum legally transferred portions of the human remains to Central Washington University. No known individuals were identified. The 685 funerary objects include 3 stone abraders; 2 adze blades; 5 unmodified antler fragments; 9 antler tools and modified fragments; 7 awls (bone and antler); 3 basketry fragments; 6 lots of beads (seed, shell, copper); 3 stone blades; 11 lots of bone (bird, fish, and mammal); 2 lots of sand, wood, and dentalium shells; 10 bone points; 17 bone tools; 2 lots of charcoal; 36 chipped stone tools; 1 clay fragment; 2 silver coins; 4 bone combs; 9 composite toggling harpoon point fragments; 1 copper pendant; 5 lots of copper ore fragments; 6 lots of fiber cordage; 15 lots of dentalium shell (modified and unmodified); 1 stone discoid; 1 petrified wood drill; 2 copper earrings; 27 stone flakes; 7 bone gaming pieces; 1 ground stone tool; 13 fragments of copper headdress; 1 lot of dentalium shell headdress attached to twine; 7 fragments of copper ornaments; 1 iron tool; 5 stone knives; 9 fragments of leather (2 that have copper attached); 1 lot of fiber mat fragments; 1 lot of soil matrix; 4 mauls; 5 mica flakes; 35 modified bone fragments; 1 modified shell; 1 bone needle; 9 stone netweights; 12 lots of red ochre; 2 lots of organic materials; 5 abalone shell ornament fragments; 57 shell pendants and fragments; 1 bone pendant; 25 copper pendants and fragments; 11 stone pipes; 71 stone points; 58 stone scrapers; 11 lots of shell; 14 lots of shell beads; 1 fragment of slag; 2 steatite fragments; 2 unmodified stones; 4 string fragments; 1 bone toggle; 8 teeth (non–1human); 84 utilized flakes; 2 antler wedges; 1 bone whistle; 9 lots of wood fragments (some burned); 1 wood fragment; 1 seed; 2 wire fragments; 3 glass fragments; 1 lot of copper, wood, and organic material; 1 lot of copper and cordage; 1 lot of cordage; 1 lot of organic material and seeds; and 2 bone fragments (modified).

''Hall Site #7'' appears to have been a large and important site largely destroyed by local collectors before any systematic recovery was attempted. Dr. F.S. Hall with Earl O. Roberts and M. Mohr of the University of Washington conducted partially controlled excavations in 1920 and 1921 at Pot Holes and a number of other nearby sites.

In 1920–1921, human remains representing a minimum of three individuals were removed from an area near Vantage Ferry in Kittitas County, WA, by F.S. Hall of the Washington State Museum. The human remains were accessioned in 1920 (Burke Accn. #1860). No known individuals were identified. No associated funerary objects are present.

In 1953–1954, human remains representing a minimum of four

individuals were removed from site 45–KT–20, Kittitas County, WA, as part of a University of Washington Field Expedition led by Dr. Earl Swanson, Jr. The human remains were transferred from the University of Washington Department of Anthropology and accessioned by the Burke Museum in 1966 (Burke Accn. #1966–95). No known individuals were identified. The 42 funerary objects are 1 lot of plant fiber; 7 lots of beads (shell and bone, 4 lots include cordage fragments); 9 lots of bone (mammal, rodent, fish); 1 chipped stone tool; 5 lots of cordage; 9 flakes; 1 shell pendant; 2 lots of fiber mat fragments; 1 scatological specimen; 1 shell fragment; 2 points; 1 wood fragment; and 2 unmodified stones.

Early and late published ethnographic documentation indicates that the sites described above are the aboriginal territory of the Moses–Columbia or Sinkiuse, and Yakima (Daugherty 1973, Miller 1998, Mooney 1896, Ray 1936, Spier 1936). Descendents of the Moses–Columbia, Sinkiuse, and Yakima are members of the Confederated Tribes of the Colville Reservation, Washington and Confederated Tribes and Bands of the Yakama Nation, Washington. Furthermore, information provided by the two tribes during consultation indicates that the aboriginal ancestors occupying this area were highly mobile and traveled the landscape for gathering resources as well as trade, and are part of the more broadly defined Plateau communities. Descendents of these Plateau communities are now widely dispersed and enrolled in the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

Officials of the Burke Museum and Central Washington University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 42 individuals of Native American ancestry. Officials of the Burke Museum and Central Washington University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 727 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Burke Museum and Central Washington University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho. Furthermore, officials of the Burke Museum and Central Washington University have determined that there is a cultural relationship between the human remains and associated funerary objects and the Wanapum Band, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282 or Lourdes Henebry-DeLeon, NAGPRA Program Director, Department of Anthropology, Central Washington University, Ellensburg, WA 98926–7544, telephone (509) 963–2671, before October 15, 2007. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho for themselves and on behalf of the Wanapum Band, a non–federally recognized Indian group, may proceed after that date if no additional claimants come forward.

Central Washington University is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group that this notice has been published.

Dated: August 28, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18091 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the control the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

In 1920–1921, unassociated funerary objects were removed from two graves at ''Hall Site #8''in the vicinity of 45–GR–134, Grant County, WA, during a museum expedition by F. S. Hall, Earl O. Roberts, and M. Mohr. The cultural items were accessioned by the museum in 1920 (Burke Accn. #1860). The 31 unassociated funerary objects are 1 lot of beads (possibly made of juniper berries), 4 metal fragments, 22 bone tools, 2 bird bones, 1 lot of shell beads, and 1 lot of olivella shell beads.

In 1920 and 1921, unassociated funerary objects were removed from an unknown location in Grant County, WA, during a museum expedition by F. S. Hall, Earl O. Roberts, and M. Mohr. The cultural items were accessioned by the museum in 1920 (Burke Accn. #1860). The 28 unassociated funerary objects are 1 lot of metal fragments, 2 dentalium shells, 11 dentalium shell beads (some strung on fiber), 3 dentalium shell fragments, 2 lots of red ochre, 8 small rocks, and 1 seed.

The burial pattern and unassociated funerary objects are consistent with Native American plateau customs. Museum documentation indicates that the cultural items were found in connection with human remains. The cultural items are consistent with cultural items typically found in context with burials in eastern Washington.

Early and late published ethnographic documentation indicates that the sites

described above are the aboriginal territory of the Moses–Columbia or Sinkiuse, and Yakima (Daugherty 1973, Miller 1998, Mooney 1896, Ray 1936, Spier 1936). Descendents of the Moses–Columbia, Sinkiuse, and Yakima are members of the Confederated Tribes of the Colville Reservation, Washington and Confederated Tribes and Bands of the Yakama Nation, Washington. Furthermore, information provided by the two tribes during consultation indicates that the aboriginal ancestors occupying this area were highly mobile and traveled the landscape for gathering resources as well as trade, and are part of the and are part of the more broadly defined Plateau communities. Descendents of these Plateau communities are now widely dispersed and enrolled in the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group.

The Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, non–federally recognized Indian group are claiming jointly all cultural items from the Columbia River area in eastern Washington and Oregon.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the 59 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Burke Museum also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Colville Reservation, Washington, Nez Perce Tribe of Idaho, Confederated Tribes of the Umatilla Reservation, Oregon, and Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, Washington. Furthermore, officials of the Burke Museum have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non–federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195–3010, telephone (206) 685–2282, before October 15, 2007. Repatriation of the unassociated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; and Nez Perce Tribe of Idaho for themselves and on behalf of the Wanapum Band, a non–federally recognized Indian group, may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Nez Perce Tribe of Idaho; and Wanapum Band, a non–federally recognized Indian group that this notice has been published.

Dated: August 28, 2007

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E7–18102 Filed 9–12–07; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on August 28, 2007, a proposed Consent Decree in *United States* v. *Premier Industries, Inc.*, Civil Action No. ED CV 07–01092 (SGL)(OPx), was lodged with the United States District Court for the Central District of California.

The proposed Consent Decree resolves the United States' claims against Premier under section 113(b) of the Clean Air Act (''CAA''), 42 U.S.C. 7413(b), for alleged violations of the CAA and the federally approved California State Implementation Plan (''SIP''), including South Coast Air Quality Management District Rule 1175 (''Rule 1175''), at an expandable polystyrene foam block manufacturing facility it owned in Chino, CA (''Facility''). The Consent Decree requires Premier to pay a civil penalty of $326,000 and requires Premier and the company that recently acquired the Facility, Insulfoam, LLC, to: comply with Rule 1175's limits on VOC emissions; operate an emission control system that meets the requirements in the Rule; adhere to specified operational requirements; and limit the pentane content of raw materials used in the manufacturing process at the Facility.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either E-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Premier Industries, Inc.*, D.J. Ref. 90–5–2–1–08413.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, CA 90012, and at U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the proposed Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. When requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 for the Consent Decree (25 cents per page reproduction cost), payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4486 Filed 9–12–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Partial Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that on August 30, 2007, a proposed Consent Decree in *United States and California Department of Toxic Substances Control* v. *Teledyne Technologies Inc.,* Civil Action No. CV 07–05674 ODW(FFMx), was lodged with the United States District Court for the Central District of California.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''DTSC'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, and section 7003 of the Resource Conservation and Recovery Act, as amended (''RCRA''), 42 U.S.C. 6973, for the performance of response actions, and for the reimbursement of response costs incurred and to be incurred by EPA and DTSC, in connection with the release and threatened release of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (''Site'') in Los Angeles County, California.

Pursuant to the Consent Decree, the defendant has agreed to pay $535,000 to the United States and $4,000 to DTSC to resolve defendant's liability for past costs, future costs, and work associated with the remedial action required for the Site set forth in EPA's 1998 Interim Record of Decision.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Teledyne Technologies Inc.,* D.J. Ref. 90–11–2–354/25. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, 300 North Los Angeles Street, Los Angeles, California 90012, and the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov),* fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $9.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Henry S. Friedman,

Assistant Section Chief, Environment and Natural Resources Division.

[FR Doc. 07–4487 Filed 9–12–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 28, 2007, a proposed Consent Decree (''Decree'') in *United States* v. *United Park City Mines Co.*, Civil Action No. 2:07–cv–00642–BSJ, was lodged with the United States District Court for the District of Utah.

The Decree resolves the United States' claims against United Park City Mines Company (''UPCM'') under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, for response costs and implementation of remedial action at the Richardson Flat Tailings Site outside Park City, Utah (the ''Site''). The Decree requires UPCM to implement the remedy selected for the Site by the U.S. Environmental Protection Agency (''EPA'') and to pay EPA certain future response costs. The Decree includes a covenant not to sue by the United States under sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *United Park City Mines Co.*, D.J. Ref. 90–11–3–08764. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Decree may be examined at the Office of the United States Attorney, 185 South State Street, Suite 400, Salt Lake City, Utah 84111, and at U.S. EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $43.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Robert D. Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 07–4488 Filed 9–12–07; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 6–07]

Notice of Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, September 20, 2007, at 1:30 p.m.

SUBJECT MATTER: Issuance of Amended Proposed Decisions and Amended Final Decisions in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 07–4558 Filed 9–11–07; 12:22 pm]

BILLING CODE 4410–01–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 10, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Katherine Astrich, OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed 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.

Agency: Employment and Training Administration.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Attestations by Facilities Temporarily Employing H–1C Nonimmigrant Aliens as Registered Nurses.

OMB Number: 1205–0415.

Affected Public: Private Sector: Business or other for-profit and Not-for-profit institutions.

Estimated Number of Respondents: 14.

Estimated Total Burden Hours: 172.

Estimated Total Annual Costs Burden: $0.

Description: On November 12, 1999, the Nursing Relief for Disadvantaged Areas Act of 1999 (NRDAA), Public Law 106–95, amended the Immigration and Nationality Act (INA) to establish the H–1C program to reduce the shortage of qualified nurses in Health Professional Shortage Areas (HPSAs). The ETA and Employment Standards Administration (ESA) promulgated regulations at 20 CFR part 655, subparts L and M, governing the filing and enforcement of attestations by facilities seeking to employ aliens as registered nurses in HPSAs on a temporary basis. (See 65 FR 51149, Aug. 22, 2000.)

The NRDAA allows qualified hospitals to employ temporary foreign workers as registered nurses for up to three (3) years under the H–1C visas. Facilities seeking H–1C visas are required to file attestations with the Secretary of Labor. Each facility must attest that (1) It meets the definition of ''facility'' based on the Social Security Act and the Public Health Service Act, (2) it did not and will not lay off a registered nurse in the period between 90 days before and 90 days after the filing of any H–1C petition, (3) it will not employ a number of H–1C nurses that exceeds 33 percent of the total number of registered nurses employed at the facility, and (4) it will not authorize the H–1C nurse to perform nursing services at any worksite other than a worksite controlled by the facility or transfer the H–1C nurse's place of employment from one work place to another.

The NRDAA expired on June 13, 2005. However, on December 20, 2006, with the enactment of Public Law 109–423, Congress reauthorized the H–1C program for an additional three (3) years. The key provisions of the program remain unaffected and take effect immediately. The mechanism for employers or facilities to make attestations to the Secretary of Labor is the ETA Form 9081, and to expedite implementation of the reauthorized statute, the ETA is requesting a reinstatement, without modifications, to this information collection.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–18051 Filed 9–12–07; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 10, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: John Kraemer, OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov*

within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed 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.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension without change of a previously approved collection.

Title: The Hydrostatic Testing Provision of the Standard on Portable Fire Extinguishers (29 CFR 1910.157(f)(16)).

OMB Number: 1218–0218.

Affected Public: Private Sector: Business or other for-profit.

Estimated Number of Respondents: 9,202,500.

Estimated Total Burden Hours: 125,952.

Estimated Total Annual Costs Burden: $16,687,200.

Description: This is a request for an extension of approval for the information collection requirement associated with the hydrostatic testing of portable fire extinguishers. Persons performing the test are required to record their name, the date of the test, and the identifier of the extinguisher tested as evidence of completing the test.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–18066 Filed 9–12–07; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 10, 2007.

The Department of Labor (DOL) hereby announces the submission the following public information collection requests (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number) / e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: Carolyn Lovett, OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316 / Fax: 202–395–6974 (these are not a toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed 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.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: Application for Approval of a Representative's Fee in Black Lung Claim Proceedings Conducted by the U.S. Department of Labor.

OMB Control Number: 1215–0171.

Estimated Number of Respondents: 285.

Estimated Total Burden Hours: 200.

Affected Public: Private Sector: Business or other for-profits.

Description: The purpose of the CM–972 is to collect pertinent data to determine if the representative's services and the amounts charged can be paid under the Black Lung Benefits Act.

Agency: Employment Standards Administration.

Type of Review: Extension without change of currently approved collection.

Title: EO 13201—Notice of Employee Rights Concerning Payment of Union Dues or Fees.

OMB Control Number: 1215–0203.

Estimated Number of Respondents: 30.

Estimated Total Burden Hours: 182.

Affected Public: Private Sector: Business or other for-profits and Not-for-profit institutions.

Description: Pursuant to EO 13201, the purpose of the regulation is to mandate that government contractors and subcontractors post a notice informing their employees that they cannot be required to be members of a union to keep their jobs; that the law permits a union and an employer to enter into a union-security agreement that requires employees to pay dues or fees to the union; and that, even where such agreements exist, employees who are not union members can be required to pay only their share of union costs relating to activities that are germane to the union's representational purposes. The notice also provides a general description of the remedies to which employees may be entitled if these rights have been violated, and provides contact information for further information about those rights and remedies. The information collection encompasses two aspects of the regulations. The first provision is section 470.11 which provides that an employee of a covered contractor may file a written complaint alleging that the contractor has failed to post the employee notice as required by the Executive Order and/or has failed to include the employee notice clause in nonexempt subcontracts or purchase orders. The second provision is section 470.4(d) which provides that contractors may make a written request to the Deputy Assistant Secretary for Labor-

Management Programs for a waiver to the posting requirements with respect to any of the contractor's facilities that are in all respects separate and distinct from activities of the contractor related to the performance of a contract.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–18070 Filed 9–12–07; 8:45 am]

BILLING CODE 4510–CN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 10, 2007.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of the ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: Brian A. Harris-Kojetin, OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed 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.

Agency: Bureau of Labor Statistics.

Type of Review: Reinstatement without change of a previously approved collection.

Title: Displaced Worker, Job Tenure, and Occupational Mobility Supplement to CPS. OMB Number: 1220–0104.

Affected Public: Individuals or households.

Estimated Number of Respondents: 55,000.

Estimated Total Burden Hours: 7,333.

Estimated Total Annual Costs Burden: $0.

Description: The Displaced Worker, Job Tenure, and Occupational Mobility Supplement provides information on people who have lost or left jobs because their plant or company closed or moved, there was insufficient work for them to do, or their position or shift was abolished. It also gathers the number of years workers have been with their current employer and the economic impact of tenure. The information can be used to assess employment stability, displacement levels, occupational change over the year, and the need for, and scope of, programs serving adult displaced workers.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. E7–18072 Filed 9–12–07; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–065)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license worldwide to practice the inventions described and claimed in U.S. Patent No. 6,046,398, entitled ''Micromachined Thermoelectric Sensors and Arrays and Process for Producing'' to Ithaco Space Systems, a wholly owned subsidiary of Goodrich Corporation, having its principal place of business in Ithaca, New York. The fields of use may be limited to sensor applications for FTIR spectroscopy, aerospace, automotive, industrial process control, medical, and pharmaceutical fields. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code 180–200, NASA Management Office, 4800 Oak Grove Drive, Pasadena, CA 91109, (818) 354–7770; (818) 393–3160 [Facsimile].

FOR FURTHER INFORMATION CONTACT: Mark Homer, Patent Counsel, NASA Management Office, Jet Propulsion Laboratory, Mail Code 180–200, 4800 Oak Grove Drive, Pasadena, CA 91109, (818) 354–7770; (818) 393–3160 [Facsimile]. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Dated: September 6, 2007.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E7–18008 Filed 9–12–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Additional Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather C. Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 19, 2007.
Time: 2 a.m. to 5 p.m.
Room: 421.
Program: This meeting, which will be by teleconference, will review applications for Media TV Production, submitted to the Division of Public Programs, at the September 5, 2007 deadline.

2. *Date:* September 20, 2007.
Time: 10 a.m. to 1 p.m.
Room: 415.
Program: This meeting, which will be by teleconference, will review applications for Lincoln Bicentennial Exhibitions, submitted to the Division of Public Programs, at the August 31, 2007 deadline.

Heather C. Gottry,
Acting Advisory Committee Management Officer.

[FR Doc. E7–18109 Filed 9–12–07; 8:45 am]
BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, (Pub. L. 95–541).

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 15, 2007. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows: 1. *Applicant:* William R. Fraser, Polar Oceans Research Group, P.O. Box 368, Sheridan, MT 59749. Permit Application No. 2008–020.

Activity for Which Permit Is Requested

Take and enter Antarctic Specially Protected Areas. The applicant plans to enter Litchfield Island (ASPA #113), Biscoe Point, Anvers Island (ASPA #139), Avian Island (ASPA #117), Dion Islands (ASPA #107), and Lagotellerie Island (ASPA 115) to study the variability of seabird ecology to changes in the physical and biological environment, especially sea ice, snow conditions and the availability of pretty. The applicant will census seabird populations and mark breeding territories; capture, mark, band and weigh select numbers of adults, chicks and eggs; obtain diet data through stomach lavage; place transmitters on individuals to develop foraging and dispersal profiles; place artificial eggs under incubating individuals to measure heart-rate and body temperatures; use GIS/GPS technologies to update existing breeding habitat maps; and, sample tissues, feathers, blood, preen gland oil for stable isotope levels.

Location

Litchfield Island (ASPA #113), Biscoe Point, Anvers Island (ASPA #139), Avian Island (ASPA #117), Dion Islands (ASPA #107), and Lagotellerie Island (ASPA 115).

Dates

October 1, 2007 to September 30, 2012.

2. *Applicant:* William R. Fraser, Polar Oceans Research Group, P.O. Box 368, Sheridan, MT 59749. Applicant Permit Application No. 2008–021.

Activity for Which Permit Is Requested

Take, and Import into the U.S.A. The applicant take and release up to 500 Adelie Penguins, Chinstrap Penguins, Gentoo Penguins, Brown Skuas South Polar Skuas Southern Giant Petrels, Blue-eyed Shags and Kelp Gulls. The applicant will: census seabird populations and mark breeding territories; capture, mark, band and weigh select numbers of adults, chicks and eggs; obtain diet data through stomach lavage; place transmitters on individuals to develop foraging and dispersal profiles; place artificial eggs under incubating individuals to measure heart-rate and body temperatures; use GIS/GPS technologies to update existing breeding habitat maps; and, sample tissues, feathers, blood, preen gland oil for stable isotope levels.

Location

Palmer Station, Marguerite Bay and vicinity.

Dates

October 1, 2007 to September 30, 2012.

3. *Applicant:* William R. Fraser, Polar Oceans Research Group, P.O. Box 368, Sheridan, MT 59749. Permit Application No. 2008–022.

Activity for Which Permit Is Requested

Take. The applicant plans to salvage seabird specimens that have died of natural causes. The specimens will be used for educational purposes at teaching and research institutions.

Location

Palmer Station, Marguerite Bay and vicinity.

Dates

October 1, 2007 to September 30, 2012.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E7–18020 Filed 9–12–07; 8:45 am]

BILLING CODE 7555–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Fiscal Year 2006 Agency Inventories Under the Federal Activities Inventory Reform Act

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Public Availability of Agency Inventory of Activities That Are Not Inherently Governmental and of Activities That Are Inherently Governmental.

SUMMARY: The Federal Activities Inventory Reform (FAIR) Act, Public Law 105–270, requires agencies to develop inventories each year of activities performed by their employees that are not inherently governmental—i.e., inventories of commercial activities. The FAIR Act further requires OMB to review the inventories in consultation with the agencies and publish a notice of public availability in the **Federal Register** after the consultation process is completed. In accordance with the FAIR Act, OMB is publishing this notice to announce the availability of inventories from the agencies listed below. These inventories identify both commercial activities and activities that are inherently governmental.

This is the third and final release of the FAIR Act inventories for FY 2006. Interested parties who disagree with the agency's initial judgment may challenge the inclusion or the omission of an activity on the list of activities that are not inherently governmental within 30 working days and, if not satisfied with this review, may appeal to a higher level within the agency.

The Office of Federal Procurement Policy has made available a FAIR Act User's Guide through its Internet site: *http://www.whitehouse.gov/omb/procurement/fair-index.html.* This User's Guide will help interested parties review FY 2006 FAIR Act inventories.

Paul A. Denett,

Administrator, Office of Federal Procurement Policy.

THIRD FAIR ACT RELEASE FY 2006

Arlington National Cemetery	Mr. Rory Smith, (703) 607–8561 *http://www.arlingtoncemetery.org.*
Armed Forces Retirement Home	Mr. Steven G. McManus, (202) 730–3533 *http://www.afrh.gov.*
Department of Housing and Urban Development (IG)	Mr. Michael Kirby, (202) 708–0614 x8190 *http://www.hudoig.gov.*
Federal Communications Commission	Ms. Bonita Tingley, (202) 418–0293 *http://www.fcc.gov/omd/reports.html.*
Holocaust Museum	Ms. Helen Shepherd, (202) 314–0396 *http://www.ushmm.org/notices/fair_act/2006.xls.*
International Trade Commission	Mr. Stephen McLaughlin, (202) 205–3131 *http://www.usitc.gov.*
National Endowment for the Humanities	Mr. Barry Maynes, (202) 606–8233 *http://www.neh.gov.*
National Transportation Safety Board	Ms. Carol Belovitch, (202) 314–6232 *http://www.ntsb.gov/info/fair_act_2006.htm.*
Office of Management and Budget	Ms. Lisa Ward, (202) 395–5670 *http://www.whitehouse.gov/omb/procurement/fair/notices_avail.html.*
Office of National Drug Control Policy	Mr. Daniel Petersen, (202) 395–6745 *http://www.whitehousedrugpolicy.gov.*
Railroad Retirement Board (IG)	Mr. William Tebbe, (312) 751–4350 *http://www.rrb.gov/mep/oig.asp.*
Small Business Administration (IG)	Mr. Robert Fisher, (202) 205–6583 *www.sba.gov/ig/OIG_Fair.html.*
U.S. Patent and Trademark Office	Mr. Jack Buie, (571) 272–6283 *http://www.uspto.gov.*

[FR Doc. E7–18028 Filed 9–12–07; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

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'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

The Securities Exchange Act of 1934 (15 U.S.C. 78a) (''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 (17 CFR 240.6h–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).

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.

Comments should be directed to (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 by sending an e-mail to: *Alexander_T._Hunt@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 within 30 days of this notice.

Dated: September 6, 2007.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18081 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56376)]

Order Granting a Conditional Exemption to Broker-Dealers From Requirements in Rules 15c3–1 And 15c3–3 Under the Securities Exchange Act of 1934 To Promptly Transmit Customer Checks for the Purchase of Deferred Variable Annuity Contracts

September 7, 2007.

I. Background

The Securities and Exchange Commission (the ''Commission'') today approved new National Association of Securities Dealers (''NASD'') [1] Rule 2821.[2] NASD Rule 2821 sets forth recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements with respect to transactions in deferred variable annuities.

According to the NASD, it designed the rule to address significant and persistent sales-practice problems in sales of deferred variable annuities. One component of Rule 2821 is a requirement that registered principals perform a comprehensive and rigorous review of the transactions. Specifically, Rule 2821(c) states, in part, that: ''Prior to transmitting a customer's application for a deferred variable annuity to the issuing insurance company for processing, but no later than seven business days after the customer signs the application, a registered principal shall review and determine whether he or she approves of the purchase or exchange of the deferred variable annuity.''

Many broker-dealers are subject to lower net capital requirements under Securities Exchange Act of 1934 (''Exchange Act'') Rule 15c3–1 [3] and are exempt from the requirement to establish and fund a customer reserve account under Rule 15c3–3 [4] because they do not carry customer funds or securities. Some of these broker-dealers receive checks from customers that are made out to third parties. Pursuant to Rules 15c3–1 and 15c3–3, a broker-dealer is not deemed to be carrying customer funds if it ''promptly transmits'' the checks to the third parties.[5] For purposes of Rules 15c3–1 and 15c3–3, the term ''promptly transmit'' means when ''such transmission or delivery is made no later than noon of the next business day after the receipt of such funds or securities.'' [6]

According to the NASD, a broker-dealer may need to hold customer checks for more than one business day in order to comply with Rule 2821.

II. Discussion

The Commission has decided to exempt broker-dealers from any additional requirements of Rules 15c3–1 or 15c3–3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity product by noon of the business day following the date the broker-dealer receives the check from the customer, provided:

(i) The transaction is subject to the principal review requirements of NASD Rule 2821 and a registered principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with that rule;

(ii) the broker-dealer promptly transmits the check no later than noon of the business day following the date a registered principal reviews and determines whether he or she approves of the purchase or exchange of the deferred variable annuity; and

(iii) the broker-dealer maintains a copy of each such check and creates a record of the date the check was received from the customer and the date the check was transmitted to the insurance company if approved, or returned to the customer if rejected.

The purpose of Rule 15c3–1 is to ensure that a broker or dealer at all times has sufficient liquid assets to promptly satisfy the claims of customers and other creditors if the broker or dealer goes out of business. One purpose of Rule 15c3–3 is to protect customers by assuring that broker-dealers do not use customers' funds or securities to fund the broker-dealer's operations. The reasons these rules require that a broker-dealer promptly forward checks is to reduce the risk that a broker-dealer or an associated person

[1] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority, Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (Aug. 1, 2007).

[2] *See* Exchange Act Release No. 56375 (Sep. 7, 2007).

[3] 17 CFR 240.15c3–1. The purpose of Rule 15c3–1 is to ensure that a broker or dealer at all times has sufficient liquid assets to promptly satisfy the claims of customers if the broker or dealer goes out of business.

[4] 17 CFR 240.15c3–3. The purpose of Rule 15c3–3 is to protect customers by assuring that broker-dealers do not use customers' funds or securities to fund the broker-dealer's operations. Among other things, Rule 15c3–3 requires that a broker-dealer make a periodic computation of the amount of money it is holding that constitutes customer funds or funds obtained from the use of customer securities. If this amount exceeds the amount of money customers owe the firm, the broker-dealer must deposit the excess in a special reserve bank account for the exclusive benefit of the firm's customers.

[5] When it amended the net capital rule in 1992, the Commission stated that a broker-dealer shall not be deemed to receive funds from customers if it receives checks made payable to certain entities other than itself (such as another broker-dealer or an escrow agent) and promptly transmits such funds. Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992).

[6] *See* Exchange Act Release No. 31511 (Nov. 24, 1992), note 11, and 17 CFR 240.15c3–1(c)(9).

of a broker-dealer will convert or misuse customer funds or securities and to assure that the price of the security the customer purchases has not moved substantially from the date the customer decided to purchase that security.

In the Approval Order for Rule 2821 we stated,

> [Proposed Rule 2821] is designed to curb sales practice abuses in deferred variable annuities. Its recommendation requirements provide a specific framework for a broker-dealer's suitability analysis of these securities. By setting forth factors that a broker-dealer must specifically consider in recommending deferred variable annuities and requiring the registered representative to obtain certain information from his or her customers, the proposed rule should improve communications between registered representatives and customers regarding these securities. The supervisory review component should foster a thorough analytical review of every deferred variable annuity transaction in a timeframe that will limit the possibility of unsuitable recommendations and transactions. The proposed rule as a whole is geared to protecting investors by requiring firms to implement more robust compliance cultures, and to give clear consideration of the suitability of these complex products.

Further, we found that Rule 2821 is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Consequently, we approved NASD's proposed Rule 2821.

As we believe the NASD's Rule 2821 to be in the public interest but a broker-dealer would be burdened with additional requirements under Exchange Act Rules 15c3–1 and 15c3–3 were it to comply with Rule 2821, we must balance the investor protections provided by Rules 15c3–1 and 15c3–3 with those provided by Rule 2821. For this reason, we have specifically tailored the above-described exemption.

First, the exemption is specifically limited to situations where a broker-dealer has failed to promptly transmit "a check made payable to an insurance company for the purchase of a deferred variable annuity product," and "the transaction is subject to the principal review requirements of NASD Rule 2821 and a registered principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with that rule." In all other situations where a check is received by a broker-dealer and is not promptly forwarded, the full provisions of both Rule 15c3–1 and 15c3–3 still apply.

Second, the exemption requires a broker-dealer to promptly transmit such checks no later than noon of the business day following the date a registered principal reviews and determines whether he or she approves of the purchase or exchange of the deferred variable annuity. This is designed to assure that the broker-dealer holds the customer's check no longer than is necessary to comply with Rule 2821.

Third, a broker-dealer must maintain a copy of each such check and create a record of the date the check was received from the customer and the date the check was transmitted to the insurance company if approved, or returned to the customer if rejected. This requirement will allow the broker-dealer's compliance and internal audit departments, as well as Commission, self-regulatory organization, and other examiners to verify that a broker-dealer is complying with the provisions of this exemption.

For the foregoing reasons, the Commission finds that granting the above-described exemption is necessary and appropriate in the public interest, and is consistent with the protection of investors.

III. Conclusion

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act [7] that, a broker-dealer shall be exempt from any additional requirements of Rules 15c3–1 or 15c3–3 due solely to a failure to promptly transmit a check made payable to an insurance company for the purchase of a deferred variable annuity product by noon of the business day following the date the broker-dealer receives the check from the customer, provided:

(i) The transaction is subject to the principal review requirements of NASD Rule 2821 and a registered principal has reviewed and determined whether he or she approves of the purchase or exchange of the deferred variable annuity within seven business days in accordance with that rule;

(ii) the broker-dealer promptly transmits the check no later than noon of the business day following the date a registered principal reviews and determines whether he or she approves of the purchase or exchange of the deferred variable annuity; and

(iii) the broker-dealer maintains a copy of each such check and creates a record of the date the check was received from the customer and the date the check was transmitted to the insurance company if approved, or returned to the customer if rejected.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–18023 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

[7] Section 36 of the Exchange Act authorizes the Commission, by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56371; File No. SR–BSE–2007–43]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, Relating to Exchange Fees and Charges

September 7, 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 August 31, 2007, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the BSE. On September 6, 2007, the BSE submitted Amendment No. 1 to the proposed rule change. The BSE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the BSE 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 BSE proposes to amend the Boston Options Exchange ("BOX") Fee Schedule in order to revise certain transaction fees for issues that trade as part of the Penny Pilot Program.[5]

[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] *See* Securities Exchange Act Release No. 55155 (January 23, 2007) 72 FR 4741 (February 1, 2007)

Continued

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 BSE 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 BSE 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 revise the existing BOX Fee Schedule in conjunction with the Penny Pilot Program. The Exchange plans to introduce the Make or Take pricing structure for all classes contained in the Penny Pilot Program.[6] The Exchange is proposing to amend the BOX Fee Schedule in order to make the following changes to certain fees and charges that are assessed to Participants in the issues referenced below, effective as of the first trading day of September 2007.[7]

Transaction Fees for Classes Contained in the Penny Pilot

The Exchange is proposing to implement a Liquidity Make or Take pricing structure for executed transactions in issues participating in the Penny Pilot Program. Under the proposed Fee Schedule change, orders that add or ''make'' liquidity to the BOX Book will receive a transaction credit upon execution. BOX Market Makers will receive a credit of $0.30 per contract. All other Participants will receive a credit of $0.25 per contract. Any order, including an order with a Fill and Kill designation, which executes against an order which is being exposed before being placed on the BOX Book, will be deemed to be making liquidity and will receive a transaction credit upon execution.

The Transaction Fee for all Participants that ''take'' liquidity from the BOX Book will be $0.45 per contract. This fee will be applied to all Participants, including Market Makers, Broker-Dealers and Executing Participants executing orders on behalf of Public Customers. Any order, including an order with a Fill and Kill designation, which takes liquidity by trading immediately upon entry to the BOX Book or following its exposure as part of NBBO filtering will be assessed the $0.45 per contract fee.

Linkage Fees

Linkage Orders executed at BOX are subject to the same billing treatment as other Broker-Dealer orders. Since Linkage Orders that are sent to and executed on BOX will be taking liquidity, these orders will be assessed a $0.45 per contract fee. Linkage Orders that are not executed upon receipt are rejected back to the sender and are never posted in the BOX Book. Therefore, a Linkage Order would never be eligible to receive a credit of the Transaction Fee.

MAC and Mini MAC Exemption

No MAC or MiniMAC fees will be charged for classes contained in the Liquidity Make or Take pricing structure. In addition, the trades in these classes will not count toward the calculation of Average Daily Volume rebates for BOX Market Makers.

Transactions Exempted From the Liquidity Make or Take Model

The following transactions will be exempt from the Liquidity Make or Take pricing structure as they are deemed to neither take nor make liquidity: Transactions which occur on the opening or re-opening of trading and transactions on both sides of a PIP, with the exception of unrelated orders that interact with an Improvement Auction, which will be charged a ''take'' fee. Transactions which are exempt from the Liquidity Make or Take pricing structure will be subject to standard transaction fees as stated in the Fee Schedule.

2. Statutory Basis

BSE believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f)(2) of Rule 19b–4[11] thereunder because it establishes or changes a due, fee or other charge imposed by the Exchange. At any time within 60 days of the filing of 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 the furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–BSE–2007–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

(SR–BSE–2006–49) (''Original Penny Pilot Program Approval Order''). *See also* Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR–BSE–2007–38).

[6] The Original Penny Pilot Program Approval Order, *supra* note 5, lists the initial thirteen options classes currently participating in the Penny Pilot Program. If the Penny Pilot Program is expanded to introduce more participating options classes, the Make or Take Pricing model will also apply to those options classes. Furthermore, if the Penny Pilot Program is extended, the Make or Take Pricing model will also be extended accordingly.

[7] Participating classes are listed in Section 33 to Chapter V of the BOX Rules.

[8] 15 U.S.C. 78f(b)

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)

[11] 17 CFR 240.19b–4(f)(2)

[12] 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 September 6, 2007, the date on which the BSE filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BSE–2007–43. 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 BSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BSE–2007–43 and should be submitted on or before October 4, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18076 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56375; File No. SR–NASD–2004–183]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Notice of Filing of Amendment Nos. 3 and 4 and Order Granting Accelerated Approval of the Proposed Rule, as Amended, Related to Sales Practice Standards and Supervisory Requirements for Transactions in Deferred Variable Annuities

September 7, 2007.

I. Introduction

On December 14, 2004, 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 [1] (''Exchange Act'' or ''Act'') and Rule 19b–4 [2] thereunder, proposed new Rule 2821 (''Proposed Rule 2821'') relating to the sales practice standards and supervisory and training requirements applicable to transactions in deferred variable annuities.[3] Proposed Rule 2821, as amended by Amendment No. 1, was published for comment in the **Federal Register** on July 21, 2005.[4] The Commission received approximately 1500 comments on the proposal.[5] NASD filed Amendment No. 2 on May 4, 2006, which addressed the comments and proposed responsive amendments. Amendment No. 2 was published for comment in the **Federal Register** on June 28, 2006.[6] The Commission received approximately 1950 comments on Amendment No. 2.[7] To further explain and modify certain provisions of Proposed Rule 2821 in response to comments, NASD filed Amendment No. 3 on November 15, 2006 and Amendment No. 4 on March 5, 2007. Amendment No. 4 supersedes all of the previous amendments in their entirety. All of the comments that the Commission has received are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). This order provides notice of Amendment Nos. 3 and 4 to the proposed rule and approves the proposed rule as amended on an accelerated basis.[8]

II. Description of the Proposal

Proposed Rule 2821 would create recommendation requirements (including a suitability obligation), principal review and approval requirements, and supervisory and training requirements tailored specifically to transactions in deferred variable annuities. It is intended to supplement, not replace, NASD's other rules relating to suitability, supervisory review, supervisory procedures, and training. Thus, to the extent Proposed Rule 2821 does not apply to a particular transaction, NASD's general rules on suitability, supervisory review, supervisory procedures, and training continue to govern when applicable.[9] The text of the proposed rule is available on FINRA's Web site (*http://www.finra.org*), at FINRA's principal office, and at the Commission's Public Reference Room.

Proposed Rule 2821 would apply to the purchase or exchange of a deferred variable annuity and to an investor's initial subaccount allocations.[10] It

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to Financial Industry Regulatory Authority Inc., or FINRA, in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Exchange Act Release No. 56146 (July 26, 2007); 72 FR 42190 (Aug. 1, 2007).

[4] *See* Exchange Act Release No. 52046A (July 19, 2005); 70 FR 42126 (July 21, 2005) (SR–NASD–2004–183).

[5] Approximately 1300 of these comments, primarily from licensed insurance professionals and variable product salespersons, are virtually identical. These letters are referred to herein, and on the list of comments on the Commission's Web site as ''Letter Type A.'' The Commission also received multiple copies of other letters, which we refer to as Letters Type B, C, D, E, F, G and H, below.

[6] *See* Exchange Act Release No. 54023 (June 21, 2006); 71 FR 36840 (June 28, 2006) (SR–NASD–2004–183).

[7] Approximately 1700 of these comments, primarily from licensed insurance professionals and variable product salespersons, are virtually identical. These letters are referred to herein as ''Letter Type B.''

[8] NASD granted consent for the Commission to approve the proposed rule beyond the timeframes set forth in section 19(b)(2) of the Act.

[9] The general suitability obligation requires a broker-dealer to consider its customer's ability to understand the security being recommended, including changes in the customer's ability to understand, monitor, and make further decisions regarding securities over time.

[10] As NASD noted in Amendment No. 2, the proposed rule focuses on customer purchases and exchanges of deferred variable annuities, areas that, to date, have given rise to many of the sales practice abuses associated with variable annuity products. *See* Exchange Act Release No. 52046A, at 3–5 (discussing various questionable sales practices that NASD examinations and investigations have uncovered and the actions NASD has taken to address those practices). The proposed rule would thus cover a standalone purchase of a deferred variable annuity and an exchange of one deferred variable annuity for another deferred variable

Continued

would not apply to reallocations of subaccounts or to subsequent premium payments made after the investor's initial purchase or exchange.[11] It also generally would not apply when an investor's purchase or exchange of a deferred variable annuity is made within a tax-qualified, employer-sponsored retirement or benefit plan.[12] If, however, a member recommends a deferred variable annuity to an individual plan participant, then Proposed Rule 2821 would apply to that purchase (or exchange) and to the initial subaccount allocations.

Proposed Rule 2821 has four main requirements. First, in order to recommend the purchase or exchange of a deferred variable annuity, a member would be required to have a reasonable basis to believe that the transaction is suitable in accordance with NASD's general suitability rule, Rule 2310.[13] In particular the member must have a reasonable basis to believe that:

- The customer has been informed, in general terms, of various features of deferred variable annuities; [14]
- The customer would benefit from certain features of deferred variable annuities, such as tax deferred growth, annuitization, or a death or living benefit;[15] and
- The particular deferred variable annuity that the member is recommending, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the deferred variable annuity, and the riders and similar product enhancements are suitable (and in the case of an exchange, the transaction as a whole also is suitable) for the customer based on the information the person associated with the member is required to make a reasonable effort to obtain pursuant to subparagraph (b)(2) of the proposed rule.[16]

Prior to recommending that a customer exchange a deferred variable annuity, a registered representative must not only have a reasonable basis to believe that the exchange is consistent with the suitability determinations in subparagraph (b)(1)(A) of the proposed rule, but must also consider whether:

- The customer would incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, or be subject to increased fees or charges; [17]
- The customer would benefit from product enhancements and improvements; [18] and
- The customer's account has had another deferred variable annuity exchange within the preceding 36 months.[19]

The associated person recommending the transaction would be required to document these considerations and sign this documentation. He or she would also have to make reasonable efforts to obtain from the customer information regarding the customer's age, annual income, financial situation and needs, investment experience, investment objectives, intended use of the deferred variable annuity, investment time horizon, existing assets (including investment and life insurance holdings), liquidity needs, liquid net worth, risk tolerance, tax status, and such other information used or considered to be reasonable by the member or person associated with the member in making recommendations to customers.[20]

Second, a registered principal would have to review the transaction and determine whether he or she approves of it prior to transmitting the customer's application to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.[21] The registered principal may approve the transaction only if he or she has determined that there is a reasonable basis to believe that the transaction would be suitable based on all of the factors contained in paragraph (b) (''Recommendation Requirements'') of the proposed rule.[22]

For purposes of reviewing deferred variable annuity purchases and exchanges, a registered principal must treat all transactions as if they have been recommended.[23] However, if a registered principal determines that a transaction, which is not suitable based on the factors contained in paragraph (b), was not recommended, he or she may nonetheless authorize the processing of it if the customer has been informed of the reason why the transaction has not been approved and the customer affirms that he or she wants to proceed with the transaction.[24]

The registered principal that reviews the transaction must document and sign the determinations that the proposed rule requires him to make.[25] He or she must complete this documentation regardless of whether he or she approves, rejects, or authorizes the transaction.[26]

Third, Proposed Rule 2821 would require members to develop and maintain supervisory procedures that are reasonably designed to achieve compliance with the proposed rule.[27] Members would be required to implement surveillance procedures to determine if associated persons ''have rates of effecting deferred variable annuity exchanges that raise for review whether such rates of exchanges evidence conduct inconsistent with the applicable provisions of [the rule], other applicable NASD rules, or the federal securities laws ('inappropriate exchanges').'' [28] Members would also be required to have policies and

annuity. For purposes of the proposed rule, an ''exchange'' of a product other than a deferred variable annuity (such as a fixed annuity) for a deferred variable annuity would be covered by the proposed rule as a ''purchase.'' The proposed rule would not cover customer sales of deferred variable annuities, including the sale of a deferred variable annuity in connection with an ''exchange'' of a deferred variable annuity for another product (such as a fixed annuity). However, recommendations of customer sales of deferred variable annuities are covered by Rule 2310, NASD's general suitability rule.

[11] NASD's general suitability rule, Rule 2310, would continue to apply to reallocations of subaccounts.

[12] Proposed Rule 2821 defines such plans as either a ''qualified plan'' under section 3(a)(12)(C) of the Act or a plan that meets the requirements of Internal Revenue Code sections 403(b), 457(b), or 457(f).

[13] *See* Proposed Rule 2821(b)(1)(A).

[14] *See* Proposed Rule 2821(b)(1)(A)(i). The proposed rule lists the following features as examples for purposes of this requirement: (1) Potential surrender period and surrender charge; (2) potential tax penalty if customers sell or redeem deferred variable annuities before reaching the age of 59½; (3) mortality and expense fees; (4) investment advisory fees; (5) potential charges for and features of riders; (6) the insurance and investment components of deferred variable annuities; and (7) market risk.

[15] *See* Proposed Rule 2821(b)(1)(A)(ii).

[16] *See* Proposed Rule 2821(b)(1)(A)(iii).

[17] *See* Proposed Rule 2821(b)(1)(B)(i).

[18] *See* Proposed Rule 2821(b)(1)(B)(ii).

[19] *See* Proposed Rule 2821(b)(1)(B)(iii).

[20] *See* Proposed Rule 2821(b)(2).

[21] *See* Proposed Rule 2821(c). NASD has determined that relief is needed to allow certain broker-dealers to complete their review of deferred variable annuity transactions as required by proposed NASD Rule 2821 without becoming fully subject to Exchange Act Rule 15c3–3 and being required to maintain higher levels of net capital in accordance with Exchange Act Rule 15c3–1. Consequently, NASD has requested relief from Rules 15c3–3 and 15c3–1 for these broker-dealers. In conjunction with the Commission's approval or proposed rule 2821, it is also granting exemptions from Rules 15c3–1 and 15c3–3 of the Exchange Act to allow NASD members to comply with proposed Rule 2821 without becoming fully subject to Exchange Act Rule 15c3–3 and being required to maintain higher levels of net capital in accordance with Rule 15c3–1.

NASD initially submitted a request for relief to the staff prior to the consolidation of its member firm regulatory functions with NYSE Regulation, Inc. This request was replaced by a subsequent request from the consolidated entity, FINRA. For readability, this second request is referred to as an NASD request throughout this order.

[22] *See* Proposed Rule 2821(c).

[23] *Id.*

[24] *Id.*

[24] *Id.*

[25] *Id.*

[27] *See* Proposed Rule 2821(d).

[28] *Id.*

procedures reasonably designed to implement corrective measures to address inappropriate exchanges and the conduct of associated persons who engage in inappropriate exchanges.[29]

Fourth, Proposed Rule 2821 would require members to develop and implement training programs that are tailored to educate registered representatives and registered principals on the material features of deferred variable annuities and the requirements of the proposed rule.[30]

III. Summary of Comments on Amendment No. 2

In its solicitation of comments on Amendment No. 2, the Commission stated that it would consider the comments it previously received,[31] and that commenters could reiterate or cross-reference previously submitted comments.[32] The Commission has considered all of the comments it received, including commenters' reiterations of and cross-references to previously submitted comments. While the summary below refers to some comments previously submitted, it primarily discusses new comments on portions of the proposed rule that Amendment No. 2 did not change and comments on those provisions of the proposed rule that Amendment No. 2 modified. It also discusses comments received in response to Amendment No. 1 that are relevant to the timing of principal review provision in paragraph (c) of the proposed rule.

A. General Comments

A number of commenters reiterated their general opposition to the proposed rule, viewing it as unnecessary, arguing that NASD has not demonstrated a need for it, and stating that strong enforcement against broker-dealer sales practice abuses provides the best deterrent to negative market conduct.[33] Some commenters also stated that existing NASD rules and the prospectus adequately inform and protect investors.[34]

A few commenters suggested that the proposed rule must take into account an estimate of its competitive and economic impact and asserted that the proposed rule must be subject to a cost/benefit analysis.[35] One commenter took the position that the proposed rule would impose economic and competitive burdens upon broker-dealers.[36] The commenter stated that the rule would require expensive new systems and operation changes that could initially total more than $200,000 for broker-dealers to implement and monitor enterprise-wide.[37] It also maintained that the ongoing costs of complying with the proposed rule would be significant and immeasurable.[38] That commenter did not, however, provide any specific information about the system changes it foresaw, or how it arrived at its $200,000 estimate.

Some commenters stated that the proposed rule would impose a burden on competition.[39] One of these commenters stated that the proposed rule would disparately impact smaller companies without state-of-the-art technological resources.[40] In its view, small to mid-sized companies may be forced out of the annuity market, thereby reducing competition and eliminating consumer options.[41] One commenter posited three ways in which the proposed rule would burden competition, stating:

- The proposed rule would disrupt enterprise-wide uniformity of compliance procedures. Compliance with the proposed rule would cost more than compliance procedures for other products, and thus would make variable annuities more expensive to sell than other products.
- Conversion to the proposed rule would provide openings for inadvertent and transitional violations and may dampen distributors' enthusiasm for selling a product with suitability and supervision standards that are different from all other securities.
- Other products have had greater incidences of disciplinary actions and do not have specific supervision and suitability standards ''that would dampen distributors' sales enthusiasm for fear of regulatory reprisals or technical violations.'' [42]

This commenter also argued that the rule targets deferred variable annuities in a discriminatory and burdensome fashion without appropriate rationale.[43]

Some commenters stated that implementation of the proposed rule would have unintended consequences.[44] For example, two commenters asserted that the proposed rule would raise barriers to access for investors who could benefit from owning a deferred variable annuity.[45] A few commenters also believed that the product-specific requirements of the proposed rule would signal to investors that something is wrong with the product.[46] One commenter stated that the proposed rule would cause expenses and fees to rise, which in turn would lead consumers to look to other, less expensive investment products that may not be as appropriate for their needs.[47]

NASD responded to concerns regarding the need for the proposed rule, the process by which it developed and revised the proposed rule, and the statutory requirements for its rulemaking in a letter to the Commission.[48] With respect to concerns

[29] *Id.*

[30] *See* Proposed Rule 2821(e).

[31] *See* Exchange Act Release No. 54023 (June 21, 2006); 71 FR at 36846 n.84.

[32] *Id.*

[33] *See, e.g.*, Letters from Stephen A. Batman, CEO, 1st Global Capital Corp. (July 19, 2006) (''1st Global Letter II''); Carl B. Wilkerson, Vice President and Chief Counsel, American Counsel of Life Insurers (July 19, 2006) (''ACLI Letter IV''); Gary A. Sanders, Senior Counsel, Law and Government Relations, National Association of Insurance and Financial Advisors and Thomas F. Korb, Vice President of Policy and Public Affairs, Association for Advanced Life Underwriting (July 19, 2006) (''NAIFA/AALU Letter II''); Letter Type B. *See also* Letter Type D. Unless otherwise noted, all letters are addressed to the Commission.

[34] *See, e.g.*, Letters from Dale E. Brown, CAE, Executive Director and CEO, Financial Services Institute (July 19, 2006) (''FSI Letter II''); Ari Burstein, Associate Counsel, Investment Company Institute (July 19, 2006) (''ICI Letter II''); 1st Global Letter II; ACLI Letter IV; Letter Type B. Two commenters suggested that the Commission delay action on the proposed rule until there is some resolution to the Commission's point-of-sale proposal. *See* ACLI Letter IV; FSI Letter II. Another commenter stated that it is not clear how the proposed rule would work with the Commission's point-of-sale proposal, especially with regard to the disclosure of material features. *See* Letter from W. Thomas Conner and Eric A. Arnold, Sutherland Asbill and Brennan LLP on behalf of Committee of Annuity Insurers (July 19, 2006) (''CAI Letter II'').

[35] *See* Letter from Joan Hinchman, Executive Director, President and CEO, National Society of Compliance Professionals, Inc. (July 19, 2006) (''NSCP Letter''); ACLI Letter IV; NAIFA/AALU Letter II.

[36] ACLI Letter IV.

[37] *Id.*

[38] *Id.*

[39] *See e.g.*, ACLI Letter IV; NAIFA/AALU Letter II; NSCP Letter.

[40] NSCP Letter.

[41] *Id.*

[42] ACLI Letter IV. Another commenter agreed that the proposed rule would place those that sell variable annuities at a competitive disadvantage in comparison with those who market other types of investments. *See* NAIFA/AALU Letter II. Two commenters also stated that adopting product specific suitability requirements and supervisory procedures would inhibit sales because registered representatives would be less inclined to sell the product. *See* Letter from Michael P. DeGeorge, General Counsel, National Association for Variable Annuities (July 19, 2006) (''NAVA Letter III''); FSI Letter II.

[43] ACLI Letter IV.

[44] *See, e.g.*, Letter from Rick Dahl, CCO, Sorrento Pacific Financial LLC (July 19, 2006) (''Sorrento Letter''); FSI Letter II; NAVA Letter III; NAIFA/AALU Letter II.

[45] *See* FSI Letter II; Sorrento Letter.

[46] *See* Letter from W. Burk Rosenthal, President, Rosenthal Retirement Planning, LP (July 19, 2006); FSI Letter II; NAVA Letter III.

[47] *See* NAIFA/AALU Letter II.

[48] *See* Letter from James S. Wrona, Associate Vice President, NASD (Aug. 31, 2006) (''NASD Response Letter'').

that the proposed rule is not necessary, NASD reiterated that its examinations, investigations, and informal discussions with its members have uncovered numerous instances of questionable sales practices in connection with the purchase or exchange of deferred variable annuities, including unsuitable recommendations, and misrepresentations and omissions.[49] It also stated that member supervision and training procedures are inadequate.[50] NASD noted that these problems stem from the unique complexities of deferred variable annuities, which can cause confusion both for the individuals who sell them and for the customers who purchase or exchange them.[51] Despite issuing Notices to Members, Regulatory and Compliance Alerts, and Investor Alerts, NASD found that these problems continue to exist.[52] NASD stated that recent joint reviews with the Commission, as well as NASD examinations and enforcement actions, demonstrate that an informal approach has not been sufficiently effective at curbing the sales practice abuses in this area.[53]

NASD also discussed its ''measured approach'' to the rulemaking process.[54] After NASD determined that a rule specific to deferred variable annuities was necessary and appropriate, it issued *Notice to Members* 04–45 (June 2004) to solicit comments from the public prior to submitting the proposed rule to the Commission.[55] In addition, NASD sought input on the proposal from five NASD standing committees, including two committees with subject matter expertise in variable annuities.[56] NASD Regulation, Inc.'s Board of Directors then approved the proposal and NASD's Board of Governors had an opportunity to review it.[57] NASD modified the proposed rule in light of comments it received from all of these sources prior to filing it with the Commission.[58]

In addition, NASD stated that nothing in section 15A, Section 19, or any other provision of the Act requires it to generate a competitive impact statement or otherwise engage in a cost/benefit analysis.[59] It also noted that, as required under section 19(b)(1) of the Act,[60] NASD submitted to the Commission a concise general statement of the basis and purpose of the proposed rule.[61]

As discussed in Part IV below, in approving a proposed NASD rule, the Commission must find that the rule is consistent with the requirements of sections 15A(b)(6) and 15A(b)(9) of the Act. Section 15A(b)(6) requires, among other things, the rules of a national securities association to be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[62] Section 15A(b)(9) provides that proposed rules may not create a ''burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].'' [63] NASD addressed the consistency of the proposed rule with these requirements, stating:

> NASD believes that the proposed rule will enhance firms' compliance and supervisory systems and provide more comprehensive and targeted protection to investors regarding fraud and manipulative acts, promote just and equitable principles of trade, and increase investor protection * * *. Like all regulation, NASD's rules often impose compliance obligations on the regulated entities. In every case, the compliance burdens associated with a new rule will vary from firm to firm depending on the firm's customer base, business model, and a variety of other factors. Section 15A(b)(9) of the Act does not, therefore, require that NASD rules impose no economic burden on NASD members or burden on competition, but rather that any such burdens are necessary and appropriate to further the purposes of the Act * * *. NASD believes that the proposed rule is consistent with, and promotes the goals of the Act.[64]

B. Comments on Proposed Rule 2821(b)—Recommendation Requirements

1. Comments on Proposed Rule 2821(b)(1)(A)—Renumbered Proposed Rule 2821(b)(1)(A)(i)

As proposed in Amendment No. 2, Proposed Rule 2821(b)(1)(A) would have required registered representatives to have a reasonable belief that the customer has been informed of the material features of deferred variable annuities in general prior to recommending a particular variable annuity to a customer.[65] One commenter stated that the rule should clarify what constitutes the material features of a deferred variable annuity, and should have a safe harbor to protect good faith attempts to disclose the required information.[66] Some commenters reiterated their support for a plain-English disclosure document to be provided to investors in addition to the prospectus.[67]

The substance of this provision remained the same in Amendment No. 3, but in response to comments NASD explicitly stated that the type of disclosure required is generic and not specific to the particular deferred variable annuity being recommended. The provision now provides that the member or person associated with the member must have a reasonable basis to believe that ''the customer has been informed, in general terms, of various features of deferred variable annuities * * *.

2. Comments on Proposed Rule 2821(b)(1)(B)—Renumbered Proposed Rule 2821(b)(1)(A)(ii)

As proposed in Amendment No. 2, Proposed Rule 2821(b)(1)(B) would have required a registered representative to

[49] *Id.* at 2.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] *Id.*

[54] *Id.* at 3.

[55] *Id.*

[56] *Id.* at 4.

[57] *Id.* at 4. NASD noted that its Board of Governors is composed of both industry and non-industry members and that one member must be a representative of an insurance company. *Id.* at 4, nt. 6. Similarly, NASD Regulation, Inc.'s Board of Directors is composed of both industry and non-industry members, and one member must be a representative of an insurance company or an affiliated NASD Member. *Id.* at 4, nt. 6.

[58] *Id.* at 4.

[59] *Id.*

[60] 15 U.S.C. 78s(b)(1).

[61] NASD Response Letter at 4.

[62] 15 U.S.C. 78o–3(b)(6). *See also* 15 U.S.C. 78c(f) (the Commission must consider whether the action will promote efficiency, competition and capital formation when it is required to consider whether an action is necessary or appropriate in the public interest).

[63] 15 U.S.C. 78o–3(b)(9).

[64] NASD Response Letter at 4–5.

[65] In response to Amendment No. 1, commenters stated this provision would amount to a *de facto* requirement to provide written disclosure to customers. *See, e.g.,* Letters from Beth L. Climo, Executive Director, American Bankers Insurance Association/ABA Securities Association (Sept. 20, 2005); Carl B. Wilkerson, Vice President and Chief Counsel, America Council of Life Insurers (Sept. 19, 2005) (''ACLI Letter II''), Thomas M. Yacovino, Vice President, A.G. Edwards & Sons, Inc. (Sept. 20, 2005); Roger C. Ochs, President, HD Vest Financial Services (Sept. 20, 2005); Michael P. DeGeorge, General Counsel, National Association for Variable Annuities (Sept. 19, 2005) (''NAVA Letter II''); Thomas R. Moriarty, President, Intersecurities, Inc. (Sept. 16, 2005) (''Intersecurities Letter''); Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association (Sept. 19, 2005) (''SIA Letter I''); Ronald C. Long, Senior Vice President, Wachovia Securities, LLC (Sept. 19, 2005) (''Wachovia Letter''). Commenters also asserted that this disclosure, along with the other disclosures already provided to investors who purchase or exchange deferred variable annuities, would be redundant and would overwhelm investors. *See e.g.,* Letter from Leesa M. Easley, Chief Legal Officer, World Group Securities, Inc. (Sept.8, 2005); ACLI Letter II; Intersecurities Letter; NAIFA/AALU Letter II; NAVA Letter II; SIA Letter I.

[66] FSI Letter II.

[67] *See, e.g.,* Letters from Patricia Struck, President, North American Securities Administrators Association (July 21, 2006) (''NASAA Letter II''); Jill I. Gross, Director of Advocacy, Pace Investor Rights Project (July 19, 2006) (''Pace Letter II''); Robert S. Banks, Jr., President, Public Investors Arbitration Bar Association (July 20, 2006).

have a reasonable basis to believe that a customer would benefit from the unique features of a deferred variable annuity prior to recommending the purchase or exchange of one. Amendment No. 2 included tax-deferred growth, annuitization and death benefits as a non-exhaustive list of unique features.

Some commenters stated that the standard should be that the customer ''could'' benefit from the features because stating that the customer would benefit implies a level of certainty and guarantee that cannot be known at the time of the purchase or exchange.[68] Other commenters also suggested deleting the modifier ''unique,'' stating that the features NASD lists as examples are not unique to deferred variable annuities.[69] In the alternative, one of these commenters suggested that NASD expand the list of features it gives as examples to include features such as living benefits.[70]

NASD agreed that some other products have features similar to those of a deferred variable annuity, and in Amendment No. 2 deleted the reference to ''unique.'' NASD also adopted commenters' suggestion to include ''living benefits'' in the list of features and modified the proposed rule accordingly in Amendment No. 3.

3. Comments on Proposed Rule 2821(b)(2)

The proposed rule would require registered representatives to make reasonable efforts to obtain a variety of information about a customer, including age, financial situation and needs, liquid net worth and intended use of the deferred variable annuity, prior to recommending a purchase or exchange of a deferred variable annuity to that customer.[71] A number of commenters raised interpretive issues about or questioned the relevance of particular information.[72] NASD declined to amend this provision in response to these comments.

4. Comments on Proposed Rule 2821(c)—Principal Review and Approval

a. General Comments

As proposed in Amendment No. 2, the principal review and approval requirements of paragraph (c) would have applied to both recommended and non-recommended transactions.[73] Commenters stated that the factors a registered principal considers should adequately reflect the differences between recommended and non-recommended transactions.[74] These commenters noted that if a transaction is not recommended, a principal may not have information regarding a customer's overall investment portfolio and would need to request that information from the customer.[75]

In Amendment No. 3, NASD noted some commenters stated that customers should be free to decide whether they want to purchase a deferred variable annuity, and thus the proposed rule's principal review requirements should not apply to non-recommended transactions.[76] NASD agreed that a fully informed customer should be able to make his or her own investment decision and modified this portion of the proposed rule. As amended, a registered principal ''may authorize the processing [of a non-recommended transaction] if the registered principal determines that the transaction was not recommended and that the customer, after being informed of the reason why the registered principal has not approved the transaction, affirms that he or she wants to proceed with the purchase or exchange of the deferred variable annuity.'' [77]

Two commenters took the position that the supervisory requirements of the proposed rule would run counter to established legal principles and the rules, systems, and divisions of responsibility already in place.[78] One of these commenters stated that the proposed rule would impose affirmative duties upon supervisory and compliance personnel to make individualized suitability determinations, in contravention of the letter and spirit of section 15(b)(4)(E) of the Act.[79]

Another commenter stated that the proposed rule should provide specific standards for principal review of age, liquidity needs, and the dollar amount involved.[80] In that commenter's view, permitting firms to set their own standards would invite abuse.[81] NASD's initial filing [82] with the Commission and Amendment No. 1 [83] would have

[68] *See, e.g.*, Letter from Ira D. Hammerman, General Counsel, Securities Industry Association (July 19, 2006) (''SIA Letter II''); ACLI Letter IV; NAVA Letter III. These commenters noted that this comment is also applicable to Proposed Rule 2821(c)(1)(A). *See* supra note 120.

[69] *See, e.g.*, ACLI Letter IV; CAI Letter II; FSI Letter II; NAVA Letter III. These commenters noted that this comment is also applicable to Proposed Rule 2821(c)(1)(A). *See* supra note 120.

[70] CAI Letter II.

[71] In response to Amendment No. 1, some commenters urged NASD to eliminate this provision, stating that NASD Rules 2310 and 3110, as well as Rule 17a–3(a)(17)(i)(A) under the Act, should govern the information that members are required to gather in making recommendations to purchase or exchange deferred variable annuities. *See e.g.*, Letters from Daniel A. Riedl, Senior Vice President and Chief Operating Officer, Northwestern Mutual Investment Services (Sept. 16, 2005) (''NMIS Letter''); M. Shawn Dreffein, President and Chief Executive Officer, National Planning Holdings, Inc. (Sept. 9, 2005); John L. Dixon, President, Pacific Select Distributors, Inc. (Sept. 16, 2005); NAVA Letter II.

[72] Three commenters stated that the proposed rule should not require a registered representative to obtain information if the customer declines to provide it upon request. Letter from Kerry Cunningham, Head of Risk Management, ING Advisors Network (July 20, 2006) (''ING Advisors Letter II''); ACLI Letter IV; FSI Letter II. One commenter stated that the information should be obtained during the sales process and not necessarily before any recommendation is made. ING Advisors Letter II. One commenter stated that the registered representative should make a reasonable effort to determine overall investment objectives but not intended use. *Id.* A number of commenters questioned the difference between the intended use of a deferred variable annuity and the customer's investment objective. *See, e.g.*, Letters from Timothy J. Lyle, Senior Vice President and Chief Compliance Officer, Contemporary Financial Solutions (July 19, 2006) (''Contemporary Financial Letter''); Timothy J. Lyle, Senior Vice President and Chief Compliance Officer, Mutual Service Corporation (July 19, 2006) (''Mutual Service Letter II''); FSI Letter II; ING Advisors Letter II. Some commenters suggested that a customer's life insurance holdings are not relevant to a deferred variable annuity suitability analysis. *See, e.g.*, CAI Letter II; Contemporary Financial Letter; FSI Letter II; Mutual Service Letter II; NAVA Letter III; Sorrento Letter; SIA Letter II.

[73] In response to Amendment No. 1, some commenters objected to requiring principal review of transactions that are not recommended. *See, e.g.*, Letters from Frances M. Stadler, Deputy Senior Counsel, Investment Company Institute (Sept. 19, 2005) (''ICI Letter''); Henry H. Hopkins, Darrell N. Braman and Sara McCafferty, T. Rowe Price Investment Securities, Inc. (Sept. 19, 2005) (''T. Rowe Price Letter''); NMIS Letter. One commenter noted that the information that would be needed for a principal review is not currently required to be collected for non-recommended annuity transactions. *See* T. Rowe Price Letter. Some commenters also stated that requiring review for non-recommended transactions would allow principals to second guess investors' decisions. *See, e.g.*, ICI Letter; NMIS Letter.

[74] *See* Letter from Darrell N. Braman, Vice President and Associate Legal Counsel and Sarah McCafferty, Vice President and Associate Legal Counsel, T. Rowe Price Associates, Inc. (July 19, 2006) (''T. Rowe Price Letter II''); ICI Letter II.

[75] ICI Letter II; T. Rowe Price Letter II.

[76] Amendment No. 3 is available on NASD's Web site at *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p017909.pdf.*

[77] *See* Proposed Rule 2821(c).

[78] *See* NAIFA/AALU Letter II; NSCP Letter. In response to Amendment No. 1, several commenters stated that the proposed principal review requirement was unduly duplicative of NASD Rule 3110. *See* Letters from Deirdre B. Koerick, Vice President, Lincoln Investment Planning, Inc. (Sept. 19, 2005); Jennifer B. Sheehan, Assistant Vice President and Counsel, Massachusetts Mutual Life Insurance Comp. (Sept. 19, 2005); ACLI Letter IV; NAVA Letter II; SIA Letter II.

[79] NSCP Letter.

[80] Pace Letter II.

[81] *Id.*

[82] NASD's initial filing is available at *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p012780.pdf.*

[83] *See* supra note 4.

required members to establish standards with respect to a variety of factors, including the customer's age and the extent to which the amount of money invested in the deferred variable annuity exceeds a stated percentage of the customer's net worth. NASD stated in Amendment No. 2 that ''while conceptually appealing, the establishment of specific thresholds would unnecessarily limit a firm's discretion in establishing procedures that adequately address its overall operations. NASD did not intend to require a firm to reject all deferred variable annuity transactions involving person over a particular age or dollar amounts over a particular level. Rather, NASD intended only that principals consider the highlighted factors as part of their review, which is a facts and circumstances inquiry.'' [84]

b. Comments on the Timing of Principal Review

Amendment No. 2 would have required registered principals to review all purchases and exchanges of deferred variable annuities no later than two business days following the date when the customer's application is transmitted to the issuing insurance company.[85] Two commenters stated that the basis for the two-day timeframe is arbitrary and has not been explained or justified.[86] A few commenters viewed the proposed rule as prioritizing speed over diligence without adequate justification.[87] One commenter stated that the timeframe was intended to allow principals to catch unsuitable sales before a contract has been issued, but contracts may be issued before the principal's review is completed even under the revised timeframe.[88] One commenter stated that ''free look'' provisions that are available under some states'' insurance laws offer a greater opportunity to redress unsuitable sales.[89]

Numerous commenters stated that it would be difficult to comply with the revised timeframe.[90] Two commenters remarked that the supervisory review timeframe does not take into account the varied business models of member firms.[91] These commenters stated that in some instances, the registered principal who reviews transactions is stationed at the issuing insurance company.[92] In those instances, the commenters stated that those individuals might not be able to serve as the reviewing principal because the triggering event is the transmission to the insurance company.[93] One commenter also noted that the proposed rule would not accommodate instances in which the application is transmitted to the issuing insurance company and the member firm simultaneously.[94]

Commenters stated that it would be especially difficult to comply with the proposed timeframe when the principal needs to get additional information from the customer, registered representative, or Office of Supervisory Jurisdiction (''OSJ'') manager.[95] One commenter stated that fear of missing the deadline may discourage principals from seeking this additional information.[96] Another commenter suggested that a review should be required to take place no later than two business days following the date the member transmits the application or no later than two business days after receipt by the insurance company to accommodate instances in which the customer sends the application directly to the insurance company.[97]

In Amendment No. 4, NASD modified the proposed rule to further address these comments.[98] As amended, the proposed rule would require a principal to review the transaction prior to transmitting a customer's application to the issuing insurance company for processing, but no later than seven business days after the customer signs the application.[99]

One commenter addressed the safeguarding of customer funds during the principal review and stated that ''clarification is needed regarding the degree of flexibility afforded to firms with respect to the safekeeping of customer funds during the review period. Rather than dictating specific procedures, firms should be permitted

[84] Amendment No. 2 is available on NASD's Web site at *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p016480.pdf.*

[85] Pursuant to Amendment No. 1, registered principals would have been required to review all purchases and exchanges prior to transmitting a customer's application to the issuing insurance company for processing.

[86] *See* ACLI Letter IV; FSI Letter II.

[87] *See, e.g.*, FSI Letter II; NAIFA/AALU Letter II; NSCP Letter. Another commenter stated that difficulty complying with the timeframe would force some broker-dealers to cancel contracts once the insurance company has already issued them. *See* CAI Letter II.

[88] CAI Letter II.

[89] ACLI Letter IV. In NASD's initial filing with the Commission, it disagreed with commenters who suggested that state-required ''free look'' periods make early principal review unnecessary. NASD explained that a ''free look'' period allows the customer to terminate the contract without paying any surrender charges and receive a refund of the purchase payments or the contract value, as required by applicable state law. Free-look periods, which vary by state law, typically range from ten to thirty days. NASD went on to state that allowing a suitability analysis to be reviewed by a principal long after an insurance company issues a deferred variable annuity contract would be inconsistent with an adequate supervisory system and would make it difficult for a member to quickly identify problematic trends. NASD's initial filing is available on its Web site at *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p012780.pdf.*

[90] *See, e.g.*, CAI Letter II; Contemporary Financial Letter; FSI Letter II; ING Advisors Letter II; Mutual Service Letter II; NAVA Letter III; NSCP Letter; Sorrento Letter.

[91] *See* NSCP Letter; T. Rowe Price Letter II.

[92] *Id.*

[93] *Id.*

[94] NSCP Letter. This commenter noted that when this occurs, the application is reviewed by the insurance company and the member firm simultaneously.

[95] *See, e.g.*, CAI Letter II; Contemporary Financial Letter; FSI Letter II; ING Advisors Letter II; Mutual Service Letter II; NAVA Letter III; NSCP Letter; Sorrento Letter.

[96] CAI Letter II.

[97] T. Rowe Price Letter II.

[98] NASD also amended the timing or principal review requirement in Amendment No. 3. That amendment would have required principals to review the transaction no later than two business days after the application was sent to the issuing insurance company if no additional contact was necessary with the customer or the registered representative. If additional contact was needed with either the customer or the registered representative, then review would have had to be completed within five business days of the application being sent to the issuing insurance company. The Commission received several comments on this timing provision, all of which are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml.*) Commenters stated that the limited review period in Amendment No. 3 was problematic and arbitrary. These commenters also suggested requiring principal review to be completed within a reasonable time period, not to exceed the expiration of the free look period, following the date the broker-dealer transmits the application to the issuing insurance company. *See e.g.*, Letter from Dale E. Brown, Executive Director and CEO, Financial Services Institute (Mar. 5, 2007) (''FSI Letter III''); Letters Type E and F.

Comments addressing subparagraph (b)(1)(A) of Amendment No. 3 stated that requiring registered representatives to ''determine'' whether a transaction was suitable, rather than having a ''reasonable basis to believe'' it, raised the bar for suitability determinations. *See e.g.*, FSI Letter III and Letters Type E and F. In Amendment No. 4, NASD revised this language to require registered representatives to have ''a reasonable basis to believe'' that the deferred variably annuity is suitable.

Commenters also stated the reference in subparagraph (b)(1)(A)(i) to the ''various'' features of deferred variable annuities created an ''unacceptable level of ambiguity'' and that the prior proposal's use of ''material'' features was preferable. *See e.g.*, FSI Letter III and Letters Type E and F.

[99] In response to Amendment No. 4, commenters requested that the Commission seek additional comment on the proposed rule. Letter from Clifford Kirsch, Sutherland Asbill and Brennan LLP on behalf of Committee of Annuity Insurers (April 9, 2007) (''CAI Letter III''); Letters Type G and H. One commenter stated that commenters have not had an opportunity to address whether Amendment No. 4 causes any unintended consequences regarding the safeguarding of customer funds at the broker-dealer for as many as seven days and to provide feedback regarding the contours of the proposed no-action relief from Exchange Act Rules 15c3–1 and 15c3–3. CAI Letter III. *See also* infra notes 101–112 and accompanying text.

to design procedures tailored to their business model.''[100] Exchange Act Rule 15c3–3 requires broker-dealers to safeguard customer funds and securities. While Rule 15c3–3 requires that a broker-dealer promptly forward checks and include as a credit in the reserve formula all customer free credit balances, it does not specify any specific procedures that a broker-dealer must use to be in compliance with the rule. Rather, it allows a broker-dealer to tailor its procedures to its particular business model. NASD Rule 2821 will not affect the applicability of Exchange Act Rule 15c3–3 with respect to the safeguarding of customer funds.

The Commission also received comments on the timeframe for principal review proposed in Amendment No. 4.[101] Some commenters addressed NASD's requested no-action relief[102] and highlighted related implementation issues.[103]

One commenter addressed situations in which an insurer's contract issuance unit is physically resident at the same location as one of the insurer's captive broker-dealer offices, and both areas share personnel with one another.[104] It asked for clarification of whether receipt of customer applications by broker-dealer personnel for principal review in these co-located situations would be considered a transmittal to the issuing insurance company for processing under proposed Rule 2821(c).[105] NASD responded by stating that in these situations ''[it] would consider the application ''transmitted'' to the insurance company only when the broker-dealer's principal, acting as such, has approved the transaction, provided that the affiliated broker-dealer ensures that arrangements and safeguards exist to prevent the insurance company from issuing the contract prior to principal approval by the broker-dealer.[106]

The Commission believes that NASD can address implementation issues, to the extent they arise, during the proposed six month implementation period. Notably, the revised timeframe in Amendment No. 4 is substantially similar to the timeframe that NASD proposed and that the Commission published for comment in Amendment No. 1, which would have required a principal to review a transaction prior to sending the application to the insurance company for processing. The Commission received numerous comments on the timing of principal review provision as it was proposed in Amendment No. 1.[107] While some commenters supported it because they believed it would give principals sufficient time for a thorough review and provide greater assurances that unsuitable transactions would not be consummated,[108] others objected to it.[109] Some commenters were concerned that members would be subject to liability for market changes affecting the value of the deferred variable annuity during the delay for supervisory review.[110] Some commenters stated that a delay in pricing the contract would be unfair to customers.[111] Others stated that the timing deadline would require costly reprogramming of broker-dealers' electronic processing systems that forward contracts to the insurance company and the registered representative's home office at the same time.[112]

One commenter stated that the interaction of this provision with other Commission and NASD rules could limit a firm's ability to review applications thoroughly.[113] Another stated that time-linking the application process with supervisory review would impair the goal under the Investment Company Act of 1940 of timely processing.[114]

A few commenters stated that the time deadline would not work in the context of direct sales because in those sales an insurance company may not know of an applicant's interest in a deferred variable annuity until it receives the application.[115] Another stated that the timing deadline would not take into account situations in which the registered principal is housed in the insurance company.[116]

A few commenters also stated that their current supervisory structure as an Office of Supervisory Jurisdiction would be incapable of dealing with the prior approval requirement and they would be forced to eliminate this form of supervisory structure.[117] One commenter stated the requirement could overwhelm principals,[118] and another stated that it would require members to allocate two to three times the supervisory staff for deferred variable annuities than for any other product.[119]

c. Proposed Rule 2821(c)—Principal Review and Approval

In Amendment No. 2, NASD listed a variety of factors that a registered principal would be required to consider in reviewing the purchase or exchange of a deferred variable annuity. In Amendment No. 3, NASD modified this provision to require registered principals to consider all of the factors that a registered representative must consider in Proposed Rule 2821(b) (''Recommendation Requirements'') and eliminated the references to the considerations in subparagraph (c)(1) (''Principal Review and Approval'') of the proposed rule. NASD also moved the considerations relating to exchanges

[100] CAI Letter III.

[101] Letter from Eric A. Arnold and Clifford E. Kirsch, Sutherland Asbill and Brennan LLP on behalf of Committee of Annuity Insurers (May 24, 2007) (''CAI Letter IV''); Letters Type G and H.

[102] *See* supra note 21.

[103] *See* CAI Letter IV.

[104] *Id.*

[105] *Id.*

[106] *See* Letter from James S. Wrona, Associate Vice President, FINRA (Aug. 10, 2007).

[107] A summary of these comments addressing Amendment No. 1 was published in the **Federal Register** along with the Commission's notice of Amendment No. 2. *See* supra notes 4 and 6.

[108] Letters from Patricia Struck, President, North American Securities Administrators Association (September 20, 2005) and Rosemary J. Shockman, President, Public Investors Arbitration Bar Association (Sept. 9, 2005).

[109] *See, e.g.*, Letters from W. Thomas Conner and Eric A. Arnold, Sutherland Asbill & Brennan on behalf of The Committee of Annuity Insurers (Sept. 19, 2005) (''CAI Letter I''); John S. Simmers, CEO, ING Advisors (Sept. 19, 2005) (''ING Letter I''); ACLI Letter II; NAVA Letter II.

[110] Letters from Denise M. Evans, General Counsel, Associated Securities Corp. (Sept. 19, 2005) (''Associated Securities Letter''); John L. Dixon, President, Pacific Select Distributors (Sept. 16, 2005) (''Pacific Select Letter''); and Julie Gerbert, Vice President, United Planners' Financial Services of America (Sept. 19, 2005) (''United Planners Letter'').

[111] ACLI Letter II; Pacific Select Letter; and United Planners Letter.

[112] CAI Letter I; NMIS Letter.

[113] ING Letter I.

[114] ACLI Letter II.

[115] CAI Letter I; NAVA Letter II; T. Rowe Price Letter I. In direct sales, customers may apply for an annuity contract by calling the insurance company or by completing an application on the Internet. NAVA Letter II. Receipt of the application is frequently the first time the insurance company even knows that the customer has filled out an application. *Id.*

[116] NMIS Letter.

[117] Letter from Shawn M. Mihal, Chief Compliance Officer, Great American Advisors (Sept. 19, 2005) and ING Letter I. These comments were submitted in response to Amendment No. 1, which would have required principals to review customers' applications prior to transmitting them to the issuing insurance company for processing. The commenters assumed that there would be no relief from Rules 15c3–1 and 15c3–3, and thus broker-dealers would have to forward checks (along with applications) to the insurance company by noon of the next business day after receiving those checks. Based on this assumption, the commenters indicated that there would not be sufficient time for representatives to forward the paperwork to the OSJ manager and the OSJ manager to review the application within the time parameters required by Rules 15c3–1 and 15c3–3. These timing concerns have been addressed by the Commission's exemptions from Rules 15c3–1 and 15c3–3 to allow NASD members to comply with the proposed rule without becoming fully subject to Exchange Act Rule 15c3–3 and being required to maintain higher levels of net capital in accordance with Rule 15c3–1. *See* Exchange Act Release No. 56376 (Sept. 7, 2007).

[118] Wachovia Letter.

[119] Associated Securities Letter.

that were in subparagraph (c)(1)(D) of Amendment No. 2 to paragraph (b) in Amendments Nos. 3 and 4. By doing this, NASD added these determinations to those factors a registered representative must consider and retained them as considerations for principal review.

i. Comments on Proposed Rule 2821(c)(1)(A) as Amended by Amendment No. 2—Principal Review and Approval

The rule, as amended by Amendment No. 2, would have required principals to consider the extent to which the customer would benefit from the unique features of a deferred variable annuity. A number of commenters remarked that their comments on proposed Rule 2821(b)(1)(B) are equally applicable to this provision and that ''would'' should be changed to ''could'' and that the modifier ''unique'' should be deleted.[120] In response to comments, NASD changed ''unique'' to ''various.'' As amended by Amendment No. 3, the rule would require registered principals to have a reasonable basis to believe that the customer has been informed, in general terms, of the various features of deferred variable annuities.[121]

ii. Comments on Proposed Rule 2821(c)(1)(C) as Amended by Amendment No. 2—Principal Review and Approval

The rule, as amended by Amendment No. 2, would have required principals to consider the extent to which the amount of money invested would result in an undue concentration in a deferred variable annuity or deferred variable annuities in the context of the customer's overall investment portfolio. Two commenters stated the term ''undue concentration'' is imprecise and capable of multiple interpretations.[122] Some commenters also viewed the proposed requirement to consider the customer's liquidity needs as subsuming the apparent intent of this provision.[123] In Amendment No. 3, NASD deleted this provision.

iii. Comments on Proposed Rule 2821(c)(1)(D)(ii) as Amended by Amendment No. 2—Principal Review and Approval

The rule, as modified by Amendment No. 2 would have required registered principals to consider the extent to which the customer would benefit from any potential product enhancements and improvements in the case of an exchange of a deferred variable annuity. One commenter stated that ''would'' should be changed to ''could'' because whether a customer benefits is determined years after the contract is purchased and depends on market performance.[124] In Amendment No. 3, NASD deleted this specific paragraph, but, provided in paragraph (b) (''Recommendation Requirements'') that principals must consider, in the case of an exchange, whether the customer would benefit from any potential product enhancements and improvements in their review.[125]

iv. Comments on Proposed Rule 2821(c)(1)(D)(iii) as Amended by Amendment No. 2—Principal Review and Approval

The rule, as modified in Amendment No. 2, would have required principals, in the case of an exchange of a deferred variable annuity, to consider the extent to which the customer's account has had another deferred variable annuity exchange within the preceding thirty-six months. One commenter, while supporting this provision, believed that the registered principal should also review the total sales production of variable annuities of associated persons to detect unsuitable sales and other potential abuses.[126] A number of commenters stated that it would be difficult to comply with this requirement.[127] In their view, principals may have a difficult time obtaining this information, especially if the exchange occurred at another broker-dealer.[128] These commenters also stated that customers may not want to share this kind of information, citing privacy concerns or policy concerns with the other broker-dealers.[129]

One commenter stated that the proposed rule should specify whether principals have to collect information on exchanges that occurred at the reviewing firm only or also on exchanges that occurred at other broker-dealers.[130] Two commenters argued that the proposed rule should clarify whether a registered principal is only obligated to consider prior exchange information if it is available to him or her at the time of his or her review.[131]

One commenter stated that the provision would impose substantial administrative and supervisory costs on broker-dealers, which would have to implement cumbersome and expensive additional surveillance tools.[132] Another commenter stated the proposed rule should clarify the level of inquiry and documentation necessary to comply with this provision.[133] In Amendment No. 3, NASD eliminated this specific provision, but provided in paragraph (b) (''Recommendation Requirements'') that principals must consider, in the case of exchange, the extent to which the customer account has had another deferred variably annuity exchange within the preceding thirty-six months.[134] NASD has stated that it will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval and that the effective date will be 120 days following publication of the Notice to Members announcing Commission approval. NASD has indicated that it may address the type of implementation issues commenters raised with respect to determining whether a customer's account has had a deferred variable annuity exchange within the preceding 36 months in connection with that *Notice to Members.*

d. Comments on Proposed Rule 2821(c)(2)—Principal Review and Approval

The proposed rule would require the registered principal who reviewed and approved, rejected, or authorized the transaction to document and sign the determinations that he or she is required to make pursuant to subparagraph (c) of the proposed rule.

As proposed in Amendment No. 2, the principal who approves a transaction would have been required to sign the registered representative's suitability determination. One commenter stated that this provision should be eliminated because ''it would establish an unprecedented standard of requiring principals to fully endorse all of the considerations leading to the

[120] See, *e.g.*, ACLI Letter IV; FSI Letter II; NAVA Letter III; SIA Letter II. *See also* supra notes 68 and 69.

[121] *See* Proposed Rule 2821(b)(1)(A)(i).

[122] *See, e.g.*, NAVA Letter III; ACLI Letter IV. Two other commenters noted that NASD should provide more guidance on what would amount to an ''undue concentration'' because deferred variable annuities often take significant portions of a customer's assets. See FSI Letter II; Sorrento Letter.

[123] *See, e.g.*, ACLI Letter IV; CAI Letter II; NAVA Letter III.

[124] *See* NAVA Letter III.

[125] *See* Proposed Rule 2821(c) and Proposed Rule 2821(b)(1)(B)(ii).

[126] *See* NASAA Letter II.

[127] *See*, *e.g.*, CAI Letter II; Contemporary Financial Letter; FSI Letter II; Mutual Service Letter II; Sorrento Letter; T. Rowe Price Letter II.

[128] *Id.*

[129] *Id.*

[130] *See* CAI Letter II.

[131] *See* Contemporary Financial Letter; Mutual Service Letter II.

[132] *See* NSCP Letter.

[133] *See* CAI Letter II.

[134] *See* Proposed Rule 2821(c) and Proposed Rule 2821(b)(1)(B)(iii).

salespersons' recommendations.''[135] In this commenter's view, the principal's role should be to affirm the fact that the salesperson elicited information for completion of the suitability documents.[136] In Amendment No. 3, NASD eliminated the requirement that registered principals sign the registered representative's suitability determinations.

5. Comments on Proposed Rule 2821(d)—Supervisory Procedures

The rule, as modified by Amendment No. 2, would have required members to implement procedures and require principals to consider whether the associated person effecting the transaction has a particularly high rate of effecting deferred variable annuity exchanges.

Two commenters argued that the phrase ''particularly high rate'' is vague and unworkable.[137] A number of commenters noted that the proposed rule implies that principals would have to implement a transaction-by-transaction review and stated that members should be able to rely on exception reports as an effective solution to unsuitable exchanges.[138] One commenter also requested clarification regarding what should happen if a registered representative does have a particular high rate of exchanges.[139] NASD modified this provision in Amendment No. 3, eliminating the reference to a ''particularly high rate'' of exchanges.

6. Comments on Proposed Rule 2821(e)—Training

As provided in Amendment No. 2, members would be required to develop and document specific training policies or programs reasonably designed to ensure that associated persons who effect and registered principals who review transactions in deferred variable annuities comply with the requirements of the proposed rule and that they understand the material features of deferred variable annuities. Several commenters questioned the need for this specific requirement, as well as the standards applicable to the training.[140] NASD declined to amend this provision in response to comments.

7. NASD's Response to Comments

As discussed above, in response to the comments received on Amendment No. 1 NASD amended portions of the proposed rule and responded to comments. NASD also filed a response to the comments received on Amendment No. 2 with the Commission addressing concerns regarding the need for the proposed rule, the regulatory process that NASD undertook in developing the proposed rule, and the statutory requirements for SRO rulemaking.[141] In Amendment Nos. 3 and 4, NASD further responded to comments and modified the proposed rule.

IV. Discussion and Commission Findings

The Commission has reviewed carefully Proposed Rule 2821, the comments, and NASD's responses to the comments, and believes that NASD has responded appropriately to the concerns raised by the commenters. The Commission finds that Proposed Rule 2821, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with section 15A(b)(6) of the Act, which requires, among other things, 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, in general, to protect investors and the public interest.[142]

Over approximately the past three years, the majority of informal actions brought against broker-dealers as a result of NASD examinations of variable annuity sales have involved the failure to establish or follow written supervisory procedures.[143] During this time period, NASD also brought numerous enforcement actions charging broker-dealers with failing to supervise sales of variable annuities.[144] In addition, NASD's examinations found a substantial number of unsuitable recommendations and instances of failing to obtain customer account information.[145] It also brought numerous enforcement actions for making unsuitable recommendations.[146]

The proposed rule is designed to curb sales practice abuses in deferred variable annuities. Its recommendation requirements provide a specific framework for a broker-dealer's suitability analysis of these securities. By setting forth factors that a broker-dealer must specifically consider in recommending deferred variable annuities and requiring the registered representative to obtain certain information from his or her customers, the proposed rule should improve communications between registered representatives and customers regarding these securities. The supervisory review component should foster a thorough analytical review of every deferred variable annuity transaction in a timeframe that will limit the possibility of unsuitable recommendations and transactions. The proposed rule as a whole is geared to protecting investors by requiring firms to implement more robust compliance cultures, and to give clear consideration of the suitability of these complex products.

Commenters asserted that the proposed rule, because it is product specific, would result in significant burdens on competition. Pursuant to the Act's requirement, the Commission has considered the impact of Proposed Rule 2821 on efficiency, competition and capital formation,[147] as well as whether the rule would impose any burden on competition not necessary or appropriate in furtherance of the Act.[148] We note that other products, including options and penny stocks, are subject to product-specific regulations, due to their complexity or their history of sales practice abuses. NASD has demonstrated through its history of examinations, enforcement actions, and guidance to members that regulating variable annuities like other products has not been sufficient to curb sales practice abuses. Moreover, we note that the Act allows the Commission to approve a self-regulatory organization rule that imposes burdens on competition so long as those burdens are necessary or appropriate in furtherance of the purposes of the Act.[149] We believe that to the extent the

[135] *See* ACLI Letter IV.

[136] *Id.*

[137] *See* ACLI Letter IV; FSI Letter II.

[138] *See* ACLI Letter IV; CAI Letter II; FSI Letter II; NAVA Letter III.

[139] *See* CAI Letter II. The commenter questioned whether the principal has to reject the transaction or just give it closer scrutiny.

[140] One commenter stated there is no need for additional training requirements because NASD Rule 2310 requires registered representatives to understand the material features of the products they sell. *See* FSI Letter II; Letter Type C. Other commenters believed this provision is duplicative of the Firm Element portion of NASD's continuing education requirements. *See, e.g.,* 1st Global Letter II; FSI Letter II. One commenter believed the training requirements would interfere with members' efficient and effective allocation of training resources. *See* FSI Letter II. A number of commenters also suggested members' programs be held to the standard of being ''reasonably designed to achieve compliance'' with the proposed rule. *See, e.g.,* Contemporary Financial Letter; ING Advisors Letter II; Mutual Service Letter II.

[141] *See* NASD Response Letter.

[142] 15 U.S.C. 78o–3(b)(6).

[143] *See* infra note 148.

[144] *See* infra note 150.

[145] *See* infra note 148.

[146] *See* infra note 150.

[147] 15 U.S.C. 78c(f).

[148] 15 U.S.C. 78o–3(b)(9).

[149] *Id.*

proposed rule imposes burdens on competition, these burdens are necessary or appropriate in furtherance of the purposes of the Act, and particularly the purpose of protecting investors.

Commenters also expressed the view that Proposed Rule 2821 may impose compliance costs on broker-dealers that exceed their costs of complying with rules applicable to other products. The complexity of deferred variable annuities warrant more targeted regulation. NASD has attempted over the past few years to address problematic and unsuitable sales through non-rulemaking means, but has not found that approach to be successful. We agree with NASD that Proposed Rule 2821 will lead firms to enhance their compliance and supervisory systems, which in turn will provide more comprehensive and targeted protection to investors.[150]

While NASD has issued a number of *Notices to Members* and *Regulatory and Compliance Alerts* regarding the suitability of deferred variable annuities,[151] it continues to encounter numerous questionable sales practices through its examinations,[152] as well as through its investigations and informal discussions with its members.[153] Just within the last few years, NASD has brought a number of cases involving failures to supervise, suitability violations, and misrepresentation in connection with purchases and exchanges of deferred variable annuities.[154]

[150] *See* NASD Response Letter.

[151] *See Notice to Members* 96–86 and *Notice to Members* 99–35. In 2002, NASD issued a *Regulatory & Compliance Alert,* entitled ''NASD Regulation Cautions Firms for Deficient Variable Annuity Communications,'' that, among other things, discussed NASD's discovery of unacceptable sales practices regarding variable annuities. In another *Regulatory & Compliance Alert* in 2002, entitled ''Reminder—Suitability of Variable Annuity Sales,'' NASD emphasized, in part, that an associated person must be knowledgeable about a variable annuity before he or she can determine whether a recommendation to purchase, sell or exchange the variable annuity is appropriate. NASD has also issued a number of *Investor Alerts* regarding variable annuities. In 2001, NASD issued an *Investor Alert* entitled ''Should You Exchange Your Variable Annuity?'' highlighting important issues that investors should consider before agreeing to exchange a variable annuity. In 2003, NASD issued an *Investor Alert* entitled ''Variable Annuities: Beyond the Hard Sell,'' which cautioned investors about certain inappropriate sales tactics and highlighted the unique features of these products.

[152] From July 2004 to April 2007, NASD completed a total of 807 routine examinations involving the review of variable annuities. *See* Letter from James S. Wrona, Associate Vice President, NASD (May 15, 2007) (''NASD Examination/Enforcement Update Letter''). These examinations resulted in 92 Letters of Caution, 45 Compliance Conferences, and 4 Acceptance, Waiver and Consent letters, in which a respondent accepts a finding of a violation, consents to the imposition of sanctions, and agrees to waive the right to a hearing. *Id.* While the majority of these actions involved the failure to establish or follow written supervisory procedures, a number of actions related to the failure to obtain and maintain customer account information, unsuitable recommendations, and the failure to comply with standards relating to communications with the public. *Id.* These findings do not include cause examinations, many of which result in formal action that is captured by enforcement actions, discussed in note 150 below. *Id.* Nor do the findings include information from special examination initiatives. *Id.*

[153] *See* NASD Response Letter.

[154] *See, e.g., Phillip Nelson,* NASD Case No. 2006004829701 (April 3, 2007) (providing misleading communication to customer regarding a variable annuity); *Victoria C. Smotherman,* NASD Case No. 2006003897501 (March 21, 2007) (fraudulently inducing purchases of variable annuities); *Donna Vogt,* NASD Case No. EAF0400730002 (Feb. 21, 2007) (making unsuitable variable annuity recommendations); *Raymond James Financial Services, Inc.,* NASD Case No. EAF0400730001 (Jan. 31, 2007) (failing to properly supervise by permitting producing branch managers to supervise themselves and by not properly reviewing variable annuity sales and exchanges); *Peter F. Esposito,* NASD Case No. 2005002689601 (Dec. 8, 2006) (submitting falsified account information to his firm concerning the liquidation of a variable annuity); *Quick & Reilly, Inc.,* NASD Case No. E102003158301 (Dec. 1, 2006) (failing to supervise variable annuity sales); *Waddell & Reed, Inc.,* NASD Case No. E062004029603 (Nov. 24, 2006) (failing to supervise sales of variable annuities where unregistered persons were selling such products); *David L. McFadden,* NASD Case No. E2005000226001 (Nov. 15, 2006) (fraudulent and unsuitable sales of variable annuities, mutual funds, and exchange traded fund shares); *CCO Investment Services, Corp.,* NASD Case No. E112005014002 (Oct. 16, 2006) (failing to, among other things, supervise variable annuity sales); *Daniel Carlos Lacey,* NASD Case No. E062004000201 (Aug. 11, 2006) (making unsuitable recommendations regarding variable annuities exchanges); *Michael K. Maunsell,* NASD Case No. 2005001939501 (Aug. 2, 2006) (making unsuitable variable annuity recommendations); *Carole G. Ferraro,* NASD Case No. E0520030291 (July 21, 2006) (making unsuitable recommendations regarding variable annuities); *Jerry Swicegood,* NASD Case No. 2005002683001 (July 13, 2006) (falsifying documents related to variable annuity exchanges); *Eric J. Brown,* NASD Case No. E112003006903 (June 27, 2006) (making unsuitable recommendations and false statements regarding variable annuities); *Joseph Vitetta,* NASD Case No. E10200412250 (June 8, 2006) (making unsuitable recommendation regarding a variable annuity, among other violations); *AmSouth Investment Services, Inc.,* NASD Case No. E052004025802 (May 24, 2006) (failing to establish and maintain reasonable supervisory system in connection with sales of variable annuities and mutual funds); *Charles Snyder,* NASD Case No. E112004042001 (May 2, 2006) (making unsuitable variable annuity recommendations); *Frank P. Grasse,* No. EL120030533 (April 17, 2006) (falsifying customer information on variable annuity applications); *Tyler M. Kerrigan,* NASD Case No. E0520030355 (March 10, 2006) (recommending unsuitable variable annuity transactions); *Angelisa Savage-Bryant,* NASD Case No. E072004064201 (March 6, 2006) (misrepresentation in connection with a variable annuity exchange); *Brian Carr,* NASD Case No. E9B2003043802 (Feb. 22, 2006) (making unsuitable variable annuity recommendations); *John Babiarz,* NASD Case No. 2005002047301 (Feb. 10, 2006) (making unsuitable variable annuity recommendations); *Michael Lancaster,* NASD Case No. E8A20040995–01 (Nov. 30, 2005) (making unsuitable recommendations regarding variable annuity subaccounts); *Lawrence LaBine,* NASD Case No. C3A20040045 (Nov. 22, 2005) (unsuitable recommendations to five customers involving variable annuity subaccounts and mutual funds); *Mansell R. Spedding,* NASD Case No. E0220030907 (Sept. 21, 2005) (unsuitable subaccount allocation recommendation for variable annuity); *Rita N. Raymer,* NASD Case No. E0520030131 (Aug. 16, 2005) (unsuitable recommendations of variable annuities); *NY Life Sec., Inc.,* NASD Case No. E0520040104 (July 22, 2005) (failing to adequately supervise sales of variable annuities and mutual funds); *Paul Olsen,* NASD Case No. E3A20030539 (June 23, 2005) (negligently failing to tell customers about fees associated with variable annuity exchanges); *Bambi Holzer,* NASD Case No. E0220020787 (June 17, 2005) (negligently misrepresenting certain aspects of variable annuities); *Ilene L. Sonnenberg,* NASD Case No. C0520050024 (May 11, 2005) (recommending unsuitable variable annuity); *Raymond James & Assocs., Inc.,* NASD Case No. C0520050020 (May 10, 2005) (finding that registered representative made unsuitable recommendations and firm failed to maintain and enforce written supervisory procedures regarding sales of variable annuities); *Issetten Hanif,* NASD Case No. C9B20040086 (Apr. 6, 2005) (unsuitable recommendations regarding variable annuity and mutual fund exchanges); *Lawrence Labine,* NASD Case No. E02020513 (Nov. 19, 2004) (unsuitable variable annuity recommendation); *Edward Sadowski,* NASD Case No. C9B040102 (Nov. 17, 2004) (unsuitable variable annuity recommendation); *James B. Moorehead,* NASD Case No. C05040073 (Nov. 11, 2004) (failing to gather suitability information for variable annuity sales); *Juan Ly,* NASD Case No. C07040094 (Nov. 9, 2004) (unsuitable variable annuity switches and misrepresentations); *Jenny Chin,* NASD Case No. E04030619 (Oct. 29, 2004) (misrepresentation and omissions regarding variable annuities); *Glenn W. Ward,* NASD Case No. C05040075 (Oct. 14, 2004) (recommending unsuitable variable annuity); *Bernard E. Nugent,* NASD Case No. C11040031 (Sept. 1, 2004) (unsuitable recommendation involving the liquidation of mutual fund shares to purchase a variable annuity); *Samuel D. Hughes,* NASD Case No. C07040067 (Aug. 19, 2004) (unsuitable variable annuity switches, unauthorized sub-account allocations, and misrepresentations); *SunAmerica Sec., Inc.,* NASD Case No. C05040051 (July 12, 2004) (lacking adequate written supervisory procedures concerning review of variable annuity and variable universal life contracts); *Jamie Engelking,* NASD Case No. E3A020441 (July 2, 2004) (unsuitable variable annuity recommendation); *Pan-American Fin. Advisers,* NASD Case No. C05040034 (June 15, 2004) (failing to have adequate supervisory procedures for variable annuity sales); *Scott Weier,* NASD Case No. E04010714 (May 27, 2004) (unsuitable variable annuity recommendations); *Gregory Jurkiewicz,* NASD Case No. E3A030436 (May 4, 2004) (unsuitable variable annuity recommendation); *Michael H. Tew,* NASD Case No.C05040010 (Apr. 7, 2004) (unsuitable recommendations regarding variable annuities); *Steve Morgan,* NASD Case No. E3A020410 (Mar. 12, 2004) (unsuitable variable annuity recommendation); *Donald Lacavazzi,* NASD Case No. C11040009 (Feb. 24, 2004) (recommending unsuitable variable annuity switching); *Michael Blandchard,* NASD Case No. C11040005 (Feb. 16, 2004) (unsuitable variable annuity recommendations); *Prudential Inv. Mgmt. and Prudential Equity Group, Inc.,* NASD Case No. C05040008 (Jan. 29, 2004) (failing to supervise and maintain accurate records relating to variable annuity replacement sales); *Waddell & Reed, Inc.,* NASD Case No. CAF040002 (Jan. 14, 2004) (failing to ascertain suitability of recommended variable annuity exchanges and failure to supervise). NASD Enforcement actions are available at *http://*

Some commenters expressed the view that NASD must wait before instituting rulemaking and show that a ''demonstrable problem'' exists.[155] While we believe NASD's examinations and enforcement actions over the years clearly demonstrate an entrenched problem in the sales culture for these products, nothing in the Act requires NASD to make such a showing. Rather, the Act requires the Commission to determine that a proposed rule is consistent with the Act and consider whether the proposed rule would promote efficiency, competition and capital formation.[156] So long as its proposed rules meet the requirements of the Act, NASD can—and indeed should—be proactive in addressing problems in the sale of securities.

Some commenters also took the position that the proposed rule should be subject to a cost/benefit analysis.[157] The Act sets forth what the Commission must consider in determining whether to approve a proposed self-regulatory organization rule. It also sets forth requirements that the self-regulatory organizations must meet. The Act does not require a cost/benefit analysis with respect to proposed self-regulatory organization rules that are filed with, and approved by, the Commission.

As a practical matter, however, NASD considered the costs and benefits of the rule as the rule was developed and modified, and NASD's members were actively involved in shaping the proposed rule. As NASD stated in its response to comments on Amendment No. 2 ''[i]ndustry members are keenly aware of the potential costs and burdens that can result from rulemaking and, as is often the case, they raised and NASD considered such issues at multiple stages of the rulemaking process.''[158]

Accelerated Approval of Amendment Nos. 3 and 4

As set forth below, the Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule, as amended, prior the thirtieth day after the date of publication of the notice of Amendment Nos. 3 and 4 in the **Federal Register**. The revisions and clarifications in Amendment Nos. 3 and 4 were made in response to comments.

In Amendment No. 3, NASD modified the Recommendation Requirements in paragraph (b) of the proposed rule. Amendment No. 2 required members to have a reasonable basis to believe the customer has been informed of the material features of a deferred variable annuity. NASD revised the proposed rule to specify that a member must have a reasonable basis to believe that a customer has been informed ''in general terms of the various features'' of deferred variable annuities. NASD made this change in response to comments to clarify that the customer need only be informed about the features of deferred variable annuities in general terms, rather than be informed about the specific features of the deferred variable annuity the member might recommend.

In addition, in Amendment No. 3, NASD incorporated the factors that a firm must consider when exchanging deferred variable annuities in the recommendation requirements rather than in the principal review and approval requirements, while maintaining a requirement that principals consider these factors. NASD also eliminated two of the considerations relating to exchanges in response to comments: the extent to which the customer would benefit from the unique features of a deferred variable annuity and the extent to which the customer's age or liquidity needs make the investment inappropriate.

Moreover, in Amendment No. 3, NASD revised the proposed rule in response to comments relating to the applicability of the proposed rule to non-recommended transactions. NASD clarified that while principals are to treat all transactions as recommended, a principal may authorize the processing of a transaction if it determines that the transaction was not recommended and that the customer affirms that he or she wants to proceed after being informed of the reason why the registered principal has not approved the transaction.

In Amendment No. 3, NASD also modified the supervisory procedures provisions of the rule in response to comments that the term ''particularly high rates of effecting deferred variable annuity exchanges'' was vague. NASD revised the proposed rule to require implementation of surveillance procedures to review associated persons' rates of effecting deferred variable annuity exchanges for consistency with the proposed rule, other NASD rules and the federal securities laws. NASD also clarified that members must have policies and procedures reasonably designed to implement corrective measures to address inappropriate exchanges.

In addition, in Amendment No. 3, NASD revised the required timeframe for principal review, which it further revised in Amendment No. 4. As amended by Amendment No. 4, the principal must review the application prior to transmitting it to the issuing insurance company for processing, but no later than seven business days after the customer signs the application. This ''prior to transmittal'' standard was also incorporated in Amendment No. 1, and the Commission received a substantial number of comments on this standard. Although Amendment No. 1 did not explicitly limit the timeframe for principal review to no more than seven days, provisions of Exchange Act Rule 15c3–3 would have operated to limit the time in which broker-dealers could hold customer funds. In light of NASD's requested exemption from Rule 15c3–3, the seven-day limit on principal review in Amendment No. 4 would replace that rule's time limitation for transactions subject to that exemption with a more workable limit.

Thus, the Commission finds good cause to approve Amendment Nos. 3 and 4 to the proposed rule, as amended, prior to the thirtieth day after the date of publication of the notice of Amendment Nos. 3 and 4 in the **Federal Register**.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3 and 4, including whether the proposed rule is consistent with the Act.[159] 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–2004–183 on the subject line.

www.nasd.com/RegulatoryEnforcement/MonthlyDisciplinaryActions/index.htm.

[155] *See supra* note 33 and accompanying text.

[156] 15 U.S.C. 78c(f).

[157] *See supra* notes 35–38 and accompanying text.

[158] As discussed in detail above, in its response to comments to Amendment No. 2, NASD noted the steps it went through as it developed the proposed rule prior to filing it with the Commission. It published the proposed rule in a Notice to Members and solicited comment. The proposal also went to five NASD standing committees (including two committees with subject matter expertise regarding variable annuities) for consultation and comment. NASD considered the public's and the committees' comments and modified the proposed rule in response. The NASD Regulation, Inc. Board of Directors then approved the proposed rule and the NASD Board of Governors had an opportunity to review it. These NASD boards include members of the broker-dealer and insurance industries. For detail on the composition of the boards, *see* NASD's Response Letter.

[159] The Commission will consider the comments we previously received. Commenters may reiterate or cross-reference previously submitted 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 SR–NASD–2004–183. 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 FINRA. 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–2004–183 and should be submitted on or before October 4, 2007.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[160] that the proposed rule, as amended (SR-NASD–2004–183), be, and it hereby is, approved.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E7–18022 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

[160] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56373; File No. SR–FINRA–2007–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change Relating to NASD Rule 11870 (Customer Account Transfer Contracts) and NYSE Rule 412 (Customer Account Transfer Contracts) To Make the Time Frames in the Rules for Validating or Taking Exception to an Instruction To Transfer a Customer's Securities Account Consistent With the Time Frames in the Automated Customer Account Transfer Service

September 7, 2007.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 8, 2007, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared by FINRA. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend National Association of Securities Dealers, Inc. (''NASD'') Rule 11870 (''Customer Account Transfer Contracts'') and New York Stock Exchange (''NYSE'') Rule 412 (''Customer Account Transfer Contracts'') to make the time frames in the rules for validating or taking exception to an instruction to transfer a customer's securities account assets and for completing the transfer of the assets consistent with the time frames in the National Securities Clearing Corporation's (''NSCC'') Automated Customer Account Transfer Service (''ACATS'') transfer cycle. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in [brackets].

11000. UNIFORM PRACTICE CODE

11870. Customer Account Transfer Contracts

(a) No Change.

(b) Transfer Procedures

(1) Upon receipt from the customer of an authorized broker-to-broker transfer instruction form (''TIF'') to receive such customer's securities account assets in whole or in specifically designated part, from the carrying member, the receiving member must immediately submit such instruction to the carrying member. The carrying member must, within [three] *one* business day[s] following receipt of such instruction, or receipt of a TIF received directly from the customer authorizing the transfer of assets in specifically designated part: (A) Validate the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances to be transferred as shown on its books); or (B) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the receiving member of the exception taken. *The time frame(s) set forth in this paragraph will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the National Securities Clearing Corporation (NSCC).*

(2) No Change.

(c) and (d) No Change.

(e) Completion of the Transfer

Within three business days following the validation of a transfer instruction, the carrying member must complete the transfer of the customer's security account assets to the receiving member. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books of account against the long/short positions that have not been delivered/received and the receiving/carrying member must debit/credit the related money amount. The customer's security account assets shall thereupon be deemed transferred. *The time frame(s) set forth in this paragraph will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the NSCC.*

(f) through (n) No Change.

* * * * *

Rule 412. Customer Account Transfer Contracts

(a) No Change.

(b)

(1) Upon receipt from the customer of an authorized broker-to-broker transfer instruction form (''TIF'') to receive such customer's securities account assets in whole or in specifically designated part, the receiving organization will immediately submit such instruction to the carrying organization. The carrying organization must, within [three (3)] *one* business day[s] following receipt of such instruction, or receipt of a TIF

[1] 15 U.S.C. 78s(b)(1).

received directly from the customer authorizing the transfer of assets in specifically designated part: (i) Validate the transfer instruction (with an attachment reflecting all positions and money balances to be transferred as shown on its books) to the receiving organization or (ii) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the receiving organization of the exception taken. *The time frame(s) set forth in this paragraph will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the National Securities Clearing Corporation (NSCC).*

(2) No Change.

(3) Within three [(3)] business days following the validation of a transfer instruction, the carrying organization must complete the transfer of the customer's securities account assets to the receiving organization. The carrying organization and the receiving organization must establish fail to receive and fail to deliver contracts at then current market values upon their respective books of account against the long/short positions (including options) that have not been delivered/received and the receiving/carrying organization must debit/credit the related money amount. The customer's securities account assets shall thereupon be deemed transferred. *The time frame(s) set forth in this paragraph will change, as determined from time-to-time in any publication, relating to the ACATS facility, by the NSCC.*

(c) through (f) No Change.

Supplementary Material .10 through .30 No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA 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. FINRA has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 11870 and NYSE Rule 412 regulate the transfer of customer accounts from one member (the ''carrying firm'') to another (the ''receiving firm''). Such transfers generally occur through ACATS, an electronic transfer system developed by NSCC to automate and standardize the transfer of accounts. Currently, based on the time frames established in ACATS, NASD Rule 11870(b) and NYSE Rule 412(b)(1) require carrying members to validate or take exception to an instruction to transfer securities account assets within three business days following receipt of a Transfer Initiation Form (''TIF'') or transfer instruction, and NASD Rule 11870(e) and NYSE Rule 412(b)(3) require carrying members to complete the transfer within three business days following the validation of a transfer instruction.

FINRA is proposing to amend NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) to make the time frames in those rules consistent with the time frames established in ACATS by the NSCC for these processes. The effect of this rule change will be that the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) will change if and when NSCC modifies those requirements. FINRA will announce any such changes in those time frames to its members in a Regulatory Notice and other appropriate communications.

FINRA is filing this rule change in anticipation of a reduction in these time frames in approximately October 2007 as recently announced by NSCC.[2] FINRA understands that NSCC is planning to seek regulatory approval from the Commission to eliminate two business days from the validation period for both full and partial transfers.

FINRA members recognize the benefit to customers of shortening the time it takes to transfer account assets. However, introducing brokers have expressed serious concerns about the effect on their business relationships with their customers of shortening the time permitted for validating or taking exception to a transfer instruction. They have noted that a representative who decides to move to another firm may have all of his or her customers sign a TIF well in advance of the anticipated move, thereby effectuating a mass movement of customers to the new firm. Under the current ACATS time frames, if the carrying firm timely notifies the introducing firm of the transfer requests, the introducing firm has up to three business days to contact its customers regarding the reasons for their transfer requests, thereby giving the introducing firm an opportunity to contact its customers to discuss why its customers have chosen to move their accounts. Some FINRA member firms also were concerned that shortening the time permitted for validating or taking exception to a transfer instruction could provide a competitive advantage to self-clearing firms because they would have more immediate notice of transfer requests and would be in a better position to employ efforts to retain the accounts. Although FINRA believes that shortening the customer account transfer process is in the best interest of public customers, who have often expressed dissatisfaction with the transfer process, FINRA requests that the Commission seek comment on the effect of the proposed rule change, particularly on introducing firms' business relationships.

As noted in Item 2 of this filing, FINRA is coordinating implementation of the shortened time frames to the ACATS transfer cycle with NSCC. NSCC has announced that it plans to implement changes to the ACATS transfer cycle in October 2007 (contingent upon the Commission's approval of the proposed changes). Members will be advised of the implementation date for any such modification of the ACATS transfer cycle time frames through a Regulatory Notice and other communications, as appropriate. A specific, coordinated effective date would be communicated to members through a Regulatory Notice and other communications, as appropriate, and would take into consideration the need for members to make internal systems changes to accommodate the revised time frames.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[3] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is designed to accomplish these ends by making the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) consistent with the time frames established by NSCC for validating or taking exception to an account transfer instruction and for completing the transfer, respectively,

[2] *See* NSCC ''Important Notice'' A#6317, P&S#5887 dated October 19, 2006, ''Important Notice'' A#6367, P&S#5937 dated December 22, 2006, ''Important Notice'' A#6425, P&S#5995 dated March 27, 2007, and NSCC ''Important Notice'' A#6457, P&S#6027 dated May 23, 2007.

[3] 15 U.S.C. 78o–3(b)(6).

thereby creating greater efficiency in the account transfer process and improving customers' experience with the account transfer process.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[4] 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–FINRA–2007–005 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–FINRA–2007–005. 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 FINRA and on FINRA's Web site at *http://www.finra.org/web/groups/rules_regs/documents/rule_filing/p036409.pdf.* 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–FINRA–2007–005 and should be submitted on or before October 4, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18075 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

[4] The Commission also seeks comment on the effect of the proposed rule change on the business relationships of introducing firms.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56372; File No. SR–NSCC–2007–13]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change To Amend Its Rules and Procedures With Regard to the Automated Customer Account Transfer Service (ACATS) and ACATS Fund/SERV Processing

September 7, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 15, 2007, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of modifications to NSCC's Rules and Procedures relating to its Automated Customer Account Transfer Service (''ACATS'') and ACATS Fund/SERV processing.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to modify NSCC's Rules as necessary to shorten the account transfer time frame with respect to certain types of ACATS and ACATS Fund/SERV transfers.[3]

1. Background

ACATS enables members of NSCC to effect automated transfers of customer accounts among themselves. In operation since 1985, ACATS was designed to facilitate compliance with New York Stock Exchange (''NYSE'') Rule 412 and National Association of Securities Dealers (''NASD'')[4] Uniform

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] Rule 50 (Automated Customer Account Transfer Service) is generally nonspecific with respect to account transfer time frames. Rule 52 (Mutual Fund Services), Section 16 (ACAT/Transfers) is nonspecific with respect to account transfer time frames and does not require modification.

[4] Rule 50 (Automated Customer Account Transfer Service) is generally nonspecific with respect to account transfer time frames. Rule 52 (Mutual Fund Services), Section 16 (ACAT/Transfers) is nonspecific with respect to account transfer time frames and does not require modification.

Practice Code Section 11870 that require NYSE and NASD members to use automated clearing agency customer account transfer services and to effect customer account transfers within specified time frames. ACATS has been modified over time, with its most significant redesign in 1999, to provide NSCC members with a more seamless and timely customer account transfer process.[5]

2. Proposed Modifications

NSCC, its members, the Customer Account Division of the Securities Industry and Financial Markets Association (''SIFMA''), NYSE, and NASD believe that because technology and processing has improved since the 1999 redesign additional modifications to ACATS processing can be made that will further enhance the timeliness and efficiency of customer account transfers. FINRA has submitted a comparable rule filing on behalf of the NYSE and NASD with the Commission.[6]

(a) Standard ACATS Transfers

Standard ACATS transfers currently include a three business day ''Request'' period. The proposed change will reduce the ''Request'' time frame from three business days to one business day. The time frame within which an account transfer may be responded to (*i.e.*, accepted or rejected) will accordingly be shortened.[7]

(b) Nonstandard ACATS Transfers—Partial Transfer Receiver

Partial Transfers may be generated by either the Receiving Member (Partial Transfer Receiver or ''PTR'') or the Delivering Member (Partial Transfer Deliverer or ''PTD''). PTRs currently have a two business day ''Request'' period. The proposed change will reduce the ''Request'' time frame from two business days to one business day. The time frame within which an account transfer may be responded to (*i.e.*, accepted or rejected) will accordingly be shortened.[8]

(c) ACAT Fund/SERV

In an ACAT transfer that includes mutual fund assets, during the ''Review'' period the Receiving Member (or if applicable its ACATS-Fund/SERV Agent) requests the reregistration of mutual fund assets by submitting a Fund Registration input record through ACATS to the Fund Member/Mutual Fund Processor. The Fund Member/Mutual Fund Processor then has four business days to either reject or acknowledge the request.

NSCC has found that the majority of Fund Member/Mutual Fund Processors act upon such requests during the first day of receipt. Therefore, NSCC is proposing to reduce the time frame from four business days to one business day.

3. Technical Correction to Rule 50

NSCC is also making a technical correction to Rule 50, Section 13. Section 13 (which addresses Receiving Member initiated Partial Transfers) states that a Delivering Member may respond to a request at any time by following the procedure set forth in Section 12. However, Section 12 addresses actions taken with respect to Delivering Member initiated transactions. NSCC is correcting this text accordingly.

4. Implementation of the Proposed Changes:

NSCC is coordinating implementation of the proposed changes with FINRA and SIFMA. Contingent upon the Commission's approval of the NSCC and FINRA proposed changes, NSCC anticipates that implementation of the changes set forth in this rule filing will take place in October of 2007. Members will be advised of the implementation through an NSCC Important Notice.

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.[9] By reducing the time frame for the transfer of customer accounts between NSCC members, the proposed amendments will bring enhanced efficiency to members and benefit their customers. As such, the proposed rule change is consistent with NSCC's statutory obligation to remove impediments to and perfect the mechanism of a national system for prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2007–13 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–NSCC–2007–13. 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/*

[5] The NASD is now known as The Financial Industry Regulatory Authority, Inc. (''FINRA'').

[6] Securities Exchange Act Release No. 56373 (September 7, 2007) (notice of filing of proposed rule change) [File No. SR–FINRA–2007–005].

[7] In addition to changes to the ''Request'' period, NSCC proposes to modify the ACATS ''status'' time frames for Request-Adjust, Request-Adjust Past, Request-Past, and Review-Error, from a maximum of three business days to a maximum of one business day. Rule 50 is nonspecific with respect to these time frames.

[8] Other non-standard transfers are: fail reversals, reclaims, and residual credits (see Rule 50, Sec. 12). PTD's do not have a ''Request'' status.

[9] 15 U.S.C. 78q–1(b)(3)(F).

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 NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/nscc/2007–13.pdf*. 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–NSCC–2007–13 and should be submitted on or before October 4, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–18077 Filed 9–12–07; 8:45 am]

BILLING CODE 8010–01–P

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5934]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Arts of Kashmir''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''The Arts of Kashmir,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Asia Society, New York, New York, from on or about October 1, 2007, until on or about January 6, 2008, and at the Cincinnati Art Museum, Cincinnati, Ohio, from on or about June 28, 2008 to on or about September 21, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 6, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–18082 Filed 9–12–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5933]

Culturally Significant Objects Imported for Exhibition Determinations: ''Fragile Diplomacy: Meissen Porcelain for European Courts''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Fragile Diplomacy: Meissen Porcelain for European Courts,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Bard Graduate Center, from on or about November 15, 2007, until on or about February 11, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 31, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–18093 Filed 9–12–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 122–7]

Delegation by the Deputy Secretary of State to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs of Authorities Related to Appointment of Yukon River Salmon Panel Members

By virtue of the authority vested in the Secretary of State, including section 1 of the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), and delegated to the Deputy Secretary of State pursuant to Delegation of Authority 245 of April 23, 2001, I hereby delegate to the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs the functions vested in the Secretary of State by section 202 of the Yukon River Salmon Act of 2000 (16 U.S.C. 5721), regarding the appointment of panel members and alternate panel members.

Any function covered by this delegation may also be exercised by the Secretary of State or the Deputy Secretary of State.

This delegation shall be published in the **Federal Register**.

Dated: August 6, 2007.

John D. Negroponte,

Deputy Secretary of State, Department of State.

[FR Doc. E7–18094 Filed 9–12–07; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–27897]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 63 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective September 13, 2007. The exemptions expire on September 14, 2009.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level 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. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment 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.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov*.

Background

On July 20, 2007, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (72 FR 39879). That notice listed 64 applicants' case histories. The 64 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 64 applications on their merits and made a determination to grant exemptions to 63 of them. The comment period closed on August 20, 2007.

The Agency received a public comment challenging the validity of Mr. Raymond Ochse's reported CMV driving experience and other information submitted in his application. Therefore, FMCSA is unable to render a final decision related to granting him an exemption until our investigation is concluded.

The Agency would like to publish a correction to Mr. Moreland's case history published in the July 20, 2007 notice (72 FR 39883). Mr. Moreland was published with a first name of Arnold when his first name is Arthur.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 63 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, macular hole, retinal detachment, corneal/retinal scarring, optic nerve injury, macular degeneration, histoplasmosis, choroidal neovascularization, phthisis bulbi, retinal vein occlusion, cataract, exotropia, papillitis, and acute multifocal plaquoid pigment epitheliopathy. In most cases, their eye conditions were not recently developed. All but twenty of the applicants were either born with their vision impairments or have had them since childhood. The twenty individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 34 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 63 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 34 years. In the past 3 years, eleven of the drivers have had convictions for traffic violations and five of them were involved in crashes.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the July 20, 2007 notice (72 FR 39879).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved

without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–98–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly. (See Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes. (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 63 applicants, eight of the applicants had traffic violations for speeding, two applicants failed to obey a traffic sign, and one applicant followed too closely. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to 63 of the 64 applicants listed in the notice of July 20, 2007 (72 FR 39879).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 63 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received three comments in this proceeding. The comments were considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSRs, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again

here, but refer interested parties to those earlier discussions.

T. Reyes challenged the validity of Raymond K. Ochse's reported CMV driving experience. He alleged that Mr. Ochse gave false information concerning his recent employment history and the amount of miles he has driven a commercial vehicle.

The Agency is currently investigating the commenter's claims and will wait to render a final decision in this case until the investigation is complete.

The Right Way Inc. recommended that Terry W. Moore receive the exemption due to his safe operation of vehicles with his visual deficiency.

Conclusion

Based upon its evaluation of the 64 exemption applications, FMCSA exempts John W. Black, Ronald D. Boeve, Paul T. Breitigan, John A. Bridges, Edward G. Brown, Edwin L. Bupp, Charles E. Castle, Joel C. Conrad, Duane C. Conway, David L. Cummings, Brian W. Curtis, Roger D. Davidson, Sr., Richard A. Davis, Sr., Thomas E. Dixon, Robin C. Duckett, Steven C. Durst, Marco A. Esquivel, Charles D. Grady, Paul L. Graunstadt, Danny R. Gray, Louis E. Henry, Jr., Raymond L. Herman, Jesse R. Hillhouse, Jr., Billy R. Holdman, Marshall L. Jackson, Ray C. Johnson, Terry R. Jones, Randall H. Keil, Gregory K. Lilly, Paul G. Mathes, John T. McWilliams, Robert A. Miller, Rodney R. Miller, Stuart T. Miller, James J. Mitchell, Terry W. Moore, Arthur R. Moreland, Andrew M. Nurnberg, Charles D. Oestreich, Robert G. Owens, Kenneth R. Pedersen, Joshua R. Perkins, Donald F. Plouf, Willie L. Ponders, Eligio M. Ramirez, Victor C. Richert, Elvis E. Rogers, Jr., Garry L. Rogers, Craig R. Saari, Jerry L. Schroder, Gerald J. Shamla, Willie C. Smith, Lanny R. Spears, Lawrence E. Stabeno, Larry D. Steiner, Robert S. Swaen, Robert L. Thies, David R. Thomas, Anthony T. Truiolo, Gregory A. VanLue, Karl A. Weinert, Ricky L. Wiginton, and Kevin W. Wunderlin from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: September 7, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–18079 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–00–7918, FMCSA–01–9258, FMCSA–01–9561, FMCSA–02–12844, FMCSA–02–13411, FMCSA–05–20027, FMCSA–05–20560]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 23 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov*.

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on July 24, 2007. The comment period ended on August 23, 2007.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 23 renewal applications, FMCSA renews the Federal vision exemptions for Eddie Alejandro, Roger D. Anderson, Glenn A. Babcock, Jr., Joey E. Buice, Paul W. Dawson, Lois E. De Souza, Tomie L. Estes, Jay E. Finney, Steven A. Garrity, Waylon E. Hall, Wayne H. Holt, Jeffery M. Kimsey, Richard L. Leonard, Larry T. Morrison, Gerald L. Phelps, Jr., Ronald F. Prezzia, Thomas G. Raymond, Tim M. Seavy, Boyd D. Stamey, Randy D. Stanley, Lee T. Taylor, James M. Tayman, Sr., and Scott C. Teich.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or

(3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 7, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–18074 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–05–21254]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 13 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on July 24, 2007. The comment period ended on August 23, 2007.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 13 renewal applications, FMCSA renews the Federal vision exemptions for George L. Cannon, Anthony Ciancone, Jr., Andrew B. Clayton, Kenneth D. Daniels, Allen R. Fasen, William D. Hodgins, Hazel L. Hopkins, Jr., Donald M. Jenson, Dean A. Maystead, Jason L. McBride, Sr., Donald L. Murphy, Carl V. Murphy, Sr., and Thomas D. Reynolds.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 7, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–18078 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–98–4334, FMCSA–99–5578, FMCSA–00–7363, FMCSA–00–7918, FMCSA–01–9258, FMCSA–01–9561, FMCSA–03–14504, FMCSA–03–15268, FMCSA–05–20027, FMCSA–05–21254]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 25 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective September 23, 2007. Comments must be received on or before October 15, 2007.

ADDRESSES: You may submit comments bearing the Department of Transportation (DOT) Docket Management System (DMS) Docket Numbers FMCSA–98–4334, FMCSA–99–5578, FMCSA–00–7363, FMCSA–00–7918, FMCSA–01–9258, FMCSA–01–9561, FMCSA–03–14504, FMCSA–03–15268, FMCSA–05–20027, FMCSA–05–21254, using any of the following methods.

- *DOT Web site: http://dmses.dot.gov.* Follow the on-line instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Room W12–140 on the ground level 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.

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

Each submission must include the Agency name and docket numbers for this Notice. Note that DOT posts all comments received without change to *http://dms.dot.gov*, including any personal information included. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://dms.dot.gov* at any time or Room W12–140 on the ground level 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. The DMS is available 24 hours each day, 365 days each year. If you want acknowledgment 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.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 25 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 25 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Linda L. Billings	Mark D. Page
John A. Chizmar	Kenneth A. Reddick
Ronald D. Danberry	Leonard Rice, Jr.
Weldon R. Evans	Juan M. Rosas
Richard L. Gagnebin	Richard C. Simms
Orasio Garcia	James T. Sullivan
Leslie W. Good	Thomas J. Sweeny, Jr.
Chester L. Gray	Steven C. Thomas
James P. Guth	Edward A. Vanderhei
Rayford R. Harper	Larry J. Waldner
Britt D. Hazelwood	Kevin L. Wickard
Joseph V. Johns	
Robert C. Leathers	
Michael S. Maki	

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year: (a) By an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 25 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 68 FR 54775; 70 FR 53412; 64 FR 27027; 64 FR 51568; 66 FR 48504; 65 FR 45817; 65 FR 77066; 68 FR 10300; 70 FR 42615; 65 FR 66286; 66 FR 13825; 66 FR 17743; 66 FR 33990; 68 FR 35772; 66 FR 30502; 66 FR 41654; 68 FR 19598; 68 FR 33570; 68 FR 37197; 68 FR 48989; 70 FR 2701; 70 FR 16887; 70 FR 30999; 70 FR 46567). Each of these 25 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by October 15, 2007.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 25 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: September 7, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–18083 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–01–9258, FMCSA–01–9561, FMCSA–03–14504, FMCSA–03–15268]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has reviewed the comments submitted in response to the previous announcement and concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at *http://dmses.dot.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The Notice was published on July 24, 2007. The comment period ended on August 23, 2007.

Discussion of Comments

FMCSA received one comment in these proceedings. The comment was considered and discussed below.

Advocates for Highway and Auto Safety (Advocates) expressed opposition to FMCSA's policy to grant exemptions from the FMCSR, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which FMCSA presents driver information to the public and makes safety determinations; (2) objects to the Agency's reliance on conclusions drawn from the vision waiver program; (3) claims the Agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31136(e) and 31315); and finally (4) suggests that a 1999 Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 22 renewal applications, FMCSA renews the Federal vision exemptions for Morris R. Beebe, II, William V. Beekler, James A. Busbin, Jr., Domenic J. Carassai, Fred W. Duran, Kenneth J. Fisk, Bruce E. Hemmer, Steven P. Holden, Russell R. Inlow, Christopher G. Jarvela, Donald L. Jensen, Darrell D. Kropf, Brad L. Mathna, Vincent P. Miller, Warren J. Nyland, Dennis M. Prevas, Greg L. Riles, Calvin D. Tomlinson, Wesley E. Turner, Mona J. Van Krieken, John W. Williams, and Paul S. Yocum.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: September 7, 2007.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E7–18085 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2005–21324]

Pre-Trip Safety Information for Motorcoach Passengers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces guidance to the motorcoach industry in response to National Transportation Safety Board (NTSB) recommendations for providing pre-trip safety information to motorcoach passengers. The NTSB recommended that the Agency require and develop minimum guidelines for pre-trip safety information to be provided by motorcoach companies to passengers. The FMCSA, in conjunction with stakeholders, developed a basic plan for motorcoach companies to implement a safety-awareness program for passengers. The goals of this initiative are to develop passenger safety-awareness guidelines suited for diverse motorcoach operational types and to encourage their adoption.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Commercial Passenger Carrier Safety Division (MC–ECP), 202–366–5763. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Docket

For access to the docket to read background documents or the comments received, go to *http://dms.dot.gov* at any time or to the Docket Management Facility, Room W12–140, 1200 New

Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

On February 26, 1999, NTSB issued recommendations to the Secretary of Transportation concerning safety briefing materials for motorcoach operators, and pre-trip safety information for passengers. The recommendations are provided below.

H–99–7 Provide guidance on the minimum information to be included in safety briefing materials for motorcoach operators.

H–99–8 Require motorcoach operators to provide passengers with pre-trip safety information.

The NTSB made similar recommendations to the American Bus Association (ABA) and the United Motorcoach Association (UMA).

The two recommendations were primarily in response to a motorcoach crash on I–95 near Stony Creek, Virginia. On July 29, 1997, a motorcoach carrying 34 passengers and a driver drifted off the side of I–95 and down an embankment into the Nottoway River, where it came to rest on its left side. One passenger was fatally injured. The driver and 3 passengers sustained serious injuries; 28 passengers sustained minor injuries.

The NTSB concluded this fatal crash highlighted the need for motorcoach passengers to receive pre-trip safety information. This information would be similar to the emergency evacuation information given during pre-flight safety briefings for commercial airline passengers. The NTSB had investigated several motorcoach crashes where passengers had described a general sense of panic because they did not know what to do or how to get out of the motorcoach.

The FMCSA formed a working group to address the NTSB recommendations that included individuals from the motorcoach industry, motorcoach manufacturers, insurance industry, safety consulting industry, trade associations, State agencies, and other Federal regulatory agencies. The working group concluded it would be best to initially encourage the motorcoach industry to take voluntary action to improve pre-trip safety awareness for passengers. The industry could do this by implementing one of various effective practices. Because of the large operational variances within the motorcoach industry, industry officials asserted that it would be impossible to develop a uniform safety-awareness regulation flexible enough for industry-wide application. As an alternative, the working group decided that the development and promotion of a list of best practices would be an effective and realistic way to ensure that motorcoach passengers are informed about important safety practices. The group discussed distribution of informational pamphlets as one of many acceptable alternatives.

In an April 1, 2005, letter to FMCSA, NTSB stated that the activities described above would provide motorcoach passengers with increased information about safety and are responsive to recommendation H–99–7. In addition, NTSB stated such activities would also provide an acceptable alternate approach to recommendation H–99–8. Based upon FMCSA's actions taken and plans made, NTSB classified recommendation H–99–7 as ''Open—Acceptable Response'' and recommendation H–99–8 as ''Open—Acceptable Alternate Response.''

The FMCSA published a notice in the **Federal Register** [71 FR 50971, August 28, 2006] to request comments on the Agency's proposed plan to implement NTSB recommendations H–99–7 and H–99–8. The FMCSA proposed a flexible plan to implement a safety-awareness program for passengers, for voluntary adoption by motorcoach companies.

Discussion of Comments

The FMCSA received seven comments to the **Federal Register** notice. All commenters concurred with or generally applauded the proposal. The UMA recommended the published guidelines be adopted as proposed. The Daecher Consulting Group, Inc. concurred with the proposed guidelines.

Due to the operational variances within the motorcoach industry, the American Bus Association's Bus Industry Safety Council (ABA–BISC) agreed with FMCSA on a flexible approach to delivering safety information to passengers. The ABA–BISC stated that it is sufficient to provide a baseline list of emergency instruction topics to be covered. The ABA–BISC would allow individual operators to develop the best means of how and when to deliver the information.

Greyhound Lines Inc. (Greyhound) recommended eliminating the topic of ''Avoiding Slips and Falls'' from pre-trip safety briefings for motorcoach passengers, because it has little to do with emergency evacuation procedures. The ABA–BISC expressed a similar view that the passenger safety briefing should be kept to a simple ''what to do in an emergency situation'' and instructions on how to avoid personal injury should take a secondary place to emergency instructions. The ABA–BISC stated further that personal injury avoidance instructions are best left to the discretion of the operator. Since standees are specifically allowed and are, in fact, common in certain motorcoach service applications, the ABA–BISC was also concerned that any emergency instruction should simply direct passengers to keep aisle ways clear by stowing their personal belongings in overhead parcel racks or under seats.

Greyhound believed that the proposed guidelines should contain more flexibility. Specifically, Greyhound recommended that the remaining five safety topics (driver direction, emergency contact, emergency exits, restroom emergency button, and fire extinguisher) be covered, but that the guidance should not provide detail on exactly what to cover under each topic. Greyhound asserted that it should be left to the operators to determine what should be said about each of the safety topics, given the wide variety of vehicles and operations covered by the proposed guidance.

Both Greyhound and ABA–BISC expressed their view that passenger safety briefings should be succinct, in order to be better understood and accepted. Greyhound asserted that each carrier should have the flexibility to include the appropriate level of detail for its passengers. Greyhound cited the example that a carrier catering to senior citizen charter groups would have a safety message with a different level of detail than line haul carriers.

In addition, Greyhound recommended that more flexibility be built into the alternative methods of presenting the safety information. Greyhound asserted that the guidance should be clarified to indicate that the listed presentation methods are not exhaustive and other methods are permissible. Both Greyhound and ABA–BISC expressed the view that combinations of different presentation methods should be specifically permitted to allow a carrier to mix presentation methods. The ABA–

BISC stated that limitations of presentation methods should be avoided.

The Commercial Vehicle Safety Alliance (CVSA) commented that the initiative should be expanded to cover school buses and vehicles designed to transport 15 or less passengers, including the driver. The CVSA also recommended that four additional topics be covered during pre-trip safety briefings for passengers. Specifically, CVSA advocated covering vehicle evacuation procedures/safe distance from vehicle, assistance of disabled and mobility impaired passengers, procedures when the driver is incapacitated, and procedures for crashes and fires. In addition, CVSA recommended that FMCSA develop training and educational materials to assist passenger motor carriers with training their drivers on the relevant pre-trip safety topics. Further, CVSA stated that FMCSA should require such training as a part of the Commercial Driver's License (CDL) and driver qualification requirements of the Federal Motor Carrier Safety Regulations (FMCSRs).

FMCSA Response to the Comments

Safety Topics To Be Covered

The FMCSA used the topic heading ''Minimum Safety Topics to be Covered'' in the ''Proposed Basic Plan for Motorcoach Passenger Safety Awareness (Basic Plan).'' The FMCSA is revising this heading to read ''Recommended Safety Topics to be Covered'' to clarify that the list of safety topics is a suggestion, and motorcoach companies can modify the list by omitting a topic that is not directly related to actions to be taken during an emergency. For example, motorcoach companies can exercise their discretion regarding whether to provide motorcoach passengers with guidance on how to avoid slips and falls. Nonetheless, FMCSA is still recommending that guidance be provided to motorcoach passengers to avoid slips and falls. The FMCSA continues to hold that it is appropriate to provide preventive guidance to motorcoach passengers on how to avoid bodily injury, prior to movement of the vehicle.

In addition, FMCSA continues to maintain that content guidance regarding the safety topics should be given to motorcoach companies. It would be inappropriate to provide motorcoach companies with no content guidance whatsoever, when it is clearly evident that certain issues, such as the location and operation of emergency exits, should be covered. The content guidance should be succinct and address appropriate information to be communicated to motorcoach passengers.

The FMCSA agrees that motorcoach companies should have the flexibility to keep the length of the entire pre-trip safety briefing sufficiently short to achieve maximum audience attention and understanding. The FMCSA believes that the final Basic Plan for Motorcoach Passenger Safety Awareness achieves this objective. Also, motorcoach companies have the flexibility to add or omit information and guidance during pre-trip passenger briefings as they see fit.

The FMCSA is removing the issue of an emergency door release located on the dash or in a stairwell. The FMCSA has learned that only recently-built motorcoaches from one manufacturer have this feature and that it is well-labeled. Greyhound also mentioned that motorcoach companies may not want to mention this feature due to security concerns. In consideration of this information, FMCSA is no longer recommending that the emergency door release be covered during pre-trip safety briefings. Motorcoach companies may mention this feature at their discretion.

In the 2006 Proposed Plan, the guideline ''Keep the aisle free of property and debris'' was mentioned under the heading of ''Avoiding Slips and Falls.'' The ABA–BISC stated that passengers are permitted to stand in the aisles, and the pre-trip safety information for passengers should contain directions to keep aisle ways clear by stowing personal belongings in overhead parcel racks or under seats. These topics are addressed by 49 CFR 392.62. This section prohibits a person from driving a motorcoach or bus unless (1) all standees are rearward of the standee line, (2) baggage or freight on the bus is stowed and secured in a manner that assures unrestricted freedom of movement to the driver and his/her proper operation of the bus, (3) unobstructed access to all exits by any occupant of the bus is assured; and (4) protection of occupants of the motorcoach or bus against injury resulting from the falling or displacement of articles transported in the motorcoach or bus is assured. A motorcoach company can cover any or all of these topics in its safety presentations to passengers.

Originally, FMCSA proposed to include the topic of ''an unobstructed and unrestricted aisle'' under the heading of ''Avoiding Slips and Falls.'' However, the Agency has instead decided to move this topic to the heading of ''Emergency Exits'' to convey a broader meaning. The primary objective of keeping the aisle free of property and debris is to ensure unobstructed and unrestricted access to exits during an emergency. It is widely accepted that the motorcoach door should be the primary exit choice when feasible. An aisle that is somehow obstructed or cluttered with passenger belongings could hinder rapid evacuation through the motorcoach door in the event of an emergency. Moving this topic to ''Emergency Exits'' helps ensure compliance with 49 CFR 392.62.

As previously mentioned, CVSA recommended that four additional topics be covered during pre-trip safety-awareness briefings for passengers, specifically vehicle evacuation procedures/safe distance from vehicle, assistance of disabled and mobility impaired passengers, procedures when the driver is incapacitated, and procedures for crashes and fires. The FMCSA maintains that motorcoach companies should establish emergency evacuation procedures for motorcoach passengers, including passengers with disabilities. The ABA–BISC has already developed suggested evacuation procedures for bus/motorcoach companies in case of fire or other emergency. These suggested procedures are posted on the ABA's Web site at *http://www.buses.org.* Motorcoach companies should incorporate these procedures into their pre-trip safety briefings and emergency evacuation procedures as they see fit. The FMCSA believes the proposed topics under the heading of ''Emergency Exits'' contain appropriate information about emergency passenger egress.

The FMCSA believes that the topic of motorcoach passengers keeping a safe distance from the vehicle after emergency evacuation is already covered under the heading of ''Driver Direction.'' The guidance states that passengers should look to the driver for direction and instruction regarding issues such as staying a safe distance from the vehicle after evacuation.

The question of how to assist the disabled, passengers with physical or mental impairments, or the elderly during an emergency evacuation of a motorcoach is complex. Adequately covering this topic during a succinct pre-trip safety briefing would be a challenge. The FMCSA believes that emergency evacuation procedures developed by motorcoach companies should specifically address the needs of passengers with disabilities. During the pre-trip safety-awareness briefing, it is appropriate to encourage able-bodied passengers to assist injured or mobility-

impaired passengers during an emergency evacuation. Motorcoach companies may cover additional topics and issues as they see fit.

The CVSA recommended the topic of driver incapacitation be specifically covered. The FMCSA agrees that the pre-trip safety information should include specific guidance about emergency passenger egress in the event that the driver becomes incapacitated and is unable to direct or show passengers how to vacate the vehicle. Although FMCSA has decided not to specifically include driver incapacitation in the Basic Plan, motorcoach companies may, at their discretion, provide general guidance to passengers regarding what to do if a driver becomes incapacitated or suddenly sick.

As for crashes and fires, FMCSA believes the existing headings and topics provide adequate guidance on what to do in the event of motorcoach crash or fire.

Various Methods of Presenting the Safety Information

The FMCSA agrees with Greyhound and ABA–BISC that the methods of presenting the safety information need to be flexible. The Basic Plan for Motorcoach Passenger Safety Awareness has been clarified to indicate that the various presentation methods listed are not exclusive, other methods are permissible, and it is acceptable for a motorcoach company to combine different presentation methods. Limitations on effective presentation methods should be avoided.

Timing and Frequency of Presentation

The ABA–BISC asserted that how and when the safety information is delivered should be left to the discretion of the motorcoach operator. While FMCSA generally agrees with this comment, the Agency believes that the proposed guidance regarding the timing and frequency of safety information presentation is appropriate. In exceptional cases, motorcoach companies can exercise discretion in deviating from the general guidance when warranted. No commenter expressed a specific, strong objection to the proposed guidelines for timing and frequency of safety information presentation. The FMCSA is making no substantial revision to these guidelines.

Other Miscellaneous Comments

The FMCSA believes that CVSA's recommendation that the initiative be expanded to cover school buses and vehicles designed to transport 15 or less passengers goes beyond the original scope of NTSB's recommendations. The proposed safety-awareness plan was intended for implementation by motorcoach companies for their passengers.

Because school buses and vehicles designed to transport 15 or fewer passengers are significantly different from motorcoaches, FMCSA believes that each of these vehicle operations would need a customized safety-awareness plan for passengers. It is important to note that FMCSA does not have safety regulatory jurisdiction over most school bus operations. The FMCSA only has jurisdiction over those school bus operations involving contractors (non-governmental entities) providing transportation that is other than home-to-school and is interstate in nature.

On August 12, 2003, FMCSA published a final rule entitled *''Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce.''* It required motor carriers operating CMVs designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce to comply with parts 391 through 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) when they are directly compensated for such services, and the vehicle is operated beyond a 75 air-mile radius from the driver's normal, work-reporting location [68 FR 47860, August 12, 2003]. As a result of the 2003 rule, these motor carriers are now subject to the same safety requirements as motorcoach operators, except for the commercial driver's license (CDL) and controlled substances and alcohol testing regulations. Affected motor carriers were required to be in compliance with such regulations by December 10, 2003 [68 FR 61246, October 27, 2003].

Section 4136 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (SAFETEA–LU) [Pub. L. 109–59, 119 Stat. 1144, 1745 (Aug. 10, 2005)] extended the applicability of the FMCSRs to interstate operations of CMVs designed or used to transport between 9 and 15 passengers (including the driver), regardless of the distance traveled. This congressional mandate has subjected a greater number of motor carriers that operate small passenger-carrying CMVs to the FMCSRs. The FMCSA is in the process of obtaining information collection approval from the Office of Management and Budget to conduct a study about the safety and/or regulatory compliance challenges of these small, passenger-carrying, commercial motor vehicle operations [71 FR 71236, December 8, 2006]. Because these passenger carriers are a newly regulated industry segment, FMCSA does not currently possess the necessary knowledge to propose a basic safety-awareness plan for them. After FMCSA completes its study, the Agency will decide whether it would be appropriate to seek comments about a proposed passenger safety-awareness plan for small passenger-carrying commercial motor vehicle operations.

CVSA also recommended that FMCSA develop educational materials to assist passenger carriers in training their drivers on the relevant pre-trip safety topics. CVSA suggested that FMCSA require such training as a part of the CDL and driver qualification requirements of the FMCSRs. The Basic Plan was designed to allow each motorcoach company to create and implement a passenger safety-awareness program that is practical and effective for the company's operational style and system. Keeping with the flexible nature of the Basic Plan, FMCSA believes that it would be infeasible to develop a model training guide for drivers on how and when to conduct pre-trip safety-awareness briefings for passengers. Motorcoach companies should design their own training materials to educate their drivers about pre-trip safety awareness for passengers, based upon each company's individual approach.

As mentioned in the August 28, 2006, **Federal Register** notice, the working group that was convened by FMCSA concluded that it would be best to initially encourage the motorcoach industry to take voluntary action to improve safety awareness for passengers, due to the wide-ranging operational variances within the industry. The group held that the development and promotion of best practices is an effective and realistic alternative to regulation to ensure motorcoach passengers receive safety information. If this initial approach is found to be ineffective and an unacceptable portion of the motorcoach industry does not voluntarily implement a safety-awareness program for passengers, FMCSA will consider whether regulatory action is needed to correct the problem. The FMCSA and its safety partners intend to monitor crashes and complaints to ensure that motorcoach companies are presenting pre-trip safety information to their passengers.

To assist motorcoach companies with implementing a safety-awareness program for passengers, FMCSA plans to develop and distribute a model safety pamphlet for motorcoach passengers. The FMCSA intends to place an electronic version of the pamphlet on

the Agency's Web site that can be downloaded and printed. This could be used by motorcoach companies that choose to distribute safety pamphlets to passengers during boarding or elect to place safety pamphlets in the pouches or sleeves on the backs of seats. The FMCSA believes that developing and distributing a model safety pamphlet for motorcoach passengers is the best single way to assist motorcoach companies in implementing a safety-awareness program for passengers. Motorcoach companies with modest financial resources could make effective use of the pamphlet as part of a safety-awareness program for passengers.

Basic Plan for Motorcoach Passenger Safety Awareness

The following Basic Plan reflects the ways FMCSA has responded to the recommendations made in the comments to the docket. The order of the recommended safety topics to be covered has been changed to rank the topics in order of importance.

Basic Plan for Motorcoach Passenger Safety Awareness

Recommended Safety Topics To Be Covered

1. *Emergency exits*—Point out the location of all emergency exits (push-out windows, roof vent, and side door) and explain how to operate them. Emphasize that, whenever feasible, the motorcoach door should be the primary exit choice. Encourage able-bodied passengers to assist any injured or mobility-impaired passengers during an emergency evacuation. Provide passengers with sufficient guidance to ensure compliance with 49 CFR 392.62, ''Safe operation, buses.''

2. *Emergency Contact*—Advise passengers to call 911 by cellular telephone in the event of an emergency.

3. *Driver Direction*—Advise passengers to look to the driver for direction and follow his/her instructions.

4. *Fire Extinguisher*—Point out the location of the fire extinguisher.

5. *Restroom Emergency Push Button or Switch*—Inform motorcoach passengers of the emergency signal device in the restroom.

6. *Avoiding Slips and Falls*—Warn passengers to exercise care when boarding and exiting the motorcoach and to use the handrail when ascending or descending steps. Encourage passengers to remain seated as much as possible while the motorcoach is in motion. If it is necessary to walk while the motorcoach is moving, passengers should always use handrails and supports.

Various Methods of Presenting the Safety Information

The following presentation methods are not an exhaustive list of ways to present safety information to motorcoach passengers. The list below should not be construed to restrict combinations of the following methods or additional presentation methods.

1. *During passenger boarding*—Informational pamphlets could be distributed to motorcoach passengers during boarding.

2. *After passenger boarding and immediately prior to moving the motorcoach*—

a. The driver requests the passengers to review informational pamphlets located in the pouches or sleeves on the back of seats.

b. The driver provides an oral presentation (similar to the presentations by airline flight attendants prior to take-off) with or without informational pamphlets as visual aids.

c. An automated audio presentation broadcasts a cassette tape or compact disk over the motorcoach audio system.

d. An automated video presentation plays a videotape or DVD on the motorcoach video system.

Timing and Frequency of the Presentation

Demand-responsive motorcoach operations, such as charters and tour services, should present the safety information to motorcoach passengers after boarding and prior to movement of the motorcoach.

Fixed route motorcoach service operations should present the safety information at all major stops or terminals, after passenger boarding and prior to movement of the motorcoach.

Policy Review by the Office of Management and Budget

E.O. 12866, as amended. The FMCSA has determined that this guidance is not significant under the standards established by the Office of Management and Budget (OMB) on April 25, 2007, under E.O. 12866, as amended. This publication was not reviewed by the OMB. The FMCSA expects the voluntary implementation of this guidance by the motorcoach industry will have annual costs that are substantially less than $100 million. Significant stakeholders that have been active in the development of this guidance, including the ABA–BISC and UMA, concur with this cost assessment.

Issued on: September 7, 2007.

John H. Hill,

Administrator.

[FR Doc. E7–18088 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; BMW

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the BMW of North America, LLC (BMW) petition for exemption of the Carline 1 vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

DATES: The exemption granted by this notice is effective beginning with the 2008 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Room W43–443, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated June 22, 2007, BMW requested exemption from the parts-making requirements of the theft prevention standard (49 CFR part 541) for the MY 2008 BMW Carline 1 vehicle line. The petition requested exemption from parts-making pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one line of its vehicle lines per year. BMW has petitioned the agency to grant an exemption for its Carline 1 vehicle line beginning with MY 2008. In its petition, BMW provided a detailed description and diagram of the identity,

design, and location of the components of the antitheft device for its Carline 1 vehicle line. BMW will install its passive antitheft device as standard equipment on the line. Features of the antitheft device will include a key with a transponder, loop antenna (coil) around the steering lock cylinder, an electronically-coded vehicle immobilizer (EWS) control unit and passive immobilizer. BMW's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

BMW stated that the EWS immobilizer device prevents the vehicle from being driven away under its own engine power. The EWS control unit provides the interface to the loop antenna (coil), engine control unit and starter. It queries key data from the transponder and provides the coded release of the engine management for a valid key. The ignition and fuel supply are only released when a correct coded release signal has been sent by the EWS control unit, to allow the vehicle to start. The immobilizer device is automatically activated when the engine is shut off and the vehicle key is removed from the ignition lock cylinder. The antitheft device can be further secured by locking the vehicle doors and hood using either the key lock cylinder on the driver's door or the remote frequency remote control. The frequency for the remote control constantly changes to prevent an unauthorized person from opening the vehicle by intercepting the signals of its remote control. The vehicle is also equipped with a central-locking system that can be operated to lock and unlock all doors or to unlock only the driver's door, preventing forced entry into the vehicle through the passenger doors.

BMW stated that the proposed antitheft device does not provide any visible or audible indication of unauthorized entry. Theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which BMW proposes to install on the Carline 1 line. The agency has concluded that the lack of a visual or audio alarm has not prevented these devices from being effective protection against theft.

The effectiveness of BMW's EWS is compared with devices which NHTSA has previously determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements of Part 541. The antitheft device that VMW intends to install on its Carline 1 vehicle line for MY 2008 is the same system that BMW installed on its BMW X3 vehicle line, X5, Carline 4, Carline 5, Carline 6, Carline 7, Carline Z4, and the MINI vehicle line. To further substantiate its device's effectiveness, BMW also submitted the April 1997 Highway Loss Data Institute's (HLDI) Bulletin on the preliminary results of antitheft devices in 1995 BMW models. BMW stated that the data demonstrates the performance of the BMW antitheft device when it was introduced in the 5 series vehicle line and is indicative of the performance it expects from any BMW antitheft device. The report compared BMWs equipped with an advanced passive antitheft devices installed in 1995 BMW models (i.e., passive activation with an electronic chip in the ignition key that must match the vehicle electronics) beginning with the January 1, 1995 production to the vehicle produced earlier in the model year that were equipped with less advanced antitheft technology (i.e., required arming the device by a special locking routine and had no electronic-key feature). According to BMW, HLDI reported significant decreases were found in both claim frequencies and average loss payment per claim for the BMW cars equipped with the new antitheft device. Specifically, HLDI's Bulletin showed a 73% decrease in relative claim frequency for BMW vehicle lines equipped with the new antitheft device as compared to the older device and a 78% decrease in relative average loss payment per claim when the vehicle line became equipped with the new device. Additionally, the agency notes that the most currently available theft data for BMW vehicle lines for which the agency has granted parts marking exemptions show that theft rates for these lines are all below the median (3.5826) and have remained so for the past three years. BMW has concluded that the antitheft device proposed for the Carline 1 vehicle line is no less effective than those devices and similar for which NHTSA has already been granted exemptions from the parts-marking requirements.

In addressing the specific content requirements of 543.6, BMW provided information on the reliability and durability of its device. To ensure reliability and durability of the device BMW conducted tests based on its own specified standards and believes that the device is reliable and durable since the device complied with its specified requirements for each test. BMW provided a detailed list of the tests conducted. BMW also stated that because the EWS immobilizer device is incorporated into the ignition, fuel injection, and starter circuit of the vehicle and is activated passively, reliability and durability of the system have to be ensured because the vehicle will not start if the EWS system malfunctions. BMW further stated that, if a malfunction should occur, the EWS device incorporates a microprocessor that can be accessed by using BMW diagnostic equipment to diagnose and correct the cause of the problem.

Additionally, the mechanical keys are unique. A special key blank, a special key cutting machine and the car's unique code are needed to duplicate a key. BMW stated that new keys will only be issued to authorized persons.

Based on the evidence submitted by BMW, the agency believes that the antitheft device for the BMW Carline 1 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Based on the information BMW has provided about its device, the agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a)(4) and (5), the agency finds that BMW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft.

For the foregoing reasons, the agency hereby grants in full BMW's petition for exemption for the Carline 1 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If BMW decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as

required by 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTS notes that if BMW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: September 7, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 07–4501 Filed 9–12–07; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–103 (Sub–No. 21X); STB Docket No. AB–1016X]

The Kansas City Southern Railway Company—Abandonment Exemption—Line in Warren County, MS; Vicksburg Southern Railroad, Inc.—Discontinuance of Service Exemption—Line in Warren County, MS

On August 24, 2007, The Kansas City Southern Railway Company (KCSR) and Vicksburg Southern Railroad, Inc. (VSOR), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903.[1] KCSR seeks to abandon and VSOR seeks to discontinue service over approximately 4.25 miles of rail line in the City of Vicksburg, in Warren County, MS. The line is referred to alternatively as the Vicksburg Industrial Lead, South Redwood Branch, or Redwood Branch, and extends from milepost 225.6 (south of the Line's crossing of Warrenton Road and the intersection with Kemp Bottom Road) to milepost 229.85 (approximately 0.05 miles south of the Line's crossing of Glass Road, just beyond the city limits of Vicksburg). The line traverses United States Postal Service Zip Code 39180 and includes the station of Cedars (milepost 227.2).

The line does not contain federally granted rights-of-way. Any documentation in KCSR's or VSOR's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 12, 2007.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,300 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than October 3, 2007. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–103 (Sub–No. 21X) and AB–1016X and must be sent to: (1) Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001; and (2) William A. Mullins, 2401 Pennsylvania Avenue, NW., Suite 300, Washington, DC 20037, and Craig Richey, 315 W. 3rd Street, Pittsburg, KS 66762. Replies to the petition are due on or before October 3, 2007.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 245–0230 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 31, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–17674 Filed 9–12–07; 8:45 am]

BILLING CODE 4915–01–P

[1] Applicants also seek exemptions from 49 U.S.C. 10904 (offer of financial assistance procedures) and 49 U.S.C. 10905 (public use conditions). These requests will be addressed in the final decision.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 7, 2007.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 15, 2007 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0904.

Type of Review: Extension.

Title: INTL–45–86 (Final) TD 8125 Foreign Management and Foreign Economic Processes Requirements of a Foreign Sale Corporation.

Description: The regulations provide rules for complying with foreign

management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign training gross receipts and qualify for reduced tax rates. Rules are included for maintaining records to substantiate compliance. Affected public is limited to large corporations that export goods or services.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 22,001 hours.

OMB Number: 1545–1651.

Type of Review: Extension.

Title: REG–118926–97 (Final) Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations.

Description: Section 6038B requires U.S. persons to provide certain information when they transfer certain property to a foreign partnership or foreign corporation. This regulation provides reporting rules to identify United States persons who contribute property to foreign partnerships and to ensure the correct reporting of items with respect to those partnerships.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–0895.

Type of Review: Revision.

Title: General Business Credit.

Form: 3800.

Description: IRC section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 3,131,300 hours.

OMB Number: 1545–1903.

Type of Review: Extension.

Title: REG–124405–03 (NPRM) Optional 10-Year Write-off of Certain Tax Preferences.

Description: This collection of information is required by the IRS to verify compliance with section 59(e). This information will be used to determine whether the amount of tax has been calculated correctly.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 10,000 hours.

OMB Number: 1545–0086.

Type of Review: Extension.

Title: U.S. Departing Alien Income Tax Return.

Form: 1040–C.

Description: Form 1040–C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability.

Respondents: Individuals or households.

Estimated Total Burden Hours: 11,632 hours.

OMB Number: 1545–1102.

Type of Review: Extension.

Title: PS–19–92 (Final) Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

Description: The regulations provide the Service the information it needs to ensure that low-income housing tax credits are being properly allocated under section 42. This is accomplished through the use of carryover allocation documents, election statements, and binding agreements executed between taxpayers (e.g. individuals, businesses, etc.) and housing credit agencies.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 4,008 hours.

OMB Number: 1545–1575.

Type of Review: Extension.

Title: REG–116608–97 (Final) Eligibility Requirements After Denial of the Earned Income Credit.

Description: This information is to provide guidance to taxpayers who have been denied the earned income credit (EIC).

Respondents: Individuals or households.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1545–0128.

Type of Review: Revision.

Title: U.S. Life Insurance Company Income Tax Return.

Form: 1120–L; Schedule M–3 (Form 1120–L).

Description: Life Insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 436,614 hours.

OMB Number: 1545–1304.

Type of Review: Extension.

Title: INTL–941–86; INTL–656–87; and INTL–704–87 (NPRM) Treatment of Shareholders of Certain Passive Foreign Investment Companies.

Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 2,500 hours.

OMB Number: 1545–1135.

Type of Review: Extension.

Title: Allocation of Patronage and Nonpatronage Income and Deductions.

Form: 8817.

Description: Form 8817 is filed by taxable farmer's cooperatives to report their income and deductions by patronage and nonpatronage sources. The IRS uses the information on the form to ascertain the amounts of patronage and nonpatronage income or loss were properly computed.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 22,006 hours.

OMB Number: 1545–1905.

Type of Review: Extension.

Title: REG–128767–04 (Final), (TD 9289) Treatment of Disregarded Entities Under Section 752.

Description: Generally, the final regulations recognize that only the assets of a disregarded entity that limits its member's liability are available to satisfy creditors' claims under local law. The proposed regulations provide rules under section 752 for taking into account the net value of a disregarded entity owned by a partner or related person for purposes of allocating partnership liabilities.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 3,000 hours.

OMB Number: 1545–2069.

Type of Review: Extension.

Title: Form 8283–V Payment Voucher for Filing Fee Under Section 170(f)(13).

Form: 8283–V.

Description: The Pension Protection Act of 2006 (Pub. L. 109–280) provides in section 1213(c) of the Act that taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of $10,000, must pay a $500 fee to the Internal Revenue Service or the deduction is not allowed.

Respondents: Individuals and households.

Estimated Total Burden Hours: 690 hours.

OMB Number: 1545–XXXX.

Type of Review: New.

Title: Foreign Based Importers—Non-Filers.

Description: Foreign corporations are subject to tax on income that is effectively connected with a U.S. trade or business and are required to file form 1120, 1120–f or 1065 reporting taxable income. The respondents will be foreign corporations. The information gathered will be used to determine if the foreign corporation has a U.S. trade or business and is required to file a U.S. Income Tax return.

Respondents: Businesses and other for-profits.

Estimated Total Burden Hours: 30 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E7–18096 Filed 9–12–07; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
September 13, 2007

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 15 Freshwater Mussels, 1 Freshwater Snail, and 5 Fishes in the Lower French Broad River and in the Lower Holston River, Tennessee; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU01

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 15 Freshwater Mussels, 1 Freshwater Snail, and 5 Fishes in the Lower French Broad River and in the Lower Holston River, Tennessee

AGENCY: Fish and Wildlife, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the State of Tennessee and Conservation Fisheries, Inc., a nonprofit organization, plan to reintroduce 15 mussels listed as endangered under section 4 of the Endangered Species Act of 1973, as amended (Act): Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*), birdwing pearlymussel (*Lemiox rimosus*), cracking pearlymussel (*Hemistena lata*), Cumberland bean (pearlymussel) (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fanshell (*Cyprogenia stegaria*), fine-rayed pigtoe (*Fusconaia cuneolus*), orange-foot pimpleback (pearlymussel) (*Plethobasus cooperianus*), oyster mussel (*Epioblasma capsaeformis*), ring pink (mussel) (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), shiny pigtoe (*Fusconaia cor*), and white wartyback (pearlymussel) (*Plethobasus cicatricosus*); 1 endangered aquatic snail: Anthony's riversnail (*Athearnia anthonyi*); 2 endangered fishes: duskytail darter (*Etheostoma percnurum*) and pygmy madtom (*Noturus stanauli*); and 3 fishes listed as threatened under section 4 of the Act: slender chub (*Erimystax cahni*), spotfin chub (=turquoise shiner) (*Erimonax monachus*), and yellowfin madtom (*Noturus flavipinnis*). We published the proposed rule for this action on June 13, 2006 (71 FR 34196). The species will be released into their historical habitat in the free-flowing reach of the French Broad River from below Douglas Dam to its confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River from below Cherokee Dam to its confluence with the French Broad River. Based on the evaluation of species experts, none of these 21 species currently exist in these river reaches or their tributaries. These species are being reintroduced under the authority of section 10(j) of the Act and would be classified as a nonessential experimental population (NEP).

The geographic boundaries of the NEP would extend from the base of Douglas Dam (river mile (RM) 32.3 (51.7 kilometers (km)) down the French Broad River, Knox and Sevier Counties, Tennessee, to its confluence with the Holston River and then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)) and would include the lower 5 RM (8 km) of all tributaries that enter these river reaches.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historical ranges. This rule provides a plan for establishing the NEP and provides for limited allowable legal take of these 16 mollusks and 5 fishes within the defined NEP area. We have decided to include all 21 species in a single rulemaking to allow us to restore the aquatic ecosystem as quickly as possible as we bring each of these species on line in the propagation facilities. We have reasons to believe all of these species co-existed in the past, and we also want the public to understand that all of these species will be reintroduced into the same stretch of river. We are not establishing 21 separate NEPs.

DATES: The effective date of this rule is October 15, 2007.

ADDRESSES: You may obtain copies of the final rule from the field office address above, by calling (931) 528–6481, or from our Web site at *http://cookeville.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Geoff Call, U.S. Fish and Wildlife Service, at the above address (telephone 931/528–6481, Ext. 213, facsimile 931/528–7075, or e-mail at *geoff_call@fws.gov*).

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Under section 10(j) of the Act, the Secretary of the Department of the Interior may designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.'' Based on the best scientific and commercial data available, we must determine whether experimental populations are ''essential'' or ''nonessential'' to the continued existence of the species. Regulatory restrictions are considerably reduced under a Non-essential Experimental Population (NEP) designation.

Without the NEP designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of an endangered species. ''Take'' is defined by the Act as ''harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct.'' Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

A population designated as experimental is treated for the purposes of section 9 of the Act as threatened, regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and special regulation for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary to provide for the conservation of a threatened species. In these situations, the regulations that generally extend most section 9 prohibitions to threatened species do not apply to NEPs, although the special 4(d) rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. When NEPs are located outside a National Wildlife

Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from authorizing, funding, or carrying out activities.

2. *Biological Information:* Prior to the impoundments, the lower French Broad and Holston Rivers historically supported a diverse fish, snail, and mussel fauna, possibly as many as 85 mussel species and subspecies, or about 65 percent of the mussel diversity once known from the entire Tennessee River system (Parmalee and Bogan 1998, pp. 1–328; Ahlstedt 2004). Of this once-rich aquatic fauna, 7 mussel species are extinct, and 21 are federally listed species (i.e., 15 mussels, 1 aquatic snail, and 5 fishes, listed in the **SUMMARY** section, above, are extirpated from these river reaches). The only federally listed mussel still occurring in the NEP area is the endangered pink mucket (*Lampsilis abrupta*), which still occurs in both the lower French Broad and lower Holston Rivers (Ahlstedt 2004; Layzer and Scott 2005, p. 11). The pink mucket is not one of the 15 mussel species we are proposing to reintroduce under this NEP.

Although much of the mussel fauna and some of the snail and fish fauna were eliminated from these river reaches, considerable suitable physical habitat remains, and various Federal (primarily the Tennessee Valley Authority (TVA)) and State natural resources agencies, industries, and municipalities have worked together to improve the water quality below the dams. Fish populations are rebounding (including the appropriate fish host species for mussel glochidia (larvae)) and snail populations are expanding in both rivers, and non-federally listed mussels and snails released into the lower French Broad River to test the area's suitability for mollusk transplants are doing well. Based on the results of recent studies and observations by knowledgeable scientists (Rakes and Shute 1999, p. 5; Scott and Saylor 2004; Layzer and Ahlstedt 2004; Layzer and Scott 2005, pp. 14–15), these river reaches now provide suitable habitat for reintroductions to occur.

Since the mid-1980s CFI, a nonprofit organization, with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service, National Park Service, TVA, and Tennessee Aquarium, has successfully translocated, propagated, and reintroduced spotfin chubs, duskytail darters, yellowfin madtoms, and smoky madtoms into Abrams Creek, Great Smoky Mountains National Park, Blount County, Tennessee. These fish historically occupied Abrams Creek prior to an ichthyocide treatment in the 1950s. An NEP designation for Abrams Creek was not needed since the entire watershed occurs on National Park Service land, section 7 of the Act applies regardless of the NEP designation, and existing human activities and public use are consistent with protection and take restrictions needed for the reintroduced populations. Natural reproduction by three of the four species in Abrams Creek has been documented (Rakes 2007). The spotfin chub reintroductions appear to be the least successful in this capacity (Shute et al. 2006, p. 106; Rakes 2007). We have also worked with CFI to translocate, propagate, and reintroduce these same four fish into an NEP established for a section of the Tellico River, Monroe County, Tennessee (67 FR 52420, August 12, 2002). Propagated fish of these four species were released into the Tellico River starting in 2003 and continuing yearly through 2007. Early indications show that these species are surviving and have had some success in spawning (Rakes 2007). It will take several more years of reintroductions to ensure future success similar to the Abrams Creek reintroductions. CFI has also successfully placed yellowfin madtoms in an existing NEP on the North Fork Holston River, Washington County, Virginia. This site is separated from the NEP on the lower Holston River by reservoirs, and the fish is not known from any of these reservoirs or intervening river sections. These reservoirs and river sections act as barriers to movement by the fish and assure that the North Fork Holston River population will remain geographically isolated and easily identifiable as a distinct population from the Lower Holston River population.

3. *Listing Information, Distribution, and Recovery Goals/Objectives:* The Appalachian monkeyface (pearlymussel) (*Quadrula sparsa*) (Lea 1841) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in July 1984 (Service 1984a). It historically occurred in the Tennessee River and three of its tributaries: the Clinch, Holston, and Powell Rivers (Service 1984a, pp. 2–4). We are unaware of historical records of the species in the French Broad River, but archeological records (Parmalee and Bogan 1988, p. 168) of this species exist from the Little Pigeon River (a lower French Broad River tributary). The species may still survive in extremely low numbers in the Powell River in Tennessee and the Clinch River in Virginia (Parmalee and Bogan 1998, p. 223). No downlisting (reclassification from endangered to threatened) criteria are provided in the recovery plan. The delisting objectives for the Appalachian monkeyface (Service1984a, pp. 19–20) are to: (1) Restore the viability of the Clinch and Powell River populations; (2) reestablish or discover viable populations in one additional river; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that there are noticeable improvements in coal-related problems and substrate quality in the Powell River and that no increase in coal-related sedimentation has occurred in the Clinch River.

The birdwing pearlymussel (*Lemiox rimosus*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in July 1984 (Service 1984b). We also established an NEP for the birdwing pearlymussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). Historical records exist for the species in 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. Historically, the species occurred in the Tennessee River near the confluence of the French Broad and Holston Rivers, in the Holston River just upstream of its confluence with the French Broad River, and in the Nolichucky River (a French Broad River tributary) (Parmalee and Bogan 1998, p. 146). Archeological records (Parmalee 1988, p. 171) of this species exist from the Little Pigeon River, a lower French Broad River tributary. It now survives in the Clinch and Powell Rivers in Tennessee and Virginia and in the Duck and Elk Rivers in Tennessee (Service 1984b, p. 2). No downlisting criteria are given in the recovery plan. The delisting objectives for the birdwing pearlymussel (Service 1984b, pp. 19–20) are to: (1) Restore the viability of the Clinch and Powell River populations, (2) reestablish

or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation has occurred in the Clinch River.

The cracking pearlymussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39850). We finalized a recovery plan for the species in July 1991 (Service 1991a). We also established an NEP for the cracking pearlymussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983, pp. 44–45, Service 1991a, pp. 2–5). It is extirpated throughout much of its range. Historical records exist from the Tennessee River near the confluence of the French Broad and Holston Rivers (Parmalee and Bogan 1998, p. 122). No historical records exist for the species in the French Broad system, but archaeological records (Parmalee 1988, pp. 168–169) of this species exist from the Little Pigeon River, a lower French Broad River tributary. It now survives at a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983, p. 45; Neves 1991, p. 277). It possibly survives in the Green River in Kentucky and in the Tennessee River, below Pickwick Dam, in Tennessee (Service 1991a). The downlisting objectives for the cracking pearlymussel (Service 1991a, p. 6) are to: (1) Reestablish/discover five viable populations; (2) ensure that one naturally produced year class exists within each population; (3) determine if recovery actions have been successful, as determined by an increase in population density and/or an increase in length of river inhabited; and (4) ensure there are no foreseeable threats to the continued existence of any population. The delisting objectives call for the reestablishment/discovery of eight viable populations and two naturally produced year classes within each population.

The Cumberland bean (pearlymussel) (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). We finalized a recovery plan for the species in August 1984 (Service 1984c). We also established an NEP for the Cumberland bean and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This species historically occurred in 10 river systems in the Cumberland and Tennessee River basins (Service 1984c, pp. 2–3). No historical records exist in the French Broad River system, but archaeological records (Parmalee 1988, p. 172) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The Cumberland bean now survives only in the Hiwassee River in Tennessee; in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky; and in the Big South Fork of the Cumberland River in Tennessee and Kentucky (Service 1984c, pp. 2–6). No downlisting criteria are given in the recovery plan. The delisting objectives for the Cumberland bean (Service 1984c, pp. 18–19) are to: (1) Restore the viability of populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population, and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the upper Cumberland and Tennessee drainages and that no increase in coal-related sedimentation exists in streams containing this species.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). Critical habitat was designated for this species on August 31, 2004 (69 FR 53136). We finalized a recovery plan for the species in May 2004 (Service 2004). We also established an NEP for the Cumberlandian combshell and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991, p. 2). Currently, populations survive in a few river reaches in both river systems (Gordon 1991, p. 2). It historically occurred in the lower Holston River and a French Broad River tributary (Nolichucky River) (Parmalee and Bogan 1998, p. 84). Archaeological records (Parmalee 1988, p. 171) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The downlisting objectives for the Cumberlandian combshell (Service 2004, pp. 65–68) call for the reestablishment/discovery of six viable populations and one naturally reproducing year class within each viable population. The delisting objectives are to: (1) Reestablish or discover viable populations in nine distinct streams, including three in the Cumberland River system, four in the upper Tennessee River system, and two in the lower Tennessee River system; (2) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (3) two distinct naturally reproducing year classes exist within each of the viable populations.

The Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984d). We also established an NEP for the Cumberland monkeyface and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in 11 rivers in the Tennessee River system (Service 1984d, pp. 2–3). Based on collections from aboriginal shell middens, Parmalee and Bogan (1998, pp. 214–215) stated that the species once occurred at the confluence of the French Broad and Holston Rivers. The species now survives at a few shoals in the Powell River in Tennessee and Virginia and the Elk and Duck Rivers in Tennessee (Service 1984d, p. 21). No downlisting criteria are given in the recovery plan. The delisting objectives for the Cumberland monkeyface (Service 1984d, pp. 21–22) are to: (1) Restore the viability of the Powell and Elk River populations; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation occurs in the Clinch River.

The dromedary pearlymussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984e). We also established an NEP for the dromedary pearlymussel

and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983, p. 16). Parmalee and Bogan (1998, p. 71) reported that the species historically occurred in the lower Holston River in Knox and Grainger Counties. Archaeological records of this species exist from the Little Pigeon River, a lower French Broad River tributary (Parmalee 1988, p. 172). It survives at a few shoals in the Powell and Clinch Rivers in Tennessee and Virginia and possibly in the Cumberland River in Tennessee (Service 1984e, pp. 3–8; Neves 1991, p. 293). No downlisting criteria are given in the recovery plan. The delisting objectives for the dromedary pearlymussel (Service 1984e, pp. 20–21) are to: (1) Restore the viability of the Clinch and Powell River populations; (2) reestablish or discover viable populations in three additional rivers; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal-related sedimentation occurs in the Clinch River.

The fanshell (*Cyprogenia stegaria*) (Rafinesque 1820) was listed as an endangered species on June 21, 1990 (55 FR 25591). We completed a recovery plan for the species in July 1991 (Service 1991b). It historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Alabama, Virginia, and Tennessee (Service 1991b). Ortmann (1918, p. 565) reported it from the lower Holston River, and Parmalee and Bogan (1998, p. 70) reported it from archaeological sites in the lower French Broad River and its tributary, the Little Pigeon River. Presently, the fanshell is believed to be reproducing in three rivers: the Green and Licking Rivers in Kentucky and the Clinch River in Tennessee and Virginia. Additionally, based on the collection of a few old specimens in the 1980s, small, apparently nonreproducing, populations may still persist in the Muskingum and Walhonding Rivers in Ohio, the Kanawha River in West Virginia, the Wabash River system in Illinois and Indiana, the Barren River and Tygarts Creek in Kentucky, and the Tennessee and Cumberland Rivers in Tennessee (Service 1991b, pp. 2–4). The downlisting objectives for the fanshell (Service 1991b, pp. 6–7) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least nine distinct viable populations exist; (2) ensure that one naturally reproduced year class exists within each of the nine populations; and (3) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures are beginning to succeed. The delisting objectives are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least 12 distinct viable populations exist; (2) ensure that two distinct naturally reproduced year classes exist within each viable population; (3) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures are successful; (4) ensure that no foreseeable threats exist that would likely impact the species' survival over a significant portion of its range; and (5) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24062). We finalized a recovery plan for the species in September 1984 (Service 1984f). We also established an NEP for the fine-rayed pigtoe and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in 15 Tennessee River tributaries (including the lower Holston River) and is currently known from 7 rivers (including the Nolichucky River, a French Broad River tributary, above the backwaters of Douglas Reservoir) (Service 1984f, pp. 2–4, Parmalee and Bogan 1998, pp. 115–116). No downlisting criteria are given in the recovery plan. The delisting objectives for the fine-rayed pigtoe (Service 1984f, pp. 22–24) are to: (1) Restore viable populations to the Clinch, Powell, and North Fork Holston Rivers, to the Little River and Copper Creek (Clinch River tributaries), and to the Elk River (Tennessee), Sequatchie River (Tennessee), and the Paint Rock River (Alabama); (2) reestablish or discover one viable population in an additional river; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population, and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal or other energy-related impacts occurs in the Clinch River.

The orangefoot pimpleback (pearlymussel) (*Plethobasus cooperianus*) (Lea 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in August 1984 (Service 1984g). It historically occurred in the Ohio, Cumberland, and Tennessee River systems, including the lower French Broad and Holston Rivers (Parmalee and Bogan 1998, p. 174). The species persists in the lower Ohio, Tennessee, and Cumberland Rivers (Service 1984g, pp. 2–6). In 2005, three adults were taken from the Ohio River and moved to the Kentucky Department of Fish and Wildlife Resources' propagation facility in Frankfort, Kentucky (Leroy Koch 2005). No downlisting criteria are given in this recovery plan. The delisting objectives for the orangefoot pimpleback (Service 1984g, pp. 13–14) are to ensure that: (1) One viable population exists in the Tennessee, Cumberland, and Ohio Rivers and these populations are dispersed throughout each river so that it would be unlikely for any one event to cause the total loss of any population; (2) viable populations are reestablished or discovered in two additional rivers; (3) three year classes, including one year class 10 years old or older, have naturally produced in each population; (4) no foreseeable threats exist that would interfere with the survival of any population; and (5) noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). Critical habitat was designated for this species on August 31, 2004 (69 FR 53136). We finalized a recovery plan for the species in May 2004 (Service 2004). We also established an NEP for the oyster mussel and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This mussel historically occurred throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991, pp. 2–3). Small populations now survive in a few river reaches in both river systems (Gordon 1991, pp. 2–3). It was historically taken in the lower French Broad River near its confluence with the Holston, and a

population still survives in the Nolichucky River, a French Broad River tributary, above Douglas Reservoir (Parmalee and Bogan 1998, p. 86). Archaeological records (Parmalee 1988, pp. 170–171) of this species exist from the Little Pigeon River, a lower French Broad River tributary. The downlisting objectives for the oyster mussel (Service 2004, pp. 65–68) call for the reestablishment/discovery of six viable populations and one naturally reproducing year class within each viable population. The delisting objectives are to: (1) Reestablish or discover viable populations in nine distinct streams in the Cumberland River system, upper Tennessee River system, and/or lower Tennessee River system; (2) ensure that the species is protected from present and foreseeable threats to the continued existence of any population; and (3) ensure that two distinct naturally reproducing year classes exist within each of the viable populations.

The ring pink (mussel) (*Obovaria retusa*) (Lamark 1819) was listed as an endangered species on September 29, 1989 (54 FR 40109). We completed a recovery plan for the species in March 1991 (Service 1991c). It historically occurred in the Ohio River and many of its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Alabama, and Tennessee (Service 1991c, pp. 2–3). Ortmann (1918, p. 567) and Parmalee and Bogan (1998, p. 166) reported it from the lower Holston River, and it has been taken from an archeological site on the lower French Broad River (Ahlstedt 1998). It likely still survives in very low numbers in the Green River in Kentucky, the Tennessee River in Tennessee and Kentucky, and the Cumberland River in Tennessee (Service 1991c, pp. 2–3, Parmalee and Bogan 1998, p. 166). In 2004 and 2005, three juveniles and one adult male were found in the Green River (Leroy Koch 2005). The adult male was taken to the Kentucky Department of Fish and Wildlife Resources' (KDFWR) propagation facility in Frankfort, Kentucky. KDFWR plans to propagate this species to augment existing populations and establish new ones, such as the lower French Broad and lower Holston Rivers. The downlisting objectives for the ring pink (Service 1991c, pp. 4–5) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least six distinct populations exist and (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed. The delisting objectives are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least nine distinct populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are successful; (3) ensure that no foreseeable threats exist that would likely impact the species' survival over a significant portion of its range; and (4) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The rough pigtoe (*Pleurobema plenum*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in August 1984 (Service 1984h). This widespread species was historically known from 22 rivers in the Mississippi and Ohio River systems (Service 1984h, pp. 2–3), including the lower French Broad and Holston Rivers (Parmalee and Bogan 1998, p. 189). Archaeological records (Parmalee 1988, p. 169) of this species exist from the Little Pigeon River (a lower French Broad River tributary). It is currently known from the Green, Barren, Cumberland, Tennessee, and Clinch Rivers (Parmalee and Bogan 1998, p. 189, Service 1984h, pp. 3–7). No downlisting criteria are given in this recovery plan. The delisting objectives for the rough pigtoe (Service 1984h, pp. 14–15) are to: (1) Protect existing populations, reestablish historical populations, and/or discover new populations so that at least six distinct populations exist; (2) ensure that these populations are dispersed throughout each river so it would be unlikely for any one event to cause the total loss of any population; (3) ensure that three year classes, including one year class 10 years old or older, have naturally produced in each population; (4) ensure that no foreseeable threats exist that would interfere with the survival of any population; and (5) ensure that noticeable improvements in water and substratum quality have occurred where habitat has been degraded.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in July 1984 (Service 1984i). We also established an NEP for the shiny pigtoe and 15 other federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). It historically occurred in the Tennessee River and 10 of its tributaries (Service 1984i, pp. 2–4). It is currently known from five river systems: the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984i, pp. 4–8). It was historically reported from the Tennessee River around the mouth of the Holston and French Broad Rivers, and it still occurs in the North Fork Holston River (a Holston River tributary) above Cherokee Reservoir (Service 1984i, pp. 2–4, Parmalee and Bogan 1998, p. 113). No downlisting criteria are given in the recovery plan. The delisting objectives for the shiny pigtoe (Service 1984i, pp. 23–25) are to: (1) Restore viable populations to the Clinch, Elk, Powell, North Fork Holston, and Paint Rock Rivers and to Copper Creek; (2) reestablish or discover one viable population in one additional river or two river corridors; (3) ensure that the species is protected from present and foreseeable threats to the continued existence of any population, and (4) determine that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that no increase in coal or other energy-related impacts occurs in the Clinch River.

The white wartyback (pearlymussel) (*Plethobasus cicatricosus*) (Say 1829) was listed as an endangered species on June 14, 1976 (41 FR 24062). We completed a recovery plan for the species in September 1984 (Service 1984j). It occurred in the Ohio, Cumberland, and Tennessee River systems, including the lower Holston River (Parmalee and Bogan 1998, p. 172). It still persists in the middle reaches of the Tennessee River (Service 1984j, pp. 4–5). No downlisting criteria are given in this recovery plan. The delisting objectives for the white wartyback (Service 1984j, pp. 12–13) are to ensure that: (1) A viable population exists in the Tennessee River; (2) viable populations are discovered or reestablished in two additional rivers; (3) these populations are dispersed so it is unlikely for any one event to cause the total loss of the species from that river system; (4) three year classes, including one year class 10 years old or older, have been produced in each reestablished population; and (5) no foreseeable threats exist that would interfere with the survival of any population.

Anthony's riversnail (*Athearnia anthonyi*) (Budd in Redfield 1854) was listed as an endangered species on April 15, 1994 (59 FR 17994). We completed a recovery plan for the species in

August 1997 (Service 1997). We also established an NEP for Anthony's riversnail and 16 federally listed mussels for a section of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama, on June 14, 2001 (66 FR 32250). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale Counties, Alabama, upstream into the lower French Broad River (Bogan and Parmalee 1983, pp. 81–82, Service 1997, pp. 1–2). Currently, two populations are known: one in Limestone Creek in Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River) in Tennessee and Alabama (Service 1997, p. 2). The downlisting objectives for Anthony's riversnail (Service 1997, p. 5–6) are to ensure that: (1) Four viable populations exist; (2) two naturally produced year classes exist in all four populations; (3) biological studies on the species are completed and recovery measures are beginning to succeed; (4) noticeable improvements in water and substratum quality have occurred where habitat is degraded; (5) each population is protected from present and foreseeable threats; and (6) all four populations remain stable or increase over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above. Additionally, all six populations should remain stable or increase over a 15-year period.

The duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) was listed as an endangered species on April 27, 1993 (58 FR 25758). We completed a recovery plan for the species in March 1994 (Service 1994a). We also established an NEP for the duskytail darter and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, duskytail darters were historically known from six populations: Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee, and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994a, pp. 3–6). The South Fork Holston River population is apparently extirpated (Service 1994a, p. 4). The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small and their viability is uncertain (Service 1994a, pp. 4–5). The Citico Creek population is healthy and viable (Shute 2005). CFI has reintroduced the species into Abrams Creek in Tennessee, and there are indications that it is becoming reestablished (Rakes et al. 2005, p. 106). No historical records exist for the fish in the lower French Broad or lower Holston Rivers. However, we and others believe it is likely that the species once inhabited these waters (Rakes and Shute 1999, p. 5). Our conclusion is based on the following facts: (1) The species was once likely much more widespread in the Tennessee River system, (2) the French Broad and Holston Rivers are tributaries to the Tennessee River between existing and historical populations, (3) both river reaches appear to contain suitable habitat for the species, and (4) there were no physical barriers that would have prevented the species from inhabiting these waters. The downlisting objectives for the duskytail darter (Service 1994a, pp. 7–8) are to: (1) Protect and enhance existing populations and reestablish a population so at least three distinct viable duskytail darter populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed; and (3) ensure that no foreseeable threats exist that would likely threaten the continued existence of the three aforementioned viable populations. The delisting objectives are to: (1) Protect and enhance existing populations and reestablish populations so at least five distinct viable duskytail darter populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are successful; and (3) ensure that no foreseeable threats exist that would likely impact the survival of the five aforementioned viable populations.

The pygmy madtom (*Noturus stanauli*) (Etnier and Jenkins 1980) was listed as an endangered species on April 27, 1993 (58 FR 25758). We completed a recovery plan for the species in September 1994 (Service 1994b). The pygmy madtom, which was likely more widespread in the Tennessee River system, has been found, and still exists, in only two short reaches of the Duck and Clinch Rivers in Tennessee. These river reaches are about 600 river miles apart. No historical records exist for the fish in the lower French Broad or lower Holston Rivers. However, we and others believe it is likely that it once inhabited these waters (Rakes and Shute 1999, p. 5). Our conclusion is based on the same facts outlined above for the duskytail darter. The downlisting objectives for the pygmy madtom (Service 1994b, p. 5) are to: (1) Protect and enhance existing populations so that at least two distinct viable populations exist; (2) ensure that studies of the species' biological and ecological requirements are complete and that any required recovery measures developed and implemented from these studies are beginning to succeed; and (3) ensure that no foreseeable threats exist that would likely impact the survival of the two aforementioned viable populations. No delisting criteria are given in this recovery plan.

The slender chub (*Erimystax cahni*) (Hubbs and Crowe 1956) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). We completed a recovery plan for the species in July 1983 (Service 1983a). It was historically known from the Clinch, Powell, and Holston Rivers (Service 1983a, pp. 2–3). The Holston River site is now under the Cherokee Reservoir. The species has not been found recently in the Powell River, and its continued existence in the Clinch River is represented by only one specimen taken in recent years (Rakes and Shute 2006, p. 1). However, collections made over the years have generally shown that specimens can often be taken only sporadically and in very small numbers. There was an effort to survey for the slender chub in 2004 and 2005. No slender chubs were found, but the surveyors felt confident that at least a few individuals may still survive in the Clinch River and a propagation program could succeed (Rakes and Shute 2006, p. 5). Additional surveys for slender chubs are planned for 2007. Although the species has never been collected from the lower French Broad system, we and others believe the species once likely inhabited these waters (Rakes and Shute 1999, pp. 3–5). Our conclusion is based on the same facts outlined above for the duskytail darter. The delisting objectives for the slender chub (Service 1983a, pp. 8–9) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Clinch and Powell Rivers; (2) ensure, through reintroductions and/or the discovery of new populations, that one other viable population exists;

(3) ensure that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River and that there is no increase in coal-related sedimentation in the Clinch River; and (4) protect the species from threats that may adversely affect the survival of the populations.

The spotfin chub (*Erimonax monachus*) (Cope 1868) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for the species in November 1983 (Service 1983b). Two NEPs have been established for the spotfin chub. The first was established for the spotfin chub and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). The second was established for the spotfin chub and the boulder darter (*Etheostoma wapiti*) for a section of Shoal Creek (a tributary to the Tennessee River), Lauderdale County, Alabama, and Lawrence County, Tennessee, on April 8, 2005 (70 FR 17916). This once-widespread species was historically known from 24 streams in the upper and middle Tennessee River system. Currently, it is extant in only four rivers/river systems (Service 1983b, pp. 2–4; P. Shute 2004; TVA 2004). CFI has reintroduced the species into Abrams Creek in Tennessee, and there are indications that it has become reestablished (Rakes et al. 2005, p. 106). Historical records exist for the species in the upper French Broad and upper Holston River systems, and the species still exists in the Holston River system above the Cherokee Reservoir (Service 1983b, pp. 2–14). We and our partners believe the species once likely inhabited the waters of the lower French Broad and lower Holston Rivers. Our conclusion is based on the same facts outlined above for the duskytail darter. The delisting objectives for the spotfin chub (Service 1983b, pp. 19–20) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River; (2) ensure, through reintroduction and/or the discovery of two new populations, that viable populations exist in two other rivers; and (3) ensure that no present or foreseeable threats exist that would likely impact the survival of any populations.

The yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) was listed as a threatened species on September 9, 1977, with critical habitat and a special rule (42 FR 45526). The critical habitat map was corrected on September 22, 1977 (42 FR 47840). We completed a recovery plan for the species in June 1983 (Service 1983c). Two NEPs have been established for the yellowfin madtom. The first NEP was established for a section of the North Fork Holston River in Washington County, Virginia, on August 4, 1988 (53 FR 29335). The second NEP was established for the yellowfin madtom and three other federally listed fishes for a section of the Tellico River in Monroe County, Tennessee, on August 12, 2002 (67 FR 52420). It was historically known from only seven streams (Service 1983c, p. 2). Four small extant populations still exist, one each in Citico Creek, Copper Creek, Clinch River, and the Powell River (Rakes and Shute 2006a, pp. 2, 6). The species was reintroduced into Abrams Creek, and the population is becoming reestablished (Shute et al. 2005, p. 106). Reintroductions into the NEP section of the Tellico River are ongoing and early results are promising (Rakes and Shute 2005, p. 13). Although there are no historical records from the lower Holston River or French Broad River system, we and others believe that the species once likely inhabited these river reaches (Rakes and Shute 1999). Our conclusion is based on the same facts outlined above for the duskytail darter. The delisting objectives for the yellowfin madtom (Service 1983c, pp. 8–10) are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) reestablish or discover viable populations in two additional rivers; (3) ensure that noticeable improvements in coal-related problems and substrate quality have occurred in the Powell River; and (4) ensure that each population is protected from present and foreseeable threats.

The recovery objectives in the recovery plans for all of the 21 species generally agree that, to reach recovery: (1) Existing populations should be restored to viable levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historical habitat. The number of secure, viable populations needed to achieve recovery (existing and restored) varies from species to species, depending on the extent of the species' probable former range (i.e., historically widespread species require a greater number of populations for recovery than species with historically more restricted distributions). However, the reestablishment of historical populations is a critical component in the recovery of all these species.

4. *Reintroduction Site:* At the request of the TVA and the TWRA, biologists from the Service, TVA, USGS, TWRA, and Alabama Game and Fish Division evaluated Tennessee River basin rivers for mollusk recovery potential. The biologists rated the French Broad River downstream of Douglas Dam as having a high potential for mollusk recovery and the Holston River below Cherokee Dam as having a medium potential primarily due to water quality and flow improvements to the tailwaters. In letters dated May 28, 1998, and June 29, 1998, the TWRA's Executive Director recommended that we consider reintroducing endangered mussels into the French Broad River below Douglas Dam and the Holston River below Cherokee Dam under NEP status. In an October 30, 1998, letter, the TWRA provided us with a list of mussel species (compiled by Tennessee mussel experts) that historically or probably occurred in these river reaches. In a December 9, 1998, letter to us, the TVA (the managers of the dams above the NEP for hydroelectric power, flood control, and recreation) expressed support for mussel recovery efforts in the Tennessee River valley streams and tailwaters.

Based on successes in Abrams Creek and CFI's intimate knowledge of nongame fishes and their habitat needs, we contracted with them to survey the lower French Broad River and determine if we could expand our listed fish recovery efforts into this major Tennessee River tributary. CFI determined that the lower French Broad River contains potential suitable habitat for the reintroduction of the duskytail darter, pygmy madtom, spotfin chub, and yellowfin madtom (Rakes and Shute 1999, pp. 2–4). Additionally, Rakes and Shute (2004) stated that the lower Holston River below Cherokee Dam could potentially support a reintroduced population of these fishes and that both river reaches contain potential habitat for slender chub reintroductions.

In a May 17, 1999, letter to us, the TWRA's Executive Director stated that he concurred with the conclusions in the report prepared by Rakes and Shute (1999). He recommended that we consider designating NEP status in the lower French Broad and Holston Rivers for the eventual reintroduction of these five fish species.

We previously established NEPs for the birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, fine-rayed pigtoe, oyster

mussel, shiny pigtoe, and Anthony's riversnail in the free-flowing reach of the Tennessee River below the Wilson Dam in Colbert and Lauderdale Counties, Alabama (66 FR 32250, June 14, 2001). In October 2003, 80 each of birdwing pearlymussels, oyster mussels, and dromedary mussels (dromedary mussels are not part of the Lower French Broad/Lower Holston NEP) and 2,370 Anthony's riversnails were placed in the NEP area below Wilson Dam. The status of these reintroduced mussels was checked during the summer of 2004 and 2005. While it is too early to determine whether or not the reintroduced individuals will become an established population, a significant number of them have survived thus far, indicating that the reintroduction has a good chance of being successful. Establishment of viable populations of these species in both the Tennessee River below the Wilson Dam under the existing regulation and in the lower French Broad and lower Holston Rivers, through this regulation, is an objective in the recovery of these species. However, it will take several years of monitoring to fully evaluate if populations of these species (and the other species) have become established and remain viable in these historic river reaches.

Based on the presence of suitable physical habitat, the positive response of endemic aquatic species to habitat improvements, improved quality of the water being released from the dams, the recommendations of the TWRA's Executive Director, and the evaluation of biologists familiar with the lower French Broad and Holston Rivers, we believe the French Broad River (downstream of Douglas Dam) and the Holston River (downstream of Cherokee Dam) appear suitable for the reintroduction of these 21 species with NEP status.

We plan to reintroduce these 21 species into historical habitat in the free-flowing reach of the French Broad River from RM 22.3 (35.7 km) (approximately 10 RM (16 km) below Douglas Dam), Knox and Sevier Counties, Tennessee, to the backwaters of Fort Loudoun Reservoir, upstream of, but near the confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, from above the backwaters of Fort Loudoun Reservoir just upstream of its confluence with the French Broad River, upstream to RM 42.3 (67.7 km) (approximately 10 RM (16 km) below Cherokee Dam). These river reaches contain the most suitable habitat for the reintroductions. None of these 21 species are known to currently exist in these river reaches, in tributaries to these reaches, or have free access to these reaches.

5. *Reintroduction Procedures:* The dates for these reintroductions, the actual number of individuals to be released, and the specific release sites cannot be determined at this time.

Mussel propagation and juvenile rearing technology are currently being refined (Jones et al. 2005). Genetic management guidelines for captive propagation of freshwater mussels have also recently been developed (Jones et al. 2006). Juvenile mussels of some species could be available for reintroduction soon after this NEP rule is finalized. Individual endangered mussels that would be used for these reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could also be released into the area. The parent stock for mussel propagation will come from existing wild populations in the Tennessee, Cumberland, and Ohio Rivers, and in most cases, adults will be returned to the capture site. Under some circumstances, adult endangered mussels could be permanently relocated (i.e., kept in captivity for their entire life) to propagation facilities or moved directly into the NEP area after being used for propagation purposes. A permit under section 10 of the ESA would be needed for handling and maintaining threatened and endangered species in captivity.

Anthony's riversnails will likely be collected for the reintroductions from a large naturally reproducing population located in Limestone Creek, Limestone County, Alabama, and relocated directly into the NEP.

Individual fishes that would be used for these reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some fishes could also be released into the NEP area. Propagation and juvenile rearing technology is available for the spotfin chub, slender chub, and duskytail darter. Limited numbers of yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild, and some pygmy madtoms can be propagated. However, madtom propagation technology, which is needed to produce large numbers of juvenile madtoms, needs further development. The parental stock for fish propagation and reintroductions will come from wild populations. Duskytail darters will likely come from Little River in Tennessee. Yellowfin madtoms will likely come from the Powell River in Tennessee. Spotfin chubs will likely come from upstream in the Holston River system above Cherokee Dam in Tennessee. Pygmy madtoms will come from the Clinch River in Tennessee. Slender chubs will come from the upper Tennessee River basin in Tennessee and Virginia. In some cases, the parents will be returned to the wild population from which they were taken. However, in most cases, adult fishes will be permanently relocated to propagation facilities.

To help ensure the genetic integrity of the reintroduced species and to match as closely as possible the genetic composition of the historical populations, we will observe the following guidelines: (1) To reduce homozygosity, at least 10 gravid female mussels, 10 fishes, and 10 snails, whenever possible, will be used as parental stock over the life of the reintroduction project (if this number cannot be obtained for very rare species, we will use whatever number is available) and (2) to match as closely as possible the genetic composition of the species that once existed in the lower French Broad and Holston Rivers, the adults and brood stock for the reintroductions will be collected using the following criteria (in order of decreasing importance): (a) Donor animals will be collected from populations in adjacent stream/tributary systems in the same physiographic province, (b) donor animals will be collected from populations in adjacent stream/tributary systems in an adjacent physiographic province, and (c) donor animals will be collected from the only population with a sufficient number of adults to produce progeny.

The permanent removal of adults (mollusks and fishes) from the wild for their use in reintroduction efforts is allowable when the following conditions exist: (1) Sufficient numbers of adults are available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) when the population is not reproducing (see 50 CFR § 17.22). For these 21 species, it is most likely that adults will be permanently removed because of the first condition. However, fewer adults will be needed for propagation than for actually moving individuals from a donor population to the NEP. An enhancement of propagation or survival permit under section 10(a)(1)(A) of the Act must be issued before any take occurs. We will coordinate these actions

with the Service's appropriate lead regions and State natural resources agencies.

6. *Status of Reintroduced Populations:* Previous translocations, propagations, and reintroductions of many of these species have not affected their wild populations. The use of artificially propagated juveniles will further reduce the potential effects on wild populations since fewer adults would be needed from the donor population. If any of the reintroduced populations become established and are subsequently lost, the likelihood of the species' survival in the wild would not be appreciably reduced because either the reintroduced individuals will be from propagated stock or the donor population will be of sufficient size to handle movement of adults. Therefore, we have determined that the reintroduced populations of these 21 species in the lower French Broad and Holston Rivers are not essential to the continued existence of these species. We will ensure, through our section 10 permit authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

7. *Location of Reintroduced Population:* The NEP area, which encompasses all the sites for the reintroductions, will extend from the base of Douglas Dam down the French Broad River, Knox and Sevier Counties, Tennessee, to its confluence with the Holston River and then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam and also will include the lower 5 RM (8 km) of all tributaries that enter these river reaches. Section 10(j) of the Act requires that an experimental population be geographically separate from other wild populations of the same species. The NEP area is totally isolated from existing populations of these species by large reservoirs, and none of these species are known to occur in, or are likely to move through, large reservoir habitat. Therefore, these reservoirs will act as barriers to the expansion of these species into other sections of the Tennessee River basin and will ensure that the NEPs remain geographically isolated and easily distinguishable from existing wild populations. Based on the habitat requirements of these mollusks and fishes, we do not expect them to become established outside the NEP area. However, if any of the reintroduced species move outside the designated NEP area, then the animals would be considered to have come from the NEP area. In that case, we may propose to amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population(s).

The designated NEP area for the duskytail darter, spotfin chub, and yellowfin madtom in the Tellico River (67 FR 52420, August 12, 2002) does not overlap or interfere with this NEP area for the lower French Broad and lower Holston Rivers in Tennessee because they are geographically separated river reaches. The designated NEP for the spotfin chub in Shoal Creek, Tennessee, (67 FR 17916) does not overlap or interfere with this NEP area for the lower French Broad and lower Holston Rivers in Tennessee because they are geographically separated river reaches.

Similarly, the NEP for the yellowfin madtom in the North Fork Holston River (53 FR 29335, August 4, 1998) is separated by reservoirs and long stretches of river that do not contain yellowfin madtoms or their habitat and act as effective barriers between madtom populations in the North Fork Holston River and the NEP in the lower Holston River.

The designated NEP area for the birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, shiny pigtoe, tubercled blossom, and Anthony's riversnail in the Tennessee River below the Wilson Dam (66 FR 32250, June 14, 2001) in Alabama does not overlap or interfere with this NEP area for the lower French Broad and lower Holston Rivers in Tennessee because they are geographically separated river reaches with several reservoirs between them.

Critical habitat has been designed for Cumberlandian combshell and oyster mussel (69 FR 53136, August 31, 2004), and the slender chub, spotfin chub, and yellowfin madtom (42 FR 45526, September 9, 1977); however, none of these designations include the NEP area. Critical habitat has not been designated for the 16 other species identified in this rule. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we have already established, by regulation, a nonessential experimental population.

8. *Management:* The aquatic resources in the reintroduction area are managed by the TWRA and the TVA. Multiple-use management of these waters will not change as a result of the NEP designation. The NEP designation will not require the TWRA or the TVA to specifically manage for reintroduced species in the NEP area. Private landowners within the NEP area will still be allowed to continue all legal agricultural and recreational activities. Because of the substantial regulatory relief provided by NEP designations, we do not believe these reintroductions will conflict with existing human activities or hinder public use of the NEP area.

The Service, State, TVA, and CFI staff will all be involved in the management of the reintroductions. They will closely coordinate on reintroductions, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reintroductions of these species.

(a) *Mortality:* The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR 17.3) such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. A person may take a listed species within the experimental population area provided that the take is unintentional and is not due to negligent conduct. However, when we have evidence of knowing (i.e., intentional) take of the listed species within the NEP, we will refer matters to the authorities, which in most cases for these reintroduced species would be the State agency, TWRA, for appropriate action. We expect levels of incidental take to be low since the reintroduction is compatible with existing human use activities and practices for the area.

(b) *Special Handling:* Service employees and authorized agents acting on their behalf may handle these 21 species for scientific purposes; to relocate them to avoid conflict with human activities; for recovery purposes; to relocate them to other reintroduction sites; to aid sick or injured individuals; and to salvage dead individuals.

(c) *Coordination with landowners and land managers:* The Service and cooperators identified issues and concerns associated with the reintroduction of these 21 species before preparing this rule. The reintroduction also has been discussed with potentially affected State agencies, businesses, and landowners within the release area. Affected State agencies, businesses, landowners, and land managers, including the TWRA and TVA, have indicated support for the reintroduction, if the species released in the

experimental population area are established as an NEP and if aquatic resource activities in the experimental population area are not constrained.

(d) *Potential for conflict with human activities:* We do not believe these reintroductions will conflict with existing or human activities or hinder public use of the NEP area within the French Broad and Holston Rivers. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are compatible with routine human activities in the reintroduction area.

(e) *Monitoring:* After the initial stocking of these species, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(f) *Public awareness and cooperation:* On January 12, 1999, we mailed letters to 47 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering proposing NEP status in the lower French Broad and Holston Rivers for the 16 mollusks (at the time of this letter, we had not yet decided to propose the fish reintroductions). We received one written response. The Tennessee Department of Environment and Conservation supported the reintroduction of the mollusks under NEP status. It stated that NEP status represents an appropriate step toward promoting the species' recovery while protecting the rights and privileges of Tennessee's citizens.

We did not circulate a similar notice regarding the potential of proposing NEP status for the five fishes. The report on the area's suitability for fish reintroductions (Rakes and Shute 1999) was not available when the mollusk notice was circulated. However, since we received only one comment on the mollusk notice, the TWRA and the TVA both support the mollusk and fish reintroductions under NEP status, and the inclusion of these fishes in the proposal would not result in any additional impact to public or government agency use of the river, we did not believe it was necessary to circulate a separate notice regarding these fishes. In any case, through the proposed rule, the public was given the opportunity to comment on the NEP designation for these fishes (see Summary of Comments and Recommendations Section below).

We have informed the general public of the importance of this reintroduction project in the overall recovery of these 21 species. The designation of the NEP for these reaches of the French Broad and Holston Rivers will provide greater flexibility in the management of these reintroduced species. The NEP designation is necessary to secure needed cooperation of the States, Tribes, landowners, agencies, and other interests in the affected area.

Finding

Based on the above information, and using the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that releasing the Appalachian monkeyface, birdwing pearlymussel, cracking pearlymussel, Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, dromedary pearlymussel, fanshell, fine-rayed pigtoe, orange-foot pimpleback, oyster mussel, ring pink, rough pigtoe, shiny pigtoe, white wartyback, Anthony's riversnail, duskytail darter, pygmy madtom, slender chub, spotfin chub, and yellowfin madtom into the lower French Broad and lower Holston Rivers Experimental Population Area under an NEP designation will further the conservation of these species.

Other Changes to the Regulations

In addition, we are making a minor technical correction to the existing regulation regarding the birdwing pearlymussel. The birdwing pearlymussel was listed on June 14, 1976 (41 FR 24062), under the scientific name of *Conradilla caelata*. The current list of endangered and threatened species at 50 CFR 17.11(h) uses the scientific name of *Conradilla caelata* for the birdwing pearlymussel. In the latest edition of the *Common and Scientific Names of Aquatic Invertebrates from the United States and Canada* published by the American Fisheries Society, the scientific name has been changed to *Lemiox rimosus* (Turgeon *et al.* 1998). This name change has occurred in a peer-reviewed publication and has acceptance in the scientific community. Therefore, we are correcting the text for the current list of endangered and threatened species at 50 CFR 17.11(h) and the existing experimental population in the free-flowing reach of the Tennessee River below Wilson Dam in Alabama at 50 CFR 17.85 by changing the scientific name for the birdwing pearlymussel from *Conradilla caelata* to *Lemiox rimosus* (see Regulation Promulgation section below).

We are also making editorial changes to 50 CFR 17.84(m) and 17.84(o). These paragraphs currently provide NEP information for multiple species; § 17.84(m) sets forth the Tellico River NEP area for spotfin chub, duskytail darter, and smoky madtom, while § 17.84 (o) sets forth the Shoal Creek NEP area for spotfin chub and boulder darter. In this final rule, we reformat this information into species-specific paragraphs, so that each fish species has its own NEP paragraph. These changes are nonsubstantive; no existing NEP areas would change as a result of the reformatting. The changes are simply for clarity and consistency, and to make information easier for the public to find.

Finally, we are also making editorial changes to replace the introductory text at 50 CFR 17.85(a) with a table for clarity. Again, this is a nonsubstantive change; no existing NEP areas would change as a result of the reformatting.

Summary of Comments and Recommendations

In the June 13, 2006, proposed rule (71 FR 34196), we requested that all interested parties submit comments or information concerning the proposed NEP. We contacted appropriate Federal, State, and local agencies, county governments, elected officials, scientific organizations, and other interested parties and invited them to comment on the proposed NEP. We also provided notification of this document through email, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interested groups. We provided the document on the Service's Cookeville Field Office Internet site following its release.

During the public comment period, we received comments from four parties: One federal agency and three universities. All four parties supported the NEP. The three university parties were peer reviewers (see below). The federal agency, Tennessee Valley Authority, operates the two dams on the lower French Broad and lower Holston Rivers. TWRA did not provide comments during the public comment period but remain supportive of this effort.

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we solicited independent opinions from four knowledgeable individuals who have expertise with these species within the geographic

region where the species occur, and/or familiarity with the principles of conservation biology. We received comments from three of the four peer reviewers. These are included in the summary below and incorporated into this final rule.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed NEP. Substantive comments received during the comment period have either been addressed below or incorporated directly into this final rule. The comments are grouped below as either peer review or public comments.

Peer Review Comments

(1) *Comment:* A recent publication entitled ''Restoration and colonization of freshwater mussels and fish in a southeastern United States tailwater'' by Layzer and Scott (2005) should be cited in lieu of some of the personal communications.

Response: We have added this citation to the document where appropriate.

(2) *Comment:* Continued operation of the dams as peaking hydroelectric projects will further hinder recolonization of the mid-water fish species and reduce the likelihood of establishing populations of some of the mussel species that rely on them as glochidial hosts.

Response: TVA continues to improve the conditions of the tailwaters below the two dams. We acknowledge that more work needs to be done to reduce the peak flows in both intensity and duration. We will continue to work with TVA to accomplish that goal. In the meantime, mussel species that use benthic fishes as glochidial hosts, such as the oyster mussel and birdwing pearlymussel, can be reintroduced as soon as this rule becomes final, since their glochidial host fish species are abundant in both rivers.

(3) *Comment:* A recent publication entitled ''Genetic management guidelines for captive propagation of freshwater mussels (Unionoidea)'' by Jones *et al.* (2006) should provide a citation for all genetic management issues related to either translocation or propagation of endangered freshwater mollusks.

Response: We have added this citation to the document where appropriate.

(4) *Comment:* Under 50 CFR 17.85, Special rules—invertebrates, there are a couple of extinct species listed in the table of NEP's in the Tennessee River. This may be very confusing to the public and perhaps be interpreted as contradictory to the ''best available science.''

Response: The table lists all the mollusk species that are included in the existing NEP below Wilson Dam in the Tennessee River (66 FR 32250, June 14, 2001). We realize that some of these species (in particular the tubercled blossom, turgid blossom, and yellow blossom pearlymussels) have not been found alive in 20 years or longer and that many experts believe that they may indeed be extinct. On the other hand, mussels can be found after a long time of not being seen in collection records and, presently, the Service has not declared any of these species extinct. These mussels are not part of this final action being set forth for the lower French Broad and lower Holston Rivers. However, the Service has initiated 5-year reviews for each of these mussels (70 FR 55157, September 20, 2005) and is in the process of assessing the mussels' listed status under the Act. If a change in status is recommended based on the review conducted, the Service would be required to go through a separate rulemaking process to formally change a species' listed status. At that time, the Service would consider associated existing regulations for the respective species and determine if corrections are necessary.

Public Comments

(5) *Comment:* The ''accidental and incidental take'' provision should be expanded to state that any take as a result of TVA's operation of its multipurpose dams and associated works (e.g., fluctuation of flows, adjustment of aeration systems) would be considered a permissible incidental take.

Response: The rule clearly states that section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. The rule allows for the taking of these reintroduced species when such take is incidental to an otherwise legal activity that is in accordance with Federal, State, and local laws and regulations. This rule applies to any legal activity TVA might undertake.

(6) *Comment:* The upstream limits of the NEP should be reconsidered since areas immediately downstream of the dams and for some distance downstream do not provide suitable habitat for any of these species due to dam operations.

Response: We acknowledge that presently the conditions below both dams (Cherokee and Douglas) are not sufficient to sustain viable populations of these listed species. However, particularly with the fish species, there could be some movement in and out of these areas. In order to provide regulatory relief, should any of these species move into these areas, we would have to designate the area as being part of the NEP. For this reason, we are going to leave the limits of the NEP as originally drafted to include the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River and the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule to designate NEP status for and reintroduce 15 endangered mussels, 1 endangered aquatic snail, 2 endangered fishes, and 3 threatened fishes in the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Knox County, Tennessee, and in the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million or more on the economy and will not have an adverse effect on any economic sector, productivity, competition, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment of the lower French Broad River (about 32 RM (51 km)) and the lower Holston River (about 52 RM (83 km)) in eastern Tennessee. Therefore, a cost-benefit and economic analysis will not be required.

We do not expect this rule to have significant impacts to existing human activities (e.g., hydroelectric power generation, flood control, agricultural activities, fishing, boating, wading, swimming, trapping) in the watershed. These rivers already have populations of the federally listed threatened snail darter (*Percina tanasi*) and endangered pink mucket mussel (*Lampsilis abrupta*), both of which require Federal agencies to consult with us under section 7 of the Act if their activities may adversely affect these species. The reintroduction of these federally listed species, which will be accomplished under NEP status with its associated regulatory relief, is not expected to impact Federal agency actions. Because of the substantial regulatory relief, we do not believe the reintroduction of

these species will conflict with existing or proposed human activities or hinder public use of the French Broad or Holston Rivers.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily the Environmental Protection Agency and TVA. Both Federal agencies support the proposal.

This rule will not materially affect entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the French Broad and Holston Rivers as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other listed species in various localities. Such rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most of the identified entities are small businesses engaged in activities along the affected reaches of these rivers, this rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of a NEP in this rule will significantly reduce the regulatory requirements regarding the reintroduction of these species, will not create inconsistencies with other agencies' actions, and will not conflict with existing or proposed human activity, or Federal, State, or public use of the land or aquatic resources.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activity while providing for the conservation of species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipality. The TWRA, which manages the fishes and mollusks in the French Broad and Holston Rivers, requested that we consider these reintroductions under a NEP designation. However, they will not be required to specifically manage for any reintroduced species. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required since this rulemaking does not require any action to be taken by local or State government or private entities. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et. seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced mollusks and fishes when such take is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these species will conflict with existing or proposed human activities or hinder public use of the French Broad and Holston River systems.

A takings implication assessment is not required because this rule (1) Will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule will substantially advance a legitimate government interest (conservation and recovery of listed freshwater mussel, snail, and fish species) and will not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have significant Federalism effects to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee on the reintroduction of these species into the French Broad and Holston River systems. The State wildlife agency in Tennessee (TWRA) requested that we undertake this rulemaking in order to assist the State in the restoration and recovery of its native aquatic fauna. Achieving the recovery goals for these species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected; roles and responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal government and is being undertaken at the request of a State agency (TWRA). We have cooperated with the TWRA in the preparation of this rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and that it meets the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal

agencies obtain approval from OMB before collecting information from the public. 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. This rule does not include any new collections of information that require approval by OMB under the Paperwork Reduction Act.

National Environmental Policy Act (NEPA)

We have determined that the issuance of this rule is categorically excluded from National Environmental Policy Act requirements (516 DM 6, Appendix 1.4 B(6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 229511), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited herein is available, upon request, from the Cookeville, TN Field Office (see **ADDRESSES** section).

Author

The principal author of this rule is Timothy Merritt, Cookeville Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final 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.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife, as follows:

■ a. Under the heading ''FISHES,'' by revising the entries for ''Chub, slender''; ''Chub, spotfin''; ''Darter, duskytail''; ''Madtom, pygmy''; ''Madtom, smoky''; and ''Madtom, yellowfin'' to read as set forth below;

■ b. Under the heading ''CLAMS,'' by revising the entries for ''Bean, Cumberland (pearlymussel)''; ''Blossom, tubercled (pearlymussel)''; ''Blossom, turgid (pearlymussel)''; ''Blossom, yellow (pearlymussel)''; ''Catspaw (purple cat's paw pearlymussel)''; ''Clubshell''; ''Combshell, Cumberlandian''; ''Fanshell''; ''Lampmussel, Alabama''; ''Mapleleaf, winged (mussel)''; ''Monkeyface, Appalachian (pearlymussel)''; ''Monkeyface, Cumberland (pearlymussel)''; ''Mussel, oyster''; ''Pearlymussel, birdwing''; ''Pearlymussel, cracking''; ''Pearlymussel, dromedary''; ''Pigtoe, fine-rayed''; ''Pigtoe, rough''; ''Pigtoe, shiny''; ''Pimpleback, orangefoot (pearlymussel)''; ''Pink, ring (mussel)''; and ''Wartyback, white (pearlymussel)'' to read as set forth below; and

■ c. Under the heading ''SNAILS,'' by revising the entry for ''Riversnail, Anthony's'' to read as set forth below.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Chub, slender	*Erimystax cahni*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do	....do	....do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(s)(1)(i)).	XN		NA	17.84(sr)
*	*	*	*	*	*		*
Chub, spotfin (=turquoise shiner).	*Erimonax monachus*	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do	....do	....do	U.S.A. (TN—specified portions of the Tellico River; see 17.84(m)(1)(i)).	XN	732	NA	17.84(m)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (AL, TN—specified portions of Shoal Creek; see 17.84(m)(1)(ii)).	XN	747	NA	17.84(m)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(m)(1)(iii)).	XN		NA	17.84(m)
*	*	*	*	*	*		*
Darter, duskytail	*Etheostoma percnurum.*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	E	502	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the Tellico River; see 17.84(p)(1)(i)).	XN	732	NA	17.84(q)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(q)(1)(ii)).	XN		NA	17.84(q)
*	*	*	*	*	*		*
Madtom, pygmy	*Noturus stanauli*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	502	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(t)(1)(i)).	XN		NA	17.84(t)
*	*	*	*	*	*		*
Madtom, smoky	*Noturus baileyi*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	163	17.95(e)	NA
Do	do	do	U.S.A. (TN—specified portions of the Tellico River; see 17.84(r)(1)(i)).	XN	732	NA	17.84(r)
*	*	*	*	*	*		*
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do	do	do	U.S.A. (TN, VA—specified portions of the Holston River and watershed; see 17.84(e)(1)(i)).	XN	317	NA	17.84(e)
Do	do	do	U.S.A. (TN—specified portions of the Tellico River; see 17.84(e)(1)(ii)).	XN	732	NA	17.84(e)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(e)(1)(iii)).	XN		NA	17.84(e)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Bean, Cumberland (pearlymussel).	*Villosa trabalis*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	.....do	.....do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN	.....	NA	17.85(b)
*	*	*	*	*	*		*
Blossom, tubercled (pearlymussel).	*Epioblasma torulosa torulosa*.	U.S.A. (AL, IL, IN, KY, TN, WV).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Blossom, turgid (pearlymussel).	*Epioblasma turgidula*.	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Blossom, yellow (pearlymussel).	*Epioblasma florentina florentina*.	.....do	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Catspaw, (=purple cat's paw pearlymussel).	*Epioblasma*	U.S.A. (AL, IL, IN, KY, OH, TN).	NA	E	394	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Clubshell	*Pleurobema clava* ...	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
*	*	*	*	*	*		*
Combshell, Cumberlandian.	*Epioblasma brevidens*.	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	17.95(f)	NA
Do	.....do	.....do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Fanshell	*Cyprogenia stegaria* (=*irrorata*).	U.S.A. (AL, IL, IN, KY, OH, PA, TN, VA, WV).	NA	E	391	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
Lampmussel, Alabama.	*Lampsilis virescens*	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
*	*	*	*	*	*		*
Mapleleaf, winged (mussel).	*Quadrula fragosa*	U.S.A. (AL, IA, IL, IN, KY, MN, MO, NE, OH, OK, TN, WI).	NA	E	426	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
*	*	*	*	*	*		*
Monkeyface, Appalachian (pearlymussel).	*Quadrula sparsa*	U.S.A. (TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
Monkeyface, Cumberland (pearlymussel).	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Mussel, oyster	*Epioblasma capsaeformis*.	U.S.A. (AL, GA, KY, MS, NC, TN, VA).	NA	E	602	17.95(f)	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pearlymussel, birdwing.	*Lemiox rimosus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
Pearlymussel, cracking.	*Hemistena lata*	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E	366	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pearlymussel, dromedary.	*Dromus dromas*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pigtoe, rough	*Pleurobema plenum*	U.S.A. (AL, IN, KY, PA, TN, VA).	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
Pigtoe, shiny	*Fusconaia cor*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pimpleback, orangefoot (pearlymussel).	*Plethobasus cooperianus*.	U.S.A. (AL, IA, IL, IN, KY, OH, PA, TN).	NA	E	15	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Pink, ring (mussel)	*Obovaria retusa*	U.S.A. (AL, IL, IN, KY, OH, PA, TN, WV).	NA	E	369	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
Wartyback, white (pearlymussel).	*Plethobasus cicatricosus*.	U.S.A. (AL, IL, IN, KY, TN).	NA	E	15	NA	NA
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (AL, GA, TN)	NA	E	538	NA	NA
Do	do	do	U.S.A. (AL—specified portions of the Tennessee River; see 17.85(a)(1)).	XN	709	NA	17.85(a)
Do	do	do	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.85(b)(1)).	XN		NA	17.85(b)
*	*	*	*	*	*		*

■ 3. Amend § 17.84 as follows:
■ a. Revise paragraphs (e), (m), and (o) to read as set forth below; and
■ b. Add new paragraphs (q), (r), (s), and (t) to read as set forth below.

§ 17.84 Special rules—vertebrates.

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*). (1) *Where is the yellowfin madtom designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: the North Fork Holston River Watershed NEP, the Tellico River NEP, and the French Broad River and Holston River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. This species is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iv) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP areas?* (i) Except as expressly allowed in paragraph (e)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the yellowfin madtom.

(ii) Any manner of take not described under paragraph (e)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the yellowfin madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) *Note:* Map of the NEP area for the yellowfin madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

* * * * *

(m) Spotfin chub (=turquoise shiner) (*Erimonax monachus*). (1) *Where is the spotfin chub designated as a nonessential experimental population (NEP)?* We have designated three populations of this species as NEPs: the Tellico River NEP, the Shoal Creek NEP, and the French Broad River and Holston River NEP. This species is not currently known to exist in the Tellico River or its tributaries, the Shoal Creek or its tributaries, or any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside the NEP areas. However, if individuals move upstream or downstream or into tributaries outside any of the designated NEP areas, we would presume that those individuals came from the closest reintroduced population. We would then amend this regulation and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(i) The Tellico River NEP area is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers (km)) and Tellico River mile 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The Shoal Creek NEP area is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(iii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox

and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(iv) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (m)(3) of this section, all the provisions of § 17.31(a) and (b) apply to the spotfin chub.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* (i) In the Tellico River NEP area, we will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

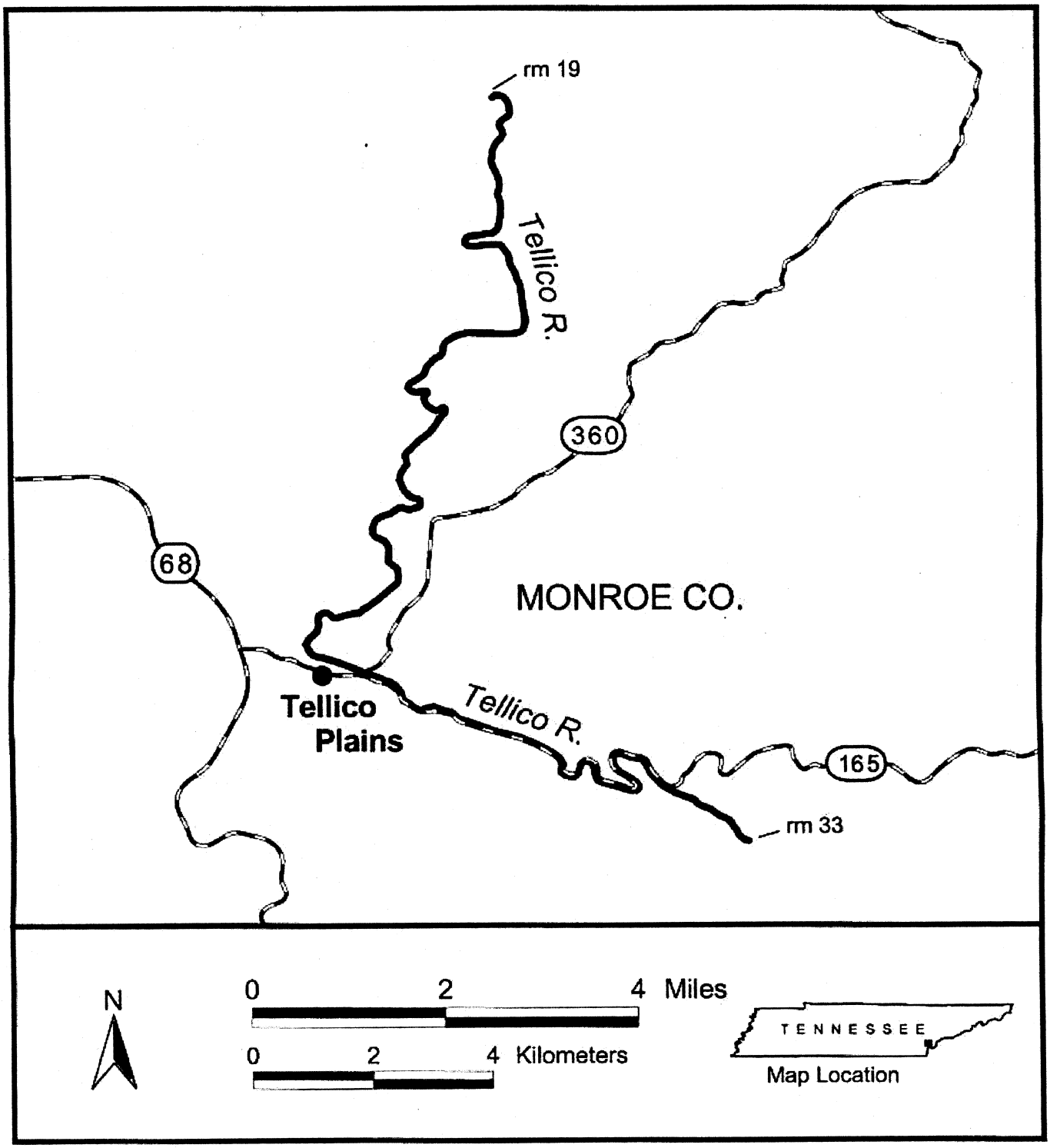
(ii) In the Shoal Creek NEP area, after the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(iii) *In the Lower French Broad and Lower Holston Rivers NEP area*, after the initial stocking of these species, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. Annual reports will be produced detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) Note: Map of the Tellico River NEP area for spotfin chub, dusky darter, smoky madtom, and yellowfin madtom in Tennessee follows:

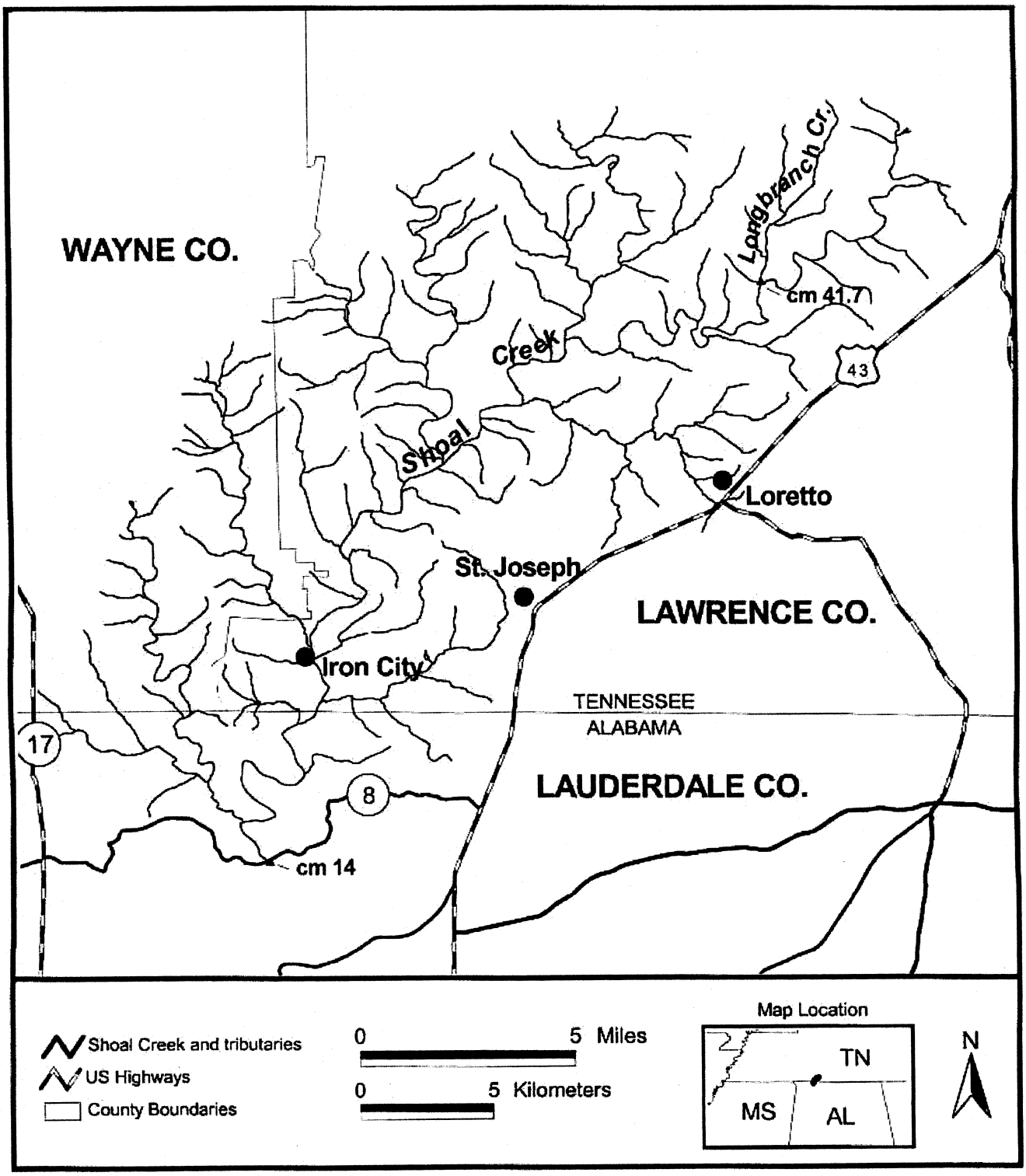
BILLING CODE 4310–55–P

Portion of the Tellico River Covered by the Spotfin Chub, Duskytail Darter, Smoky Madtom and Yellowfin Madtom Nonessential Experimental Population Designation



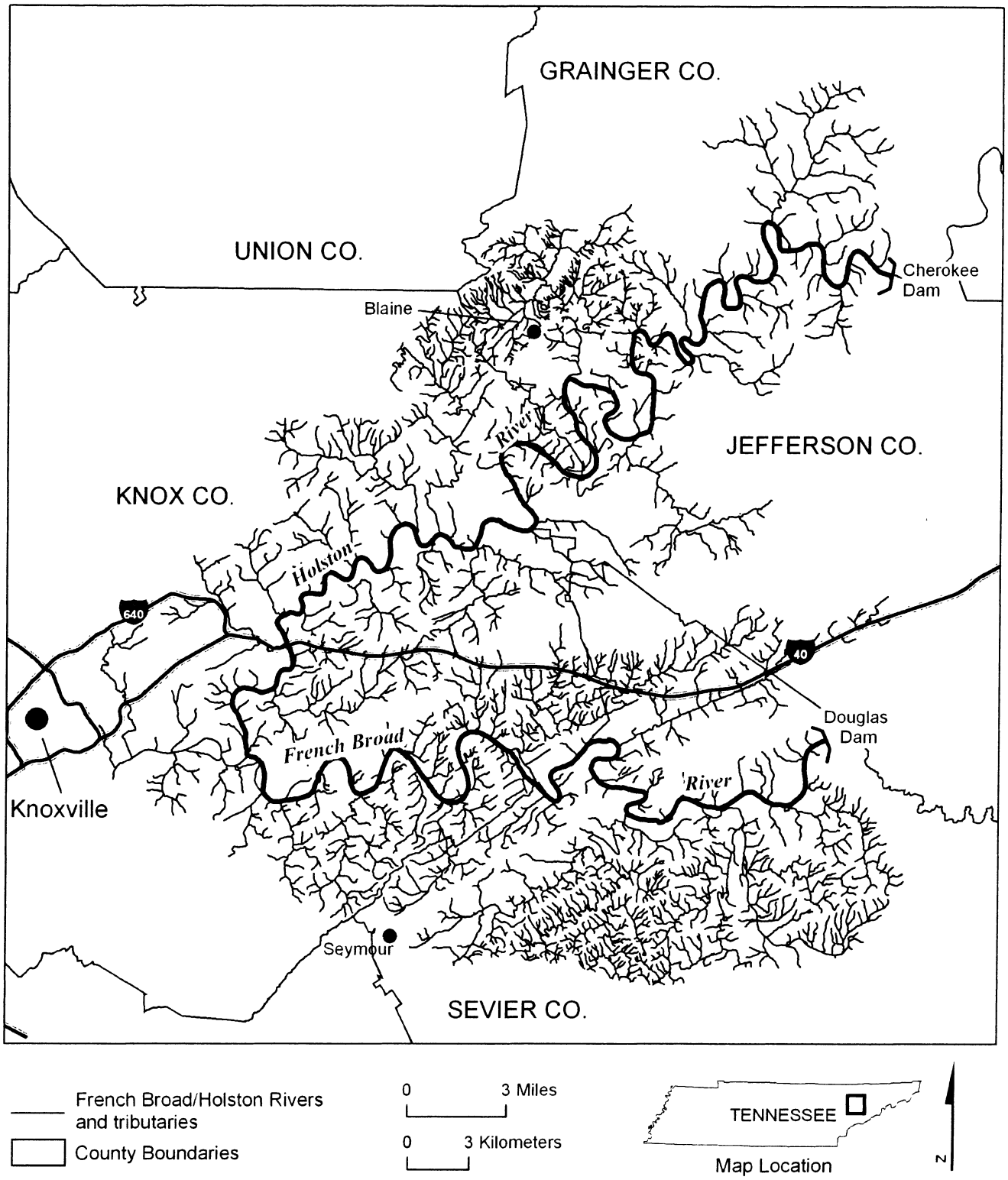
(6) Note: Map of the Shoal Creek NEP area for spotfin chub and boulder darter in Tennessee and Alabama follows:

Portion of Shoal Creek Watershed Covered by the Spotfin Chub and Boulder Darter Nonessential Experimental Population Designation



(7) Note: Map of the French Broad River and Holston River NEP area for spotfin chub, slender chub, duskytail darter, pygmy madtom, and yellowtail madtom in Tennessee follows:

Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 2 Federally Listed Endangered Fishes: Duskytail Darter and Pygmy Madtom; and 3 Federally Listed Threatened Fishes: Slender Chub, Spotfin Chub, and Yellowfin Madtom Nonessential Experimental Population Designation.



BILLING CODE 4310–55–C

* * * * *

(o) Boulder darter (*Etheostoma wapiti*).

(1) *Where is the boulder darter designated as a nonessential experimental population (NEP)*? (i) The NEP area for the boulder darter is within the species' historic range and is defined as follows: Shoal Creek (from Shoal Creek mile 41.7 (66.7 km)) at the mouth of Long Branch, Lawrence County, TN, downstream to the backwaters of Wilson Reservoir (Shoal Creek mile 14 (22 km)) at Goose Shoals, Lauderdale County, AL, including the lower 5 miles (8 km) of all tributaries that enter this reach.

(ii) The boulder darter is not currently known to exist in Shoal Creek or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this rule through our normal rulemaking process in order to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (o)(3) of this section, all the provisions of § 17.31(a) and (b) apply to the boulder darter.

(ii) Any manner of take not described under paragraph (o)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (o)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (o)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* After the initial stocking of fish, we will monitor annually their presence or absence and document any spawning behavior or young-of-the-year fish that might be present. This monitoring will be conducted primarily by snorkeling or seining and will be accomplished by contracting with the appropriate species experts. We will produce annual reports detailing the stocking rates and monitoring activities that took place during the previous year. We will also fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the boulder darter in the Shoal Creek, Tennessee and Alabama, appears immediately following paragraph (m)(6) of this section.

* * * * *

(q) Duskytail darter (*Etheostoma percnurum*). (1) *Where is the duskytail darter designated as a nonessential experimental population (NEP)*? We have designated two populations of this species as NEPs: The Tellico River NEP and the French Broad River and Holston River NEP. This species is not currently known to exist in the Tellico River or its tributaries or in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside these NEP areas. However, if individuals move upstream or downstream or into tributaries outside either of the designated NEP areas, we would presume that these individuals came from the reintroduced population. We would then amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(i) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The French Broad River and Holston River NEP area is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (q)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the duskytail darter.

(ii) Any manner of take not described under paragraph (q)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (q)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (q)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the duskytail darter in the Tellico River, Tennessee, appears immediately following paragraph (m)(5) of this section.

(6) *Note:* Map of the NEP area for the duskytail darter in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(r) Smoky madtom (*Noturus baileyi*). (1) *Where is the smoky madtom*

designated as a nonessential experimental population (NEP)?

(i) The NEP area for the smoky madtom is within the species' probable historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) The smoky madtom is not currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend paragraph (r)(1)(i) of this section and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (r)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the smoky madtom.

(ii) Any manner of take not described under paragraph (r)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (r)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (r)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the smoky madtom in the Tellico River, Tennessee, appears immediately following paragraph (m)(6) of this section.

(s) Slender chub (*Erimystax cahni*).

(1) *Where is the slender chub designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the slender chub is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The slender chub is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (s)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the slender chub.

(ii) Any manner of take not described under paragraph (s)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (s)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (s)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the slender chub in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

(t) Pygmy madtom (*Noturus stanauli*).

(1) *Where is the pygmy madtom designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the pygmy madtom is within the species' historic range and is defined as follows: the French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches.

(ii) The pygmy madtom is not known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area.

Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (t)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the pygmy madtom.

(ii) Any manner of take not described under paragraph (t)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of this species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (t)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (t)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) *Note:* Map of the NEP area for the pygmy madtom in the French Broad River and Holston River, Tennessee, appears immediately following paragraph (m)(7) of this section.

■ 4. Amend § 17.85 by revising paragraph (a) introductory text and adding a new paragraph (b) to read as follows:

§ 17.85 Special rules—invertebrates.

(a) *Seventeen mollusks in the Tennessee River.* The species in the following table comprise nonessential experimental populations (NEPs):

Common name	Scientific name
Cumberland bean (pearlymussel).	*Villosa trabalis*
tubercled blossom (pearlymussel).	*Epioblasma torulosa torulosa*
turgid blossom (pearlymussel).	*Epioblasma turgidula*
yellow blossom (pearlymussel).	*Epioblasma florentina florentina*
catspaw (purple cat's paw pearlymussel).	*Epioblasma obliquata obliquata*
clubshell	*Pleurobema clava*
Cumberlandian combshell.	*Epioblasma brevidens*
Alabama lampmussel.	*Lampsilis virescens*
winged mapleleaf (mussel).	*Quadrula fragosa*
Cumberland monkeyface (pearlymussel).	*Quadrula intermedia*
oyster mussel	*Epioblasma capsaeformis*
birdwing pearlymussel.	*Lemiox rimosus*
cracking pearlymussel.	*Hemistena lata*
dromedary pearlymussel.	*Dromus dromas*
fine-rayed pigtoe	*Fusconaia cuneolus*
shiny pigtoe	*Fusconaia cor*
Anthony's riversnail	*Athearnia anthonyi*

* * * * *

(b) *Sixteen mollusks in the French Broad and Holston Rivers.* The species in the following table comprise nonessential experimental populations (NEP):

Common name	Scientific name
Cumberland bean (pearlymussel).	*Villosa trabalis*
Cumberlandian combshell.	*Epioblasma brevidens*
fanshell	*Cyprogenia stegaria*
Appalachian monkeyface (pearlymussel).	*Quadrula sparsa*
Cumberland monkeyface (pearlymussel).	*Quadrula intermedia*
oyster mussel	*Epioblasma capsaeformis*
birdwing pearlymussel	*Lemiox rimosus*
cracking pearlymussel	*Hemistena lata*
dromedary pearlymussel.	*Dromus dromas*
fine-rayed pigtoe	*Fusconaia cuneolus*
rough pigtoe	*Pleurobema plenum*
shiny pigtoe	*Fusconaia cor*
orange-foot pimpleback (pearlymussel).	*Plethobasus cooperianus*
ring pink (mussel)	*Obovaria retusa*
white wartyback (pearlymussel).	*Plethobasus cicatricosus*
Anthony's riversnail	*Athearnia anthonyi*

(1) *Where are these mollusks designated as NEPs?* (i) The NEP area for these mollusks is within the species' historical range and is defined as follows: The French Broad River, Knox and Sevier Counties, Tennessee, from the base of Douglas Dam (river mile (RM) 32.3 (51.7 kilometers (km)) downstream to the confluence with the Holston River; then up the Holston River, Knox, Grainger, and Jefferson Counties, Tennessee, to the base of Cherokee Dam (RM 52.3 (83.7 km)); and the lower 5 RM (8 km) of all tributaries that enter these river reaches. None of the species identified in paragraph (b) are known to exist in any of the tributaries to the free-flowing reaches of the French Broad River below Douglas Dam, Knox and Sevier Counties, Tennessee, or of the Holston River below the Cherokee Dam, Knox, Grainger, and Jefferson Counties, Tennessee. Based on their habitat requirements, we do not expect these species to become established outside this NEP area. However, if any individuals are found upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (b)(1)(i) of this section to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(ii) Another NEP area for 10 of these mollusks (Cumberland bean, Cumberlandian combshell, Cumberland monkeyface, oyster mussel, birdwing pearlymussel, cracking pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, shiny pigtoe, and Anthony's riversnail) is provided in paragraph (a) of this section.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?* (i) Except as expressly allowed in paragraph (b)(3) of this section, all the prohibitions of § 17.31(a) and (b) apply to the mollusks identified in paragraph (b) of this section.

(ii) Any manner of take not described under paragraph (b)(3) of this section will not be allowed in the NEP area. We may refer the unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified mollusks, or parts thereof, that are taken or possessed in violation of paragraph (b)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (b)(2) of this section.

(3) *What take is allowed in the NEP area?* Take of these species that is

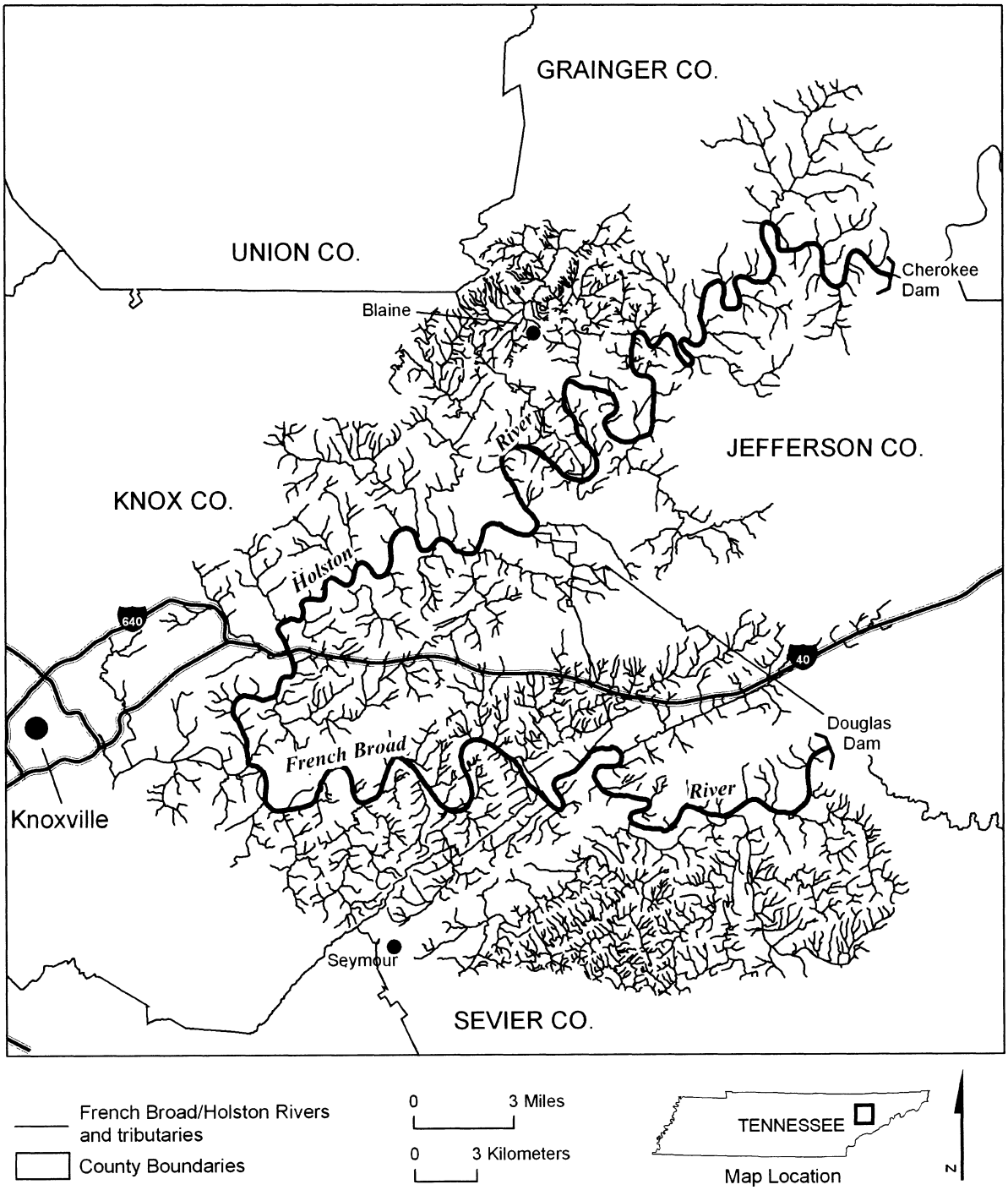
accidental and incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(5) Note: Map of the NEP area in Tennessee for the 16 mollusks listed in paragraph (b) of this section follows:

BILLING CODE 4310–55–P

Portion of the Lower French Broad River Watershed and the Lower Holston River Watershed Covered by the 15 freshwater mussels: Appalachian Monkeyface Pearlymussel, Birdwing Pearlymussel, Cracking Pearlymussel, Cumberland Bean Pearlymussel, Cumberlandian Combshell, Cumberland Monkeyface Pearlymussel, Dromedary Pearlymussel, Fanshell, Fine-rayed Pigtoe, Orange-foot Pimpleback Pearlymussel, Oyster Mussel, Ring Pink, Rough Pigtoe, Shiny Pigtoe, and White Wartyback Pearlymussel; and 1 Federally Listed Endangered Aquatic Snail: Anthonys Riversnail Nonessential Experimental Population Designation.



* * * * *

Dated: August 8, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07–4320 Filed 9–12–07; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
September 13, 2007

Part III

The President

Notice of September 12, 2007—Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Federal Register
Vol. 72, No. 177
Thursday, September 13, 2007

Presidential Documents

Title 3—

The President

Notice of September 12, 2007

Continuation of the National Emergency With Respect to Certain Terrorist Attacks

Consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency I declared on September 14, 2001, in Proclamation 7463, with respect to the terrorist attacks at the World Trade Center, New York, New York, the Pentagon, and aboard United Airlines flight 93, and the continuing and immediate threat of further attacks on the United States.

Because the terrorist threat continues, the national emergency declared on September 14, 2001, last extended on September 5, 2006, and the powers and authorities adopted to deal with that emergency, must continue in effect beyond September 14, 2007. Therefore, I am continuing in effect for an additional year the national emergency I declared on September 14, 2001, with respect to the terrorist threat.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

THE WHITE HOUSE,
September 12, 2007.

[FR Doc. 07–4593
Filed 9–12–07; 1:20 pm]
Billing code 3195–01–P

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H.R. 2863/P.L. 110–75

To authorize the Coquille Indian Tribe of the State of Oregon to convey land and interests in land owned by the Tribe. (Aug. 13, 2007; 121 Stat. 724)

H.R. 2952/P.L. 110–76

To authorize the Saginaw Chippewa Tribe of Indians of the State of Michigan to convey land and interests in lands owned by the Tribe. (Aug. 13, 2007; 121 Stat. 725)

H.R. 3006/P.L. 110–77

To improve the use of a grant of a parcel of land to the State of Idaho for use as an agricultural college, and for other purposes. (Aug. 13, 2007; 121 Stat. 726)

S. 375/P.L. 110–78

To waive application of the Indian Self-Determination and Education Assistance Act to a specific parcel of real property transferred by the United States to 2 Indian tribes in the State of Oregon, and for other purposes. (Aug. 13, 2007; 121 Stat. 727)

S. 975/P.L. 110–79

Granting the consent and approval of the Congress to an interstate forest fire protection compact. (Aug. 13, 2007; 121 Stat. 730)

S. 1716/P.L. 110–80

To amend the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, to strike a requirement relating to forage producers. (Aug. 13, 2007; 121 Stat. 734)

Last List August 13, 2007

CORRECTION

In the last **List of Public Laws** printed in the *Federal Register* on August 13, 2007, H.R. 2025, Public Law 110-65, and H.R. 2078, Public Law 110-67, were printed incorrectly. They should read as follows:

H.R. 2025/P.L. 110–65

To designate the facility of the United States Postal Service located at 11033 South State Street in Chicago, Illinois, as the "Willye B. White Post Office Building". (Aug. 9, 2007; 121 Stat. 568)

H.R. 2078/P.L. 110–67

To designate the facility of the United States Postal Service

located at 14536 State Route 136 in Cherry Fork, Ohio, as the ''Staff Sergeant Omer T. 'O.T.' Hawkins Post Office''. (Aug. 9, 2007; 121 Stat. 570)

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