AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Federal Register

10–3–07 Wednesday
Vol. 72 No. 191 Oct. 3, 2007

Pages 56241–56616

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2638

RINs 3209–AA00 and 3209–AA07

Amendments To Incorporate a Statement Regarding the ''Sole and Exclusive'' Nature of the Authority That the Regulations of the Office of Government Ethics Confer on Executive Branch Departments and Agencies

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule, clarifying amendments.

SUMMARY: The Office of Government Ethics is amending its regulations to clarify the sole and exclusive nature of the authority it has conferred on executive branch departments and agencies and to remove certain language that this clarification makes redundant.

DATES: *Effective Date:* November 2, 2007.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, telephone: 202–482–9300; TDD: 202–482–9293; FAX: 202–482–9237.

SUPPLEMENTARY INFORMATION: As the supervising ethics office for the executive branch, the Office of Government Ethics (OGE) has promulgated, at subchapter B of chapter XVI of title 5 of the Code of Federal Regulations, regulations that, among other things, confer on executive branch departments and agencies (''agencies'') the authority to carry out various functions of the executive branchwide ethics program. Agencies exercise this authority solely and exclusively, in order to ensure consistent and uniform application of the various statutory and regulatory authorities constituting the framework for ethics in the executive branch.

OGE previously amended one section of subchapter B, 5 CFR 2634.906, in order to add language emphasizing the sole and exclusive nature of the authority OGE has conferred on executive branch agencies. 63 FR 15273–15274 (March 31, 1998). In a branchwide issuance to designated agency ethics officials, DAEOgram DO–99–014 (April 12, 1999), available on OGE's Web site (*http://www.usoge.gov*), OGE similarly explained that the provisions of subchapter B that confer authority on executive branch agencies confer sole and exclusive authority. In January 2002, OGE reiterated this longstanding interpretation of subchapter B in connection with a matter pending before another administrative body, which in turn published the following decision taking note of the sole and exclusive authority OGE has conferred on executive branch agencies: 59 FLRA No. 50 (2003).

In order to ensure consistent and uniform application of subchapter B, OGE is issuing these final rule technical clarifying amendments, effective November 2, 2007, which incorporate in subchapter B an express regulatory statement regarding the sole and exclusive nature of the authority that subchapter B confers on executive branch agencies. Because this statement is applicable to all regulatory provisions in subchapter B, the language OGE added to 5 CFR 2634.906 in its 1998 amendment is now redundant. Accordingly, OGE is also removing that amended language from § 2634.906, including the note thereto, and reissuing that section as previously worded.

Finally, in accordance with section 402(b) of the Ethics in Government Act and section 201 of E.O. 12674 as modified, OGE has consulted with the Department of Justice and the Office of Personnel Management on these final rule clarifying amendments.

Matters of Regulatory Procedure

Administrative Procedure Act

These clarifying amendments to OGE's executive branchwide regulations constitute interpretative rules that are exempt, pursuant to 5 U.S.C. 553(b)(A), from the general procedures for notice of proposed rulemaking and opportunity for public comment. The purpose of the amendments is to clarify that the agencies concerned have sole and exclusive authority to make specific ethics determinations as to their employees. These amendments do not substantively change any existing responsibilities.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch agencies and their employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule, once finalized, will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the **Federal Register**.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have also been reviewed by the Office of Management and Budget under that Executive Order.

Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to these revisions notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the federal government in administering these regulatory amendments, since the provisions only clarify OGE's original intent regarding sole and exclusive agency authority under the executive branchwide government ethics regulations. Finally, this rulemaking is not economically significant under the Executive Order and will not interfere with State, local or tribal governments.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory rulemaking in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2638

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Dated: September 21, 2007.

Robert I. Cusick,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Office of Government Ethics is amending parts 2634 and 2638 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

Title 5—Administrative Personnel

CHAPTER XVI—OFFICE OF GOVERNMENT ETHICS

SUBCHAPTER B—GOVERNMENT ETHICS

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

■ 1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart I—Confidential Financial Disclosure Reports

■ 2. Section 2634.906 is amended by removing the note and revising the regulatory text of the section to read as follows:

§ 2634.906 Review of confidential filer status.

The head of each agency, or an officer designated by the head of the agency for that purpose, shall review any complaint by an individual that his position has been improperly determined by the agency to be one which requires the submission of a confidential financial disclosure report pursuant to this subpart. A decision by the agency head or designee regarding the complaint shall be final.

PART 2638—OFFICE OF GOVERNMENT ETHICS AND EXECUTIVE AGENCY ETHICS PROGRAM RESPONSIBILITIES

■ 3. The authority citation for part 2638 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

■ 4. Section 2638.101 is amended by adding a new paragraph (c) to read as follows:

§ 2638.101 Authority and purpose.

* * * * *

(c) *Agency authority.* Subject only to the authority of the Office of Government Ethics as the supervising ethics office for the executive branch, all authority conferred on agencies in this subchapter B of chapter XVI of title 5 of the Code of Federal Regulations is sole and exclusive authority.

[FR Doc. E7–19470 Filed 10–2–07; 8:45 am]

BILLING CODE 6345–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[Docket Number: AMS–CN–07–0060; CN–07–003B]

RIN 0581–AC75

2007 Crop Cotton Classification Services and User Fees to Growers

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: The Smith-Doxey Amendment of 1937 (7 U.S.C. 473a) to the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) provided authority for the USDA to perform cotton classification and market news services to producers at no cost. Prior to that time, authorization for classing services was provided through the Cotton Standards Act of 1923 (7 U.S.C. 51–65) and for statistical purposes through the Cotton Statistics and Estimates Act of 1927. Costs for classing services under the Smith-Doxey Amendment were supplied through appropriated funds until 1981 at which time the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) authorized the USDA to begin collecting user fees for their services and the classing fee structure was implemented through the Smith-Doxey Amendment. The statutory authority for the delivery of classing services and collection of applicable fees under the Smith-Doxey Amendment will lapse on September 30, 2007. This rulemaking is necessary to re-establish the regulatory authority for the program's continued operation and incorporate the current fee structure for the 2007 crop year, which was published in the June 1, 2007, **Federal Register** (72 FR 30457), under the authority of the Cotton Standards Act of 1923.

DATES: *Effective Date:* October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton Program, AMS, USDA, Room 2639–S, STOP 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224. Telephone (202) 720–2145, facsimile (202) 690–1718, or e-mail *darryl.earnest@usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that may be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 30,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Continuing the user fee at the 2006 crop level as stated will not significantly affect small businesses as defined in the RFA because:

(1) The fee represents a very small portion of the cost-per-unit currently borne by those entities utilizing the services. (The 2006 user fee for classification services was $1.85 per bale; the fee for the 2007 crop would be maintained at $1.85 per bale; the 2007 crop is estimated at 19,900,000 bales);

(2) The fee for services will not affect competition in the marketplace;

(3) The use of classification services is voluntary. For the 2006 crop, 21,729,000 bales were produced; and, almost all of these bales were voluntarily submitted by growers for the classification service;

(4) Based on the average price paid to growers for cotton from the 2005 crop of 46.9 cents per pound, 500 pound bales of cotton are worth an average of $234.50 each. The proposed user fee for classification services, $1.85 per bale, is less than one percent of the value of an average bale of cotton; and

(5) This rule does not change any of the provisions in the regulations which were in effect for this activity under the Cotton Statistics and Estimates Act of 1927 with the exception of the definition of ''Act'' as these regulations will now be authorized under a new authority.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the provisions to be amended by this rule have been previously approved by OMB and were assigned OMB control number 0581–AC58.

SUPPLEMENTARY INFORMATION: The United States Cotton Standards Act of 1923 (7 U.S.C. 51–65) was enacted into law on March 4, 1923, to authorize the Secretary of Agriculture to establish and promote the use of the official cotton standards of the United States for the classification of cotton by which its quality or value may be judged or determined for commercial purposes; to prevent deception therein and provide for the proper application of such standards; to establish a classing service for the public on a fee basis; and to provide for the licensing of qualified classers to determine the quality of cotton according to the official standards. The Act called for the Secretary of Agriculture to cause to be collected such fees and charges for services and materials rendered to cover, as nearly as practicable, and after taking into consideration net proceeds from any sale of samples, the costs incident to providing services and standards under the sections of the Act including administrative and supervisory costs.

The Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476) was enacted into law March 3, 1927, and directed the Secretary of Agriculture to collect and publish annually statistics of estimates of the grades of the cotton carryover each year and to collect and publish at least three estimates each year of the grades of the current crop as ginned. Classing services were conducted under this Act to provide industry with these estimates of cotton quality. Due to the imminent need felt by the Secretary of Agriculture to provide as much information possible regarding the cotton quality and the commercial value at the time it was sold, an amendment to the Cotton Statistics and Estimates Act was passed by Congress on April 13, 1937, the Smith-Doxey Amendment (7 U.S.C. 473a). The Amendment authorized and directed the Secretary of Agriculture to provide free classing and market news services to members of organized cotton improvement groups. These free services were continued until 1981 when the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) was enacted on August 13, 1981, which contained an amendment to the Cotton Statistics and Estimates Act known as the ''Cotton Classification Act'' (Pub. L. 97–35, Stat. 373–374) that directed the Secretary of Agriculture to provide cotton classification services to producers, and recover, as nearly as practicable, the costs of providing such services through imposition of user fees. The statutory authority found in the Cotton Statistics and Estimates Act of 1927, which has been used for cotton classification activities since 1981, will lapse on September 30, 2007. As a result of this, the cotton classification service will continue to operate under the authority of the United States Cotton Standards Act of 1923 with all previous provisions for program operations and fee rates to remain constant.

Fees for Classification Under the Cotton Standards Act

This rulemaking incorporates the current fee structure for the 2007 crop year that was published in the **Federal Register** on June 1, 2007 (72 FR 30457). The fee rate of $1.85 per bale charged to cotton producers for High Volume Instrument (HVI) classification services during the 2007 harvest season is deemed to, as nearly as practicable, cover salaries, costs of equipment and supplies, and other overhead costs, including costs for administration, and supervision.

This rule ensures that classing services remain uninterrupted and that the fee rate charged to producers for classification remains at $1.85 per bale during the 2007 harvest season under the Cotton Standards Act of 1923.

Accordingly, § 28.909, paragraph (b) would reflect the continuation of the HVI classification fee at $1.85 per bale.

As provided for in the Uniform Cotton Classing Fees Act of 1987 (Pub. L. 102–237), as amended, a 5 cent per bale discount would continue to be applied to voluntary centralized billing and collecting agents as specified in § 28.909(c).

Growers or their designated agents receiving classification data would continue to incur no additional fees if classification data is requested only once. The fee for each additional retrieval of classification data in § 28.910 would remain at 5 cents per bale. The fee in § 28.910(b) for an owner receiving classification data from the National database would remain at 5 cents per bale, and the minimum charge of $5.00 for services provided per monthly billing period would remain the same. The provisions of § 28.910(c) concerning the fee for new classification memoranda issued from the National database for the business convenience of

an owner without reclassification of the cotton will remain the same at 15 cents per bale or a minimum of $5.00 per sheet.

The fee for review classification in § 28.911 would be maintained at $1.85 per bale.

The fee for returning samples after classification in § 28.911 would remain at 40 cents per sample.

Pursuant to 5 U.S.C. 553, good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the current authority under which USDA performs cotton classification and charges user fees will lapse on September 30, 2007.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton samples, Grades, Market news, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

■ For the reasons set forth in the preamble, 7 CFR part 28, subpart B, is revised to read as follows:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

Subpart D—Cotton Classification and Market News Service for Producers

Definitions

Sec.
28.901 Definitions.

Administration

28.902 Director.

Classification and Market News Services

28.903 Classification of samples.
28.904 Market news.

Sampling

28.906 Sampling arrangements.
28.907 Responsibilities of licensed gins or warehouses.
28.908 Samples.
28.909 Costs.

Classification

28.910 Classification of samples and issuance of classification data.
28.911 Review classification.

Limitation of Services

28.917 Limitation of services.

Subpart D—Cotton Classification and Market News Service for Producers

Authority: 7 U.S.C. 51–65; 7 U.S.C. 471–476.

Definitions

§ 28.901 Definitions.

When used in the regulations in this subpart:

(a) *Act* means the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51–65) and the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476), unless otherwise noted.

(b) *Service* means the Agricultural Marketing Service of the United States Department of Agriculture.

(c) *Administrator* means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Service to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act for the Administrator.

(d) *Division* means the Cotton Division of the Agricultural Marketing Service.

(e) *Director* means the Director of the Cotton Division, or any officer or employee of the Division to whom authority has heretofore been delegated or to whom authority may hereafter be delegated, to act for the Director.

(f) *Producer* means any individual, partnership, corporation, association, trust, estate, or other legal entity, a state or political subdivision thereof, or any agency of such state or political subdivision producing American Upland or American Pima cotton in the capacity of landowner, landlord, tenant, or sharecropper.

Administration

§ 28.902 Director.

The Director shall perform for and under the supervision of the Administrator, such duties as the Administrator may require in enforcing the regulations in this subpart.

Classification and Market News Services

§ 28.903 Classification of samples.

The Director, or an authorized representative, upon the receipt of a producer's cotton sample which complies with the regulations in this subpart shall, as hereinafter provided, furnish to such producer or to an agent designated by the producer the classification in accordance with the official cotton standards of the United States.

§ 28.904 Market news.

The Director shall cause to be distributed to producers of cotton and to others on request, timely information on prices for various qualities of cotton.

Sampling

§ 28.906 Sampling arrangements.

(a) Cotton must be sampled by a gin or warehouse that holds a valid license to sample cotton issued pursuant to §§ 28.20 through 28.22.

(b) The Director, or an authorized representative may direct that sampling be performed by employees of the Department of Agriculture for the purpose of appraising the sampling procedures at cotton gins or warehouses, or for the purpose of providing service to producers in special cases where a licensed gin or warehouse is not available.

§ 28.907 Responsibilities of licensed gins or warehouses.

Each licensee shall be primarily responsible for drawing, identifying, handling, and shipping samples of cotton in accordance with this subpart and with instructions furnished by the Director or an authorized representative from time to time.

§ 28.908 Samples.

(a) *Only one sample to be submitted.* Only one sample from each bale of eligible cotton shall be submitted for classification under this subpart. This does not prohibit the submission of an additional sample from a bale for review classification if the producer so desires.

(b) *Drawing of samples manual.* (1) Each cut sample shall be drawn from the bale after it is tied out following the grinning process, and shall be approximately 6 ounces in weight, not less than 3 ounces of which are to be drawn from each side of the bale: *Provided,* That each sample from a bale of American Pima cotton shall be approximately 10 ounces in weight, not less than 5 ounces of which are to be drawn from each side of the bale.

(2) Where it is necessary to draw two sets of samples, a single cut should be made in each side of the bale, and the portion of cotton removed from each cut should be broken in half across the layers to provide two complete samples. In those cases where this method would result in samples of insufficient length, it will be acceptable to split the sample lengthwise along the layers, provided the outside portion from each side is submitted for the official classification.

(c) *Mechanical sampling.* Samples may be drawn in gins equipped with mechanical samplers approved by the Division and operated according to sampling instructions furnished by the Director or an authorized representative. Such samples shall not be less than 6 ounces in weight.

(d) *Samples must be representative.* Each sample must be representative of the bale from which drawn.

(e) *Handling samples.* Samples shall not be dressed or trimmed and shall be carefully handled in such manner as not to cause loss of leaf, sand, or other material, or otherwise change their

representative character. Samples shall be handled only by employees of the licensee prior to shipment or delivery to the cotton classing office of the Division.

(f) *Identifying and shipping samples.* Each sample shall be identified with a tag, supplied or approved by the Division, bearing the gin or warehouse number of the bale from which the sample was drawn and the name and address of the producer of the bale. The tag shall be placed between the two halves of the sample, the sample tightly rolled and enclosed in a package or bag for shipment. Each package or bag shall be labeled or marked with the name and address of the licensed gin or warehouse. The packages shall be shipped or delivered direct to the cotton classing office serving the territory in which the cotton is ginned. Samples that where drawn by a mechanical sampler at the gin may be transported with the bales to the warehouse and then shipped or delivered direct to the classing office by the warehouse.

(g) *Request for classification.* Samples received from a licensed gin or warehouse with the identification tag required in § 28.908(f) shall constitute a request for classification service by the producer.

§ 28.909 Costs.

(a) Costs incident to sampling, tagging, and identification of samples and transporting samples to points of shipment shall be assumed by the producer, but tags and containers for the shipment of samples and shipping charges via U.S. Postal Service or duly authorized common carrier will be furnished by the service. After classification the samples shall become the property of the Government. The proceeds of the sale of cotton samples shall be used to defray the costs of providing the services under this subpart.

(b) The cost of High Volume Instrument (HVI) cotton classification service to producers is $1.85 per bale.

(c) The Division will periodically bill producers or the voluntary agents designated by producers for the cost of classification. A discount of 5 cents per sample will be granted for services provided under this section when billing is made to voluntary agents.

Classification

§ 28.910 Classification of samples and issuance of classification data.

(a)(1) The samples submitted as provided in the subpart shall be classified by employees of the Division and classification memoranda showing the official quality determination of each sample according to the official cotton standards of the United States shall be issued by any one of the following methods at no additional charge:

(i) Computer diskettes,

(ii) Computer tapes, or

(iii) Telecommunications, with all long distance telephone line charges paid by the receiver of data.

(2) When an additional copy of the classification memorandum is issued by any method listed in paragraph (a)(1), there will be a charge of five cents per bale. If provided as an additional method of data transfer, the minimum fee for each tape or diskette issued shall be $10.00.

(b) Owners of cotton, other than producers, may receive classification data showing the official quality determination of each sample by means of telecommunications from a central database to be maintained by the Division. The fee for this service shall be five cents per bale, with all long distance telephone line charges paid by the receiver of data. The minimum charge assessed for services obtained from the central database shall be $5.00 per monthly billing period.

(c) Upon request of an owner of cotton for which classification memoranda have been issued under the subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be 15 cents per bale or a minimum of $5.00 per sheet.

§ 28.911 Review classification.

(a) A producer may request one review classification for each bale of eligible cotton. The fee for review classification is $1.85 per bale.

(b) Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20 through 28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 40 cents per sample in addition to the fee established above in this section.

Limitations of Services

§ 28.917 Limitations of services.

The Director, or an authorized representative, may suspend, terminate, or withhold cotton classing and market news services to any producer upon any failure of the producer to comply with the act or these regulations. Failure to remit fees for classification services shall result in loss of service.

Dated: September 28, 2007.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 07–4891 Filed 10–2–07; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2007–18]

Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other Than Personal Use

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Federal Election Commission is revising its rules regarding the use of campaign funds by candidates and other individuals. The revision adds to the current list of permissible uses of campaign funds in Commission regulations: donations to non-Federal candidates; and any other lawful purpose other than personal use. This change conforms the provision with those in the Federal Election Campaign Act, as amended (''the Act''). Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: November 2, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Stacey J. Shin, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 313 of the Federal Election Campaign Act of 1971, as amended (''the Act''), sets forth permissible uses of

contributions [1] accepted by candidates and donations [2] received by individuals to support their activities as Federal officeholders. Section 313 is codified at 2 U.S.C. 439a and is referred to hereafter as ''Section 439a.'' Section 439a(a) provides that candidates may use contributions, and individuals holding Federal office may use donations, for: (1) Expenditures in connection with the candidate's or individual's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with duties of the individual as a Federal officeholder; (3) contributions to an organization described in section 170(c) of the Internal Revenue Code; (4) transfers, without limitation, to a national, State, or local committee of a political party; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose, unless such purpose constitutes personal use of contributions or donations. See 2 U.S.C. 439a(a).

Section 113.2 of the Commission's regulations implements Section 439a by tracking the permissible uses of campaign funds and funds donated to a Federal officeholder. The Commission initiated this rulemaking to add to section 113.2 the two recently enacted permissible uses regarding donations to non-Federal candidates, and donations for any other lawful purpose other than personal use. *See* the Consolidated Appropriations Act of 2005.[3] The Commission notes that before 2002, the Act and Commission regulations had permitted the use of campaign funds for ''any other lawful purpose'' other than personal use. The Bipartisan Campaign Reform Act of 2002 (''BCRA''),[4] deleted ''any other lawful purpose'' from Section 439a and set forth four permissible uses of campaign funds.

As noted above, however, the ''any other lawful purpose'' provision was restored to Section 439a through the Consolidated Appropriations Act of 2005. At that time, Congress also added donations to State and local candidates as permissible uses of campaign funds. These changes to the Act prompted this rulemaking.

The Commission published a Notice of Proposed Rulemaking (''*NPRM*'') on July 19, 2007, in which it sought comment on proposed revisions to 11 CFR 113.2. *See Notice of Proposed Rulemaking for Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other Than Personal Use*, 72 FR 39583 (July 19, 2007).[5] The comment period closed on August 20, 2007. The Commission received one written comment from the Internal Revenue Service, which stated that ''the proposed rules do not pose a conflict with the Internal Revenue Code or the regulations thereunder.''

Accordingly, the Commission has decided to revise its rules governing the use of campaign funds to add to the current list of permissible uses of campaign funds in Commission regulations: (1) Donations to non-Federal candidates; and (2) any other lawful purpose other than personal use. These changes are identical to those proposed in the *NPRM.*

Transmission of Final Rules to Congress

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on September 25, 2007.

Explanation and Justification

1. 11 CFR 113.2(d)—Donations to State and local candidates

Section 439a(a)(5) of the Act expressly permits Federal candidates and officeholders to donate their campaign funds to State and local candidates. The Commission is amending 11 CFR 113.2 accordingly, by adding a new paragraph (d), which permits Federal candidates and officeholders to donate campaign funds from their authorized committees to ''State and local candidates subject to the provisions of State law.''

2. 11 CFR 113.2(e)—Any other lawful purpose

The Commission is amending 11 CFR 113.2 by inserting a new paragraph (e), which states that campaign funds ''may be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g).'' New paragraph (e) follows section 439a(a)(6) of the Act, which permits the use of campaign funds ''for any other lawful purpose,'' unless the funds are converted by any person to personal use. The Commission notes that this change to the Act had the effect of superseding the analysis in Advisory Opinion 2003–26 (Voinovich), in which the Commission concluded that after BCRA deleted the ''any other lawful purpose'' provision from Section 439a, campaign funds could be used only for those non-campaign purposes that were specifically enumerated in Section 439a. The change also had the effect of superseding, in part, Advisory Opinion 2004–03 (Dooley), to the extent that Advisory Opinion 2004–03 placed certain limits on an authorized committee that had converted into a multicandidate committee and its use, for any lawful purpose, of funds that had been received when the committee was an authorized committee.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached final rule does not have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities affected by this rule are not ''small entities'' under 5 U.S.C. 601. The definition of ''small entity'' does not include individuals, but classifies a not-for-profit enterprise as a ''small organization'' if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). The final rule affects authorized committees, which are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals. Authorized committees are financed by contributions from a large number of persons and controlled by the candidate and the candidate's campaign employees and volunteers. To the extent that any authorized committees might be considered ''small organizations,'' the number that are affected by this final rule is not substantial.

The final rule also does not impose any additional restrictions or increase the costs of compliance for authorized committees. Instead, the final rule provides authorized committees with additional options for using campaign funds, which track the recent changes to 2 U.S.C. 439a(a). The final rule does not impose an undue burden upon authorized committees because they are already required to report the use of

[1] A ''contribution'' is a payment, service or anything of value given to a person for the purpose of influencing a Federal election. *See* 11 CFR 100.52(a). ''Contributions'' are subject to the limits and prohibitions of the Act.

[2] A ''donation'' is a payment, service or anything of value given to a person other than a ''contribution.'' *See* 11 CFR 300.2(e).

[3] Pub. L. 108–447, 118 Stat. 2809 (2004). The Consolidated Appropriations Act of 2005 directed that section 312a(a) of the Act be amended, but was executed by amending section 313(a) of the Act ''as the probable intent of Congress.'' 2 U.S.C.A. 439a (West 2004).

[4] Pub. L. 107–155, 116 Stat. 81 (2002).

[5] *Available at http://www.fec.gov/pdf/nprm/useoffunds/notice_2007-15.pdf.*

campaign funds to the Commission. Therefore, the attached final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 113

Campaign funds.

PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

■ 1. The authority citation for Part 113 continues to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

■ 2. Section 113.2 is amended by:

■ a. Adding paragraph (d);

■ b. Redesignating paragraphs (e) and (f) as paragraphs (f) and (g);

■ c. Adding new paragraph (e) ;

■ d. Amending newly redesignated paragraph (f)(1) introductory text by removing the reference ''paragraph (e)(5)'' and inserting in its place, the reference ''paragraph (f)(5)'';

■ e. Amending newly redesignated paragraph (f)(1) introductory text by removing the reference ''paragraph (e)(1)(i)'' and inserting in its place, the reference ''paragraph (f)(1)(i)''; and

■ f. Amending newly redesignated paragraph (f)(1)(ii)(A) by removing the reference ''paragraph (e)(1)(i)'' and inserting in its place, the reference ''paragraph (f)(1)(i)''.

§ 113.2 Permissible non-campaign use of funds (2 U.S.C. 439a).

* * * * *

(d) May be donated to State and local candidates subject to the provisions of State law; or

(e) May be used for any other lawful purpose, unless such use is personal use under 11 CFR 113.1(g).

* * * * *

Dated: September 24, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7–19260 Filed 10–2–07; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AD33

Member Inspection of Credit Union Books, Records, and Minutes

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a final rule on member inspection of federal credit union (FCU) books, records, and minutes. The rule provides that a group of members representing approximately one percent of the membership, with a proper purpose and upon petition, may inspect and copy nonconfidential portions of the credit union's books, records, and minutes. This rule standardizes and clarifies existing member inspection rights.

DATES: This rule is effective November 2, 2007.

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

SUPPLEMENTARY INFORMATION:

A. Background

In April 2007, the NCUA Board published a proposed rule on member inspection of FCU books, records, and minutes. 72 FR 20061 (April 23, 2007). The proposal provided that a group of members representing approximately one percent of an FCU's membership, upon petition and with a proper purpose, may obtain access to the nonconfidential portions of the FCU's books, records, and minutes. As stated in the preamble to the proposal, the NCUA Board intended it to replace existing NCUA legal opinions stating FCU members may inspect an FCU's books and records under the same terms and conditions that state corporation law where the FCU is located permits shareholder inspection of corporate records. The NCUA Board believes regulating member inspection of FCU records is preferable to reliance on state corporation law because corporation law on shareholder inspection varies from state to state and all FCUs should have the same standard regardless of an FCU's location. In addition, some courts may refuse to apply their state corporation law to inspection requests by FCU members or may incorrectly analogize the financial interests of credit union members to those of depositors in a mutual savings bank and deny members inspection on those grounds. In fashioning the proposed rule, the Board identified an existing Office of Thrift Supervision (OTS) rule governing the right of shareholders to inspect the books, records, and minutes of federal stock savings associations. 12 CFR 552.11 (OTS Rule). The proposal tracked the OTS Rule in large part.

The public comment period closed on June 22, 2007. NCUA received 37 comments on the proposal. After consideration of the comments, NCUA has prepared this final rule on member inspection of FCU books, records, and minutes.

B. Public Comments

Several commenters believed the rule and its petition process were unnecessary. Some of these commenters suggested that member access to FCU information should be limited to information the FCU, in its discretion, determined to release to its members. Other commenters stated the existing member access process, that is, reliance on state corporation law to determine member rights, was adequate.

The NCUA Board disagrees with these commenters. Permitting members access to FCU information at the discretion of the FCU would limit FCU transparency and treat FCU members as something less than the true owners of the FCU. Also, as discussed in the preamble to the proposed rule, reliance on State law and State courts to apply State law to FCUs has not worked well in the context of member access to FCU records. 72 FR 20061, 20062 (April 23, 2007). Accordingly, this final rule retains the proposed process for members to obtain access to FCU records by petition.

Many commenters stated that, if the NCUA retained the proposed petition process, it should provide additional protection for credit unions and credit union records. Some of these commenters argued the proposed rule would make it too easy for competitor credit unions and banks to acquire sensitive financial information. Some of these commenters also felt special interests could use the petition process in a repetitive fashion to paralyze a credit union. Many commenters also believed that the proposal went too far in making the information related to the compensation, benefits, and qualifications of senior management available to members.

Upon consideration of the public comments the NCUA Board has made several changes in the member petition

process. The various specific comments and NCUA's responses are discussed in the following section-by-section analysis.

Section 701.3(a) Member Inspection Rights

This proposed paragraph established the right of a group of members, upon submission of a proper petition, to inspect and copy nonconfidential portions of books and records of account and minutes of the proceedings of the credit union's members, board of directors, and committees of directors.

A few commenters stated that, if the phrase ''books and records of account'' meant ''accounting records,'' the rule should say so more specifically. The Board concurs with these commenters and has changed the rule to more clearly reflect this. One commenter asked if ''books and records of account'' included only ''high-level'' records, such as consolidated financial statements or income statements, or also included records with more detail, such as general ledger postings. The scope of books and records covered by the rule includes all financial documents, including those with detailed information, subject to the confidentiality provisions in § 701.3(d) as discussed below.

A few commenters stated that, if the credit union's minutes are available to others, the credit union would likely be more circumspect in the details in its minutes causing off the record decision-making and making NCUA examination and review more difficult. Another commenter, however, felt that the rule would encourage FCUs to be overly detailed in their minutes to avoid the prospect of litigation. Several commenters also felt members should only have access to written minutes, and not other recordings or documents, reports, studies, or visual aids considered by the meeting participants.

The NCUA Board believes that directors have an obligation to make informed decisions and to record the basis for those decisions. Further, members have a right to information that will help them understand how directors made their decisions. NCUA and its examiners may also need to know how directors and members reached particular decisions and so expect that the records created by the FCU will be complete in this regard. Accordingly, for purposes of this rule ''minutes of the proceedings at all meetings of its members, board of directors, and committees of directors'' includes not only the information contained in the formal summary of the proceedings, but also any recordings, documents, reports, studies, visual aids, or other information considered by the meeting participants.

A few commenters suggested that access to older records should be limited because of the difficulty in locating older documents. The Board notes that, if an FCU maintains older records, it must make them available for inspection and copying upon receipt of a proper petition. Although a credit union may find it more difficult to locate older records, the costs of search and duplication are born by the petitioners as provided for in § 701.3(e) of the rule, discussed below.

A few commenters wondered if the proposed rule created new records retention requirements or otherwise affected a credit union's ability to ''purge'' records. One of these commenters asked if the rule required a credit union, for example, to retain indefinitely the documents considered by a credit union's board. This same commenter asked if the retention requirement extended to information related to documents associated with courses of action the credit union board rejected, in addition to those the credit union decided to pursue.

An FCU must have records retention policies that are reasonable and that meet its operational requirements and the requirements of the law. This final rule on member inspection of FCU records, however, is not a records retention rule and imposes no retention requirements on FCUs. Accordingly, an FCU that receives an inspection petition need not reconstitute responsive records it may have had at one point but destroyed before the date it received the petition. Also, an FCU need not create new records to respond to a member request.

Accordingly, and except as discussed above, the Board adopts § 701.3(a) as proposed.

Section 701.3(b) Petition for Inspection

This proposed paragraph set forth the petition requirements. The proposal stated that at least one percent of the credit union's members, with a minimum of 20 members and a maximum of 250 members, must sign the petition. The petition must describe the particular records to be inspected and state a purpose for the inspection related to the business of the credit union. The petition must state that the petitioners as a whole, or certain named petitioners, agree to pay the direct and reasonable costs associated with search and duplication of requested material. The petition must also state that the inspection is not desired for any purpose in the interest of a business or object other than the business of the credit union and that the petitioners have not in the past, and do not intend now, to sell or offer for sale any information obtained from the credit union. The petition must name one or more members who will represent the petitioners on issues such as inspection procedures, costs, and potential disputes.

Several commenters thought the required petition language that the information requested ''is not desired for any purpose in the interest of a business or object other than the business of the credit union'' should be clarified. Other commenters thought the rule should include a more specific reference to a proper purpose. One commenter suggested a proper purpose be defined as a purpose related to the ''proper management and administration of the credit union.''

As noted in the preamble to the proposed rule, a proper purpose for an inspection petition is a purpose that relates to the protection of the members' financial interests in the credit union. 72 FR 20061, 20062 (April 23, 2007). The Board has amended the final rule text to include this definition. Member financial interests in the credit union include the types of financial products offered by a credit union, the fees and rates charged by the credit union for those services, and how those services are delivered to the members. The members also have a financial interest in how the FCU builds and manages the net worth of the FCU.

There were many comments about the minimum number of required petition signatures.

Several commenters thought the proposal's base requirement of one percent of the members was too restrictive. A few of these commenters stated any one member who wanted to see nonconfidential books or records should be allowed to do so without a petition. One commenter stated that, if the rule did not grant inspection rights to any one member, NCUA should adopt a petition standard of half of one percent of the members, or the lesser of one percent or ten members.

The majority of the commenters, however, thought the proposal made it too easy for members to obtain records. Some of these commenters felt there should be no upper limit on the number of necessary signatures. Several of these commenters suggested the upper limit should be 500, not 250, signatures. One commenter suggested a ''sliding scale flat cap'' based on the size of the credit union. One commenter suggested a minimum of 250 members for smaller credit unions and no upper limit for

larger credit unions. A few commenters expressed concern that a group of 250 or fewer members could make multiple and repetitive inspection requests and keep the credit union from focusing on providing services to its members. A few commenters thought only members who have been members for awhile, such as at least six months, should be permitted to sign the petition.

The requirement that a minimum number of members sign an inspection petition ensures that member ownership rights are protected while also protecting the FCU from improper access requests. The petition requirement strikes a balance between the members' right to know and understand how the directors are executing their responsibilities on behalf of the members and an FCU's right to be free from requests with illegitimate aims, such as harassment or the desire by the FCU's competitors to obtain information from the FCU. In attempting to strike this balance, NCUA looked to the OTS rule on access by shareholders at stock savings associations, which generally requires inspection upon the request of shareholders owning one percent of the outstanding stock. The NCUA also looked to member signature requirements in other FCU petition contexts.

After considering the public comments, the Board has made some changes to the petition signature requirement in the final rule.

The Board recognized the concern that, for very large FCUs, the 250 signature cap was only a fraction of a percent of their membership and, perhaps, would make it too easy for the petition process to be used in a manner not reflective of the desires of the majority of the membership. The Board determined, however, that removing the cap on the maximum number of signatures entirely would, in cases involving very large FCUs, make it almost impossible for members to obtain timely inspection of records. Accordingly, the Board has determined to raise the maximum number of required signatures from 250 to 500. For very large credit unions, a cap of 500 signatures is a closer approximation to one percent of the membership. Also, this particular range, one percent of the members with no fewer than 20 and no greater than 500, is consistent with other uses of the petition process, such as a petition seeking nomination for an FCU's board of directors. *See* Standard FCU Bylaws, Art. V (April 2006).

In addition, the Board has determined to require that members who sign the petition must have been members for at least 180 days at the time the petition is submitted to the FCU. This lessens the likelihood that individuals might join solely to sign a petition for some pending and improper purpose. The 180-day membership requirement is also consistent with the requirement in the OTS Rule that inspecting shareholders have owned their stock for at least six months.

A few commenters were unsure what the phrase ''[a]t least one percent of the credit union's members, with a minimum of 20 members and a maximum of 250 members'' meant. These commenters asked for clarification or examples. As discussed above, the final rule changes the maximum number of signatures from 250 to 500. Here are some examples illustrating this petition requirement, using FCUs of different sizes:

Example One: Assume Main Street FCU has 800 members. One percent of 800 members is eight members. Since eight is less than the minimum of 20 signatures required by this final rule, any petition by Main Street FCU's members for inspection of its records must be signed by at least 20 of its members.

Example Two: Assume Widget Company FCU has 5,000 members. One percent of 5,000 members is 50 members. Since 50 is between the minimum of 20 signatures required by the rule and the maximum of 500, any inspection petition by Widget Company FCU's members must be signed by at least 50 of its members.

Example Three: Assume Arlandia Community FCU has 75,000 members. One percent of 75,000 members is 750 members. Since 750 is greater than the maximum of 500 signatures required by the rule, any inspection petition by Arlandia Community FCU's members must be signed by at least 500 of its members.

The proposed rule required the petition state the petitioners ''do not intend now, to sell or offer for sale any information obtained from the credit union.'' A few commenters thought this should be changed to emphasize that petitioners affirmatively agree not to sell the information or use it other than for the business of the credit union. The Board agrees with the suggested change and has modified the final rule accordingly.

One commenter suggested the member representatives named on the petition should be limited in number so an FCU would know more precisely with whom to deal on petition issues. The Board agrees and has amended the final rule to require the petitioners name one representative and one alternate.

Many commenters stated a petition should not be used for certain purposes, such as questioning a director's qualifications or why a credit union raised a fee, made an unpopular rate change, closed a branch, or stopped offering a certain product. These commenters generally thought a proper purpose should be limited to a significant, pending corporate event, such as a conversion, merger, change in account insurance, or voluntary termination, and some thought member inspection rights should be limited only to charter conversion issues. A few of these commenters thought the decisions of a board of directors could be too easily scrutinized and challenged publicly, and this would hamper board operations and might make it difficult to find volunteers.

The Board has considered these comments carefully. As the owners of the credit union, members have the right to vote in connection with significant corporate events and the right to inspect records in connection with those events. But members also have the right to elect and remove directors. Dissatisfaction with directors could stem from actions taken by directors affecting the members' financial interests in the FCU, including the various actions commenters mentioned, although falling short of being significant, pending corporate events. Accordingly, the Board declines to limit the inspection rights of members to significant, pending corporate events.

NCUA received a few other comments on this proposed paragraph. One commenter suggested members who have caused the credit union a loss or employees who have been terminated should not be permitted to sign the petition. The Board disagrees. All members are owners and so have the right, if they can find enough other members willing to sign a petition, to inspect records. Another commenter stated the petition should indicate with whom or what the petitioners plan to share the information. The Board disagrees. If an FCU has concerns about how its member-owners might use that information it can discuss this issue with the petitioners and, if necessary, raise the issue to the regional directors as described in the dispute resolution process.

Accordingly, and except as discussed above, the Board adopts § 701.3(b) as proposed.

Section 701.3(c) Inspection Procedures

The proposed paragraph stated that, within 14 days of receipt of a petition, the FCU must either allow inspection and copying of all requested material or inform the petitioning members in writing why it is not able to do so. Inspection may be made in person or by agent or attorney and at any reasonable

time or times. Member inspection rights under this paragraph are in addition to any other member inspection rights afforded by law, regulation, or the credit union's bylaws.

Several commenters asked for clarification of the statement that ''Member inspection rights under this paragraph are in addition to any other member inspection rights afforded by law, regulation, or the credit union's bylaws.'' One of these commenters interprets the quoted language as meaning, for example, that if the Model Business Corporation Act (MBCA) or the Model Nonprofit Corporation Act (MNCA), as adopted in a particular state, provide greater access rights than § 701.3, then the FCU must follow the MBCA or MNCA instead of the petition requirements in § 701.3. Most of these commenters suggest the rule should preempt state law such as the MBCA or MNCA for FCU member inspection rights.

The Board has amended the final rule to clarify that the rule's inspection rights are in addition to any other member inspection rights afforded by the credit union's charter or bylaws or other Federal law or Federal regulation. When this rule becomes effective, State law will no longer apply to member inspection of FCU records.

A few commenters suggested members only be allowed to inspect records and take notes and not be allowed to copy records. One commenter stated that, instead of making the information available for inspection at a branch location convenient to petitioners as indicated in the proposed preamble, a credit union should be allowed to determine where documents should be made available.

The Board disagrees with these comments. Note taking may not be sufficient for the member to communicate the gist of documents to other members. Also, it should not be too difficult for an FCU to transfer documents, or copies of documents, between branches so as to accommodate petitioners.

One commenter stated that, in lieu of physical inspection followed by copying, a credit union should have the option of copying and delivering documents without a physical inspection. The Board agrees and has amended the final rule accordingly.

A few commenters stated FCUs might have difficulty locating requested records and making them available to the petitioners within 14 days. These commenters believe a credit union should have more than the proposed 14 days to respond to a petition request. Some of these commenters suggested 30 days, while one commenter suggested 60 days.

These commenters misinterpret the requirements of the proposed rule. The proposal does not require an FCU allow inspection and copying of requested material within 14 days of receipt of a petition. The proposal stated only that the FCU must either allow inspection and copying of all requested material within 14 days or, in the alternative, inform the petitioning members in writing why the FCU is not able to do so.

The purpose of this 14-day response requirement is to ensure that petitioning members can obtain timely inspection of relevant records. The Board intends that an FCU attempt to orchestrate inspection and copying with 14 days but recognizes this may not be possible because, for example, some requested records may be confidential, voluminous, or difficult to find. If an FCU cannot complete inspection within 14 days, it must act within 14 days to inform the petitioners about the status of the FCU's response. To clarify the Board's intent, the Board has reworded this part of § 701.3(c) to read as follows:

> A federal credit union must respond to petitioners within 14 days of receiving a petition. In its response, a credit union must inform petitioners either that it will provide inspection of the requested material and, if so, when, or, if a credit union is going to withhold all or part of the requested material, it must inform petitioners what part of the requested material it intends to withhold and the reasons for withholding the requested material. As soon as possible after receiving a petition, a credit union must schedule inspection and copying of nonconfidential requested material it determines petitioners may inspect and copy.

If the petitioners do not get some response from the FCU in 14 days that is satisfactory to them, they have the option of pursuing their dispute resolution rights in § 701.3(f).

In addition to the modification of rule text discussed above, the Board has reorganized § 701.3(c) into subparagraphs to make it easier to read.

Accordingly, and except as discussed above, the Board adopts § 701.3(c) as proposed.

Section 701.3(d) Confidential Books, Records, and Minutes

The proposed paragraph stated that members do not have the right to inspect any portion of an FCU's books, records, or minutes if Federal law or regulation prohibits disclosure of that portion, the portion contains nonpublic personal information as defined in § 716.3 (dealing with member privacy); or the portion contains information about credit union employees or officials the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The proposal did permit members, however, to inspect materials describing the compensation and benefits provided by the credit union to its senior executive officers, and the qualifications of the senior executive officers.

Several commenters objected to the proposed requirement that an FCU permit member inspection of compensation and benefits of senior executive officers, contending variously that:

- Absent compelling justification, individual rights to financial privacy and privacy concerns should prevail;
- Publicizing compensation of senior management out of context could be used to facilitate involuntary mergers and to portray the credit union industry in a negative way;
- Disclosures would ''enrage'' members;
- Disclosures would be detrimental to employee relations; and
- Disclosures would clash with confidentiality provisions in employee contracts.

Some commenters suggest disclosure of senior executive compensation be phased-in or existing records excluded through a grandfather provision. One commenter suggested that disclosure should be limited to a statement of the compensation level as a percentage of CU peer averages. A few commenters stated that this disclosure issue should not be addressed as part of a general member inspection rule but as a separate rulemaking with further study by NCUA. One commenter suggested that the disclosure of ''qualifications'' be limited to a resume or similar summary and not include performance evaluations or personnel files.

At this time, the Board has decided to continue to study the issue of member and public access to information about senior executive compensation and benefits. Accordingly, the final rule does not include any member inspection rights specific to this information and information about senior FCU executives will be subject to the employee confidentiality rule: members may, if they have a proper petition, inspect employee information except for information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Credit unions, in consultation with affected employees, have reasonable discretion in determining which employee information should be kept confidential under this standard.

Some commenters also expressed concern that the rule does not adequately protect the confidentiality of various other credit union records. The records mentioned included: Personnel records; mid- and low-level staff salaries and bonuses; board discussions of personnel matters, relations with partners and public officials, and comments on member behavior and financial information; trade secrets; business, marketing, strategic, and disaster recovery plans; product pricing information and analysis; management and board succession plans; vendor contracts; member surveys and demographic studies; member and business correspondence; physical security plans and building schematics; risk assessments; and attorney-client privileged documents. Several commenters suggested that confidential records should include any proprietary records or information the premature release of which could cause the credit union financial harm. Other commenters suggested that board minutes taken in ''confidential'' or or ''executive'' session should be protected from member inspection.

While the proposed rule was intended to provide an FCU's member-owners with meaningful access to the books, records, and minutes of the credit union, the proposal did contain both procedural and substantive protections for records the release of which could harm the credit union or its members or employees. As noted in the preamble to the proposal, those protections included a minimum number of required petition signatures; limitations on the scope of the term ''books and records of account''; the requirement that the petitioners state a proper purpose; specific confidentiality provisions for information related to members and FCU employees; and the authority of the regional director to impose restrictions on the inspection and copying of records.

These protections remain in the final rule. In response to those commenters who thought that the rule should provide more specific protection for FCU records not related to members or employees, the Board has determined to add another explicit category of confidential information not subject to inspection or copying, that is, books, records, and minutes ''the publication [of which] could cause the credit union predictable and substantial financial harm.'' This category will protect physical security plans, computer security plans, building schematics, risk assessments, and other, similar information where public release, or release to the FCU's competitors, could lead to predictable and substantial financial harm to the FCU.

The Board cannot consider every possible kind of FCU record and generalize as to whether, in every case, those records would be subject to member inspection. The Board does note that internal FCU correspondence and vendor contracts not considered by an FCU's board will likely not be within the definition of ''books and records of account'' as that term is used in § 701.3(a) and so will be outside the scope of documents subject to member inspection unless considered at meeting of the FCU's board of directors. Most employee-related information, including personnel records, staff salaries and bonuses, and board discussion of personnel matters, will include information about individual credit union employees or officials. The disclosure of such information would constitute an unwarranted invasion of personal privacy and so would be confidential under § 701.3(d)(4) and not subject to inspection. Credit union records about particular members or that mention members by-name, including discussion of member behavior or account activity and portions of member surveys, would generally be confidential under § 701.3(d)(3).

The Board declines to distinguish between minutes of regular meetings of the board of directors and other types of meetings, such as so-called ''confidential'' or ''executive'' meetings. Members have the right to inspect nonconfidential portions of the minutes of proceedings of the credit union's board of directors and committees of directors regardless of how the directors characterize their meetings.

One commenter suggested the rule define confidential records by reference to the various exemptions available to the federal government under the Freedom of Information Act (FOIA), including the deliberative process exemption. The Board declines to analogize the access of individuals to government information under the FOIA to FCU member inspection rights. Any person, including foreign persons, may submit FOIA requests to U.S. government agencies, but the members of an FCU are its owners with direct financial interests in the FCU and inspection rights reflecting those interests. Another commenter suggested the rule determine the confidentiality of records by reference to the ''common law.'' Since the common law varies from state-to-state, the Board believes regulating member inspection rights through a general reference to common law would fail to address some of the concerns that the rule, as drafted, alleviates.

Accordingly, and except as discussed above, the Board adopts § 701.3(d) as proposed.

Section 701.3(e) Costs

The proposed paragraph provided that an FCU may charge petitioners the direct and reasonable costs associated with search and duplication but not other costs, including indirect costs or attorney's fees. As stated in the preamble to the proposed rule, the typical direct costs of search and duplication would include the number of hours a clerk might take to locate and duplicate the requested documents multiplied by the clerk's hourly compensation rate, plus the per page costs of duplication. 72 FR 20061, 20065 (April 23, 2007). Requesters need not, however, reimburse the credit union for indirect costs, including costs associated with the management or supervision of the person(s) conducting the search, costs to review documents, costs associated with in-person inspection of records, overhead costs, or the costs of any legal services. *Id.*

One commenter stated petitioners should be responsible for both indirect and direct costs. The Board disagrees. To require members to reimburse the credit union for indirect costs would put too much of a burden on the member-owner, in part because the credit union has significant discretion as to how much it will incur in the way of indirect costs (e.g., the costs of review).

One commenter noted the proposed rule permitted petitioners to put a limit on how much they were willing to pay and asked how an FCU should respond if the petitioner's limit was less than the FCU's estimate of the direct and reasonable costs associated with search and duplication. If an FCU believes the petitioners' estimate is too low, it should inform the petitioners what its estimated cost is and ask the petitioners if they want to raise the dollar amount they are willing to pay or, in the alternative, if they want the FCU to continue with its search and reproduction with the understanding that the petitioners might not receive everything sought from the FCU.

One commenter asked how an FCU could collect its costs from the petitioners if they refused to pay. The petition is a form of unilateral contract offer from the named petitioners that the FCU accepts by performance, that is, the production of the requested

documents.[1] If the named petitioners refuse to reimburse the FCU for the direct and reasonable costs of search and duplication actually incurred, the FCU may proceed against the named petitioners for breach of contract.

Accordingly, the Board adopts § 701.3(e) as proposed.

Section 701.3(f) Dispute Resolution

The proposed paragraph provided that, in the event of a dispute between an FCU and its members concerning a petition for inspection or the associated costs, either party may submit the dispute to the regional director. The regional director, after obtaining the views of both parties, will direct the credit union either to withhold the disputed materials or to make them available for member inspection and copying. The regional director may place conditions upon release, if appropriate. The regional director's decision is a final agency decision and is not appealable to the Board.

Several commenters stated NCUA should not be involved in dispute resolution because NCUA would be biased or unqualified to resolve disputes. One commenter stated that NCUA would not be independent if the records request was related to a matter requiring NCUA's approval such as a merger or similar corporate action.

NCUA disagrees with those commenters who suggest the regional director is an inappropriate adjudicator of inspection-related disputes. In handling a dispute, the regional director is bound to follow the law with full consideration for the safe and sound operation of the FCU and the protection of members' legal rights. The regional director's knowledge of FCU organization and operations makes him or her ideally qualified to determine, for example, which FCU records need protection from competitors or from potential release to the public. The regional director offers timely resolution of inspection disputes, particularly where the inspection request relates to pending member vote subject to a statutory or regulatory timeline.

A few commenters thought an FCU's supervisory committee should have a role in resolution of disputes related to member petitions for inspection of records because the supervisory committee, among other responsibilities, addresses member complaints. The preamble to the proposed rule specifically noted that petitioners have the option to submit a dispute to their supervisory committee rather than the regional director. 72 FR 20061, 20066 (April 23, 2007). The Board reiterates here that petitioners have the option of submitting a dispute to their supervisory committee rather than the regional director. If petitioners are dissatisfied with the response of their supervisory committee, they will still be able to submit the dispute to the regional director. Additionally, the Board believes there may be circumstances where a regional director believes a supervisory committee can or should be able to resolve a dispute over member access to records, and the final rule now provides that a regional director has the discretion to refer a dispute to the supervisory committee. If a regional director refers a dispute to the supervisory committee, the rule states petitioners who are dissatisfied with a supervisory committee response can resubmit the dispute to the regional director for a final agency decision.

Several commenters thought the rule should include a timetable for the regional director to act on a dispute. The Board declines to impose a timetable or other deadline for dispute resolution. If one or both of the parties to a dispute desire a rapid dispute resolution, they should inform the regional director and, in appropriate cases, the regional director will move forward quickly to resolve the dispute. The amount of information in dispute and the resources needed by the regional director to resolve the dispute may vary from case-to-case; in some cases, there may be no need for any sort of rapid dispute resolution. Accordingly, artificial regulatory deadlines are impracticable.

A few commenters sought clarification about whether an FCU could withhold information pending the regional director's decision on a dispute. The Board's intent with this rule is that an FCU may withhold information that is in dispute pending the regional director's decision.

Some commenters thought the regional director's decision on a dispute should be appealable to the NCUA Board. After careful consideration, the Board declines to grant any administrative appeal rights. The regional director's decision will be NCUA's final agency decision, and any party that believes itself injured by that decision may, if it desires, pursue judicial action.

Accordingly, and except as discussed above, the Board adopts § 701.3(f) as proposed.

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This final rule standardizes and clarifies the rights of members to inspect FCU records. The rule is not a significant departure from existing practice that FCUs must permit inspection under the same terms and conditions that state law requires for shareholders to inspect corporation records. The rule requires that a minimum of one percent of the FCU's members sign a petition to obtain access. In some states, this burden on the members might exceed the burden on shareholders to obtain access and so reduces the likelihood of an FCU having to grant access. Accordingly, the Board has determined and certifies that this rule will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

Section 701.3 contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), NCUA submitted a copy of the proposed § 701.3 as part of an information collection package to the Office of Management and Budget (OMB) for its review and approval of a new collection of information. On July 13, 2007, the OMB approved the collection and assigned it Control Number 3133–0176.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this rule does not constitute a policy that has federalism implications for purposes of the executive order.

[1] "A contract is also said to be 'unilateral' when there is a promise on one side only, the consideration on the other side being executed." Black's Law Dictionary 294 (5th ed. 1979).

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 701

Credit unions, Records.

By the National Credit Union Administration Board on September 27, 2007.

Mary F. Rupp,

Secretary of the Board.

■ The NCUA Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. Add § 701.3 to read as follows:

§ 701.3 Member inspection of credit union books, records, and minutes.

(a) *Member inspection rights.* A group of members of a Federal credit union has the right, upon submission of a petition to the credit union as described in paragraph (b) of this section, to inspect and copy nonconfidential portions of the credit union's:

(1) Accounting books and records; and

(2) Minutes of the proceedings of the credit union's members, board of directors, and committees of directors.

(b) *Petition for inspection.* The petition must describe the particular records to be inspected and state a proper purpose for the inspection, that is, a purpose related to the protection of the members' financial interests in the credit union. The petition must state that the petitioners as a whole, or certain named petitioners, agree to pay the direct and reasonable costs associated with search and duplication of requested material. The petition must also state that the inspection is not desired for any purpose other than the stated purpose; that the members signing the petition will not sell or offer for sale any information obtained from the credit union; and that the members signing the petition have not within five years preceding the signature date sold or offered for sale any information acquired from the credit union or aided or abetted any person in procuring any information from the credit union for purposes of sale. The petition must name one member, and one alternate member, who will represent the petitioners on issues such as inspection procedures, costs, and potential disputes. At least one percent of the credit union's members, with a minimum of 20 members and a maximum of 500 members, must sign the petition. Each member who signs the petition must have been a member of the credit union for at least 180 days at the time the petitioners submit the petition to the credit union.

(c) *Inspection procedures.* (1) A Federal credit union must respond to petitioners within 14 days of receiving a petition. In its response, a credit union must inform petitioners either that it will provide inspection of the requested material and, if so, when, or, if a credit union is going to withhold all or part of the requested material, it must inform petitioners what part of the requested material it intends to withhold and the reasons for withholding the requested material. As soon as possible after receiving a petition, a credit union must schedule inspection and copying of nonconfidential requested material it determines petitioners may inspect and copy.

(2) Inspection may be made in person or by agent or attorney and at any reasonable time or times. The credit union may, at its option, skip inspection and deliver copies of requested documents directly to the petitioners. Member inspection rights under this section are in addition to any other member inspection rights afforded by the credit union's charter or bylaws or other Federal law or Federal regulation.

(3) If the credit union denies inspection because the petitioners have failed to obtain the minimum number of valid signatures, the credit union must inform the petitioners which signatures were not valid and why.

(d) *Confidential books, records, and minutes.* Members do not have the right to inspect any portion of the books, records, or minutes of a Federal credit union if:

(1) Federal law or regulation prohibits disclosure of that portion;

(2) The publication of that portion could cause the credit union predictable and substantial financial harm;

(3) That portion contains nonpublic personal information as defined in § 716.3 of this part; or

(4) That portion contains information about credit union employees or officials the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(e) *Costs.* A Federal credit union may charge petitioners the direct and reasonable costs associated with search and duplication. The credit union may not charge for other costs, including indirect costs or attorney's fees.

(f) *Dispute resolution.* (1) In the event of a dispute between a federal credit union and its members concerning a petition for inspection or the associated costs, either party may submit the dispute to the regional director. The regional director, after obtaining the views of both parties, will direct the credit union either to withhold the disputed materials or to make them available for member inspection and copying. The regional director may place conditions upon release. The decision of the regional director is a final agency decision and is not appealable to the Board.

(2) The regional director has the discretion to refer any dispute to the credit union's supervisory committee for review and resolution. If petitioners are not satisfied with the supervisory committee's response, they may resubmit the dispute to the regional director.

[FR Doc. E7–19557 Filed 10–2–07; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28068; Directorate Identifier 2007–CE–043–AD; Amendment 39–15217; AD 2007–20–07]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company) Model 390 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model 390 airplanes. This AD requires you to inspect the starter-generator to determine the serial number (S/N) and suffix letter, which indicates if the part is improperly shimmed. This AD also requires you to replace any improperly shimmed starter-generator with a properly shimmed starter-generator. This AD results from reports of a manufacturing error where certain starter-generators may have been improperly shimmed. We are issuing this AD to detect and correct improperly shimmed starter-generators, which could result in premature starter-generator failure. This failure could lead to increased chances of dual starter-generator failure on the same flight.

DATES: This AD becomes effective on November 7, 2007.

On November 7, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2007–28068; Directorate Identifier 2007–CE–043–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; fax: (316) 946–4107; email: *philip.petty@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

On June 5, 2007, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation Model 390 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on June 12, 2007 (72 FR 32230). The NPRM proposed to require you to inspect the starter-generator to determine the S/N and suffix letter, which indicates if the part is improperly shimmed. The NPRM also proposed to require you to replace any improperly shimmed starter-generator with a properly shimmed starter-generator.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Term ''Defective'' in the AD

A representative of Hawker Beechcraft states that the term ''defective,'' as used in the NPRM, is not technically correct. The starter-generators affected by the AD are not defective. The problem causing the starter-generators to fail is improper shimming due to poorly written or missing assembly instructions. Not all units in the suspect range may be over-shimmed.

Hawker Beechcraft requests the term ''defective'' be changed throughout the AD to describe the affected starter-generators more accurately.

We concur with the commenter. We will change the term ''defective'' to ''improperly shimmed'' throughout the final rule AD action based on this comment.

Comment Issue No. 2: Change the Term ''New Design'' in the AD

A representative of Hawker Beechcraft states that the term ''new design,'' as used in the NPRM, is not accurate. The basic design of the affected starter-generator did not change. The assembly instructions were changed to ensure that future starter-generators are properly shimmed.

Hawker Beechcraft requests the term ''new design'' be changed throughout the AD to describe the replacement part more accurately.

We concur with the commenter. We will change the term ''new design'' to ''properly shimmed'' throughout the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 105 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$8,400

We estimate the following costs to do any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per generator
5 work-hours × $80 per hour = $400	$9,648 for new part; $6,593 for overhauled part.	$10,048 for new part; $6,993 for overhauled part.

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 AD.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. 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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–28068; Directorate Identifier 2007–CE–043–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding the following new AD:

2007–20–07 Hawker Beechcraft Corporation (Type Certificate No. A00010WI previously held by Raytheon Aircraft Company): Amendment 39–15217; Docket No. FAA–2007–28068; Directorate Identifier 2007–CE–043–AD.

Effective Date

(a) This AD becomes effective on November 7, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 390 airplanes, serial numbers RB–1 and RB–4 through RB–149, that are certificated in any category.

Unsafe Condition

(d) This AD results from reports of a manufacturing error where certain starter-generators may have been improperly shimmed. We are issuing this AD to detect improperly shimmed starter-generators, which could result in premature starter-generator failure. This failure could lead to increased chances of dual starter-generator failure on the same flight.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the left-hand and right-hand starter-generators, Raytheon Aircraft Company (RAC) part number (P/N) 390–389001–0001 or Advance Industries, Inc. (AI) P/N MG94A–1, to determine the serial number and suffix letter as specified in paragraph 3.A.(2) of RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.	Within the next 50 hours time-in-service (TIS) after November 7, 2007 (the effective date of this AD) or within the next 3 months after November 7, 2007 (the effective date of this AD), whichever occurs first.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.
(2) If any starter-generator(s) specified in paragraph 3.A.(2) of RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006, is/are found during the inspection required in paragraph (e)(1) of this AD, replace that starter-generator with a properly shimmed starter-generator.	As follows: (i) If both starter-generators are identified as being improperly shimmed, replace at least one within 10 hours TIS after the inspection required in paragraph (e)(1) of this AD. Replace the other within the next 200 hours TIS after November 7, 2007 (the effective date of this AD) or within the next 12 months after November 7, 2007 (the effective date of this AD), whichever occurs first. (ii) If one starter-generator is identified as being improperly shimmed, replace it within the next 200 hours TIS after November 7, 2007 (the effective date of this AD) or within the next 12 months after November 7, 2007 (the effective date of this AD), whichever occurs first.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.
(3) If a starter-generator specified in paragraph 3.A.(2) of RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006, is not found during the inspection required in paragraph (e)(1) of this AD, no further action is required.	Not applicable	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.

Actions	Compliance	Procedures
(4) Do not install on any airplane any RAC P/N 390–389001–0001 or AI P/N MG94A–1 that is specified in paragraph 3.A.(2) of RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow RAC Mandatory Service Bulletin SB 24–3790, Issued: August, 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), 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: Philip Petty, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; fax: (316) 946–4107; e-mail: *philip.petty@faa.gov*. 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.

Material Incorporated by Reference

(g) You must use Raytheon Aircraft Company Mandatory Service Bulletin SB 24–3790, Issued: August, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Hawker Beechcraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

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

Issued in Kansas City, Missouri, on September 24, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19192 Filed 10–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27595; Directorate Identifier 2006–NM–248–AD; Amendment 39–15216; AD 2007–20–06]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) 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:

It has been revealed that the control surface balancing procedure in the * * * SAAB 2000 SRM (structural repair manual) * * * is incorrect.

Incorrect balance, outside the tolerance of the aileron control surface, may lead to vibrations that in [the] worst case can result in flutter.

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

DATES: This AD becomes effective November 7, 2007.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 7, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey, Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2677; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 16, 2007 (72 FR 12576). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been revealed that the control surface balancing procedure in the Web and CD/DVD versions of the SAAB 2000 SRM (structural repair manual) Chapter 51–60–00, Control Surface Balancing Procedure is incorrect. The incorrect Calculation formula (page 1, 4 and 7) was incorporated in Revision 21 of the SRM dated April 01/05 and was distributed in 4 July 2005 on the CD/DVD issue Apr. 01/05.

In the incorrect formula, an ''×'' (multiplication) has been replaced with a ''+'' (addition) when the data was converted in the system and if this formula is followed, you may receive a result outside of the allowed tolerance.

Incorrect balance, outside the tolerance of the aileron control surface, may lead to vibrations that in [the] worst case can result in flutter.

The hard copy of the manual, SAAB 2000 SRM, is correct.

The CD/DVD dated Oct 01/05, marked ''Reissue'', includes a correct SAAB SRM revision 22.

The corrective action includes identifying ailerons that have been balanced after July 4, 2005. If balanced incorrectly, they must be rebalanced.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Withdraw the NPRM

Saab points out that at the time European Aviation Safety Agency (EASA) issued Emergency Airworthiness Directive 2006–0053–E, dated February 22, 2006 (the MCAI), the hard copy of the structural repair manual (SRM) was correct but the Web and CD/DVD versions had an incorrect calculation formula. At that time, the FAA did not issue an emergency AD because there were only 3 of the affected airplanes operating in the U.S. and the

operators stated that they had not used the incorrect formula. The rest of the affected fleet was operating in Europe and subject to the EASA Emergency AD. SAAB AB states that this means that no affected airplane is operating with a rigging performed according to the incorrect formula. Saab recommends that we withdraw the NPRM and do not issue the AD.

We disagree with the request to withdraw the NPRM. The number of affected airplanes of U.S. registry has grown from 3 to 7 in the past year, a growth trend that could continue. We cannot be certain that all airplanes that are placed on the U.S. Register have had the ailerons balanced correctly. Issuance of this AD will ensure that airplanes will be in compliance before being permitted to operate in the U.S. We have revised the Costs of Compliance paragraph of this AD to reflect the current number of U.S.-registered airplanes. We have made no other change to the AD in this regard.

Request To Refer to Later Revisions of the CD/DVD

Saab requests that we change the following phrase from paragraph (e) of the NPRM: ''The CD/DVD dated Oct 01/05, marked 'Reissue', includes a correct SAAB SRM revision 22.'' Saab states that the SRM has been revised a couple of times since the MCAI was issued, and that revision 23 and higher of the SRM have the correct formula.

We acknowledge that revision 23 and higher of the SRM also have the correct formula. However, we have not revised the text in paragraph (e) of the AD because that text is simply a direct quote from the MCAI. We have not changed the AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD affects about 7 products of U.S. registry. We also estimate that it takes about 1 work-hour per product to identify ailerons that have been balanced after July 4, 2005. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of the AD for U.S. operators to be $560, or $80 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

2. Is not a ''significant rule'' under 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 AD and placed it in the AD docket.

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–20–06 Saab Aircraft AB: Amendment 39–15216. Docket No. FAA–2007–27595; Directorate Identifier 2006–NM–248–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 7, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab Model SAAB 2000 airplanes, certificated in any category, ranging from serial number –004 through –063, on which aileron, P/N (part number) 7357600–501/502, P/N 7357600–503/504, P/N 7357600–505/506, P/N 7357600–507/508, P/N 7357991–601/602, P/N 7357991–603/604, P/N 7357991–605/606, P/N 7357995–843/844, or P/N 7357995–927/928, is installed.

Subject

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

Reason

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

It has been revealed that the control surface balancing procedure in the web and CD/DVD versions of the SAAB 2000 SRM (Structural Repair Manual) Chapter 51–60–00, Control Surface Balancing Procedure is incorrect. The incorrect Calculation formula (page 1, 4 and 7) was incorporated in Revision 21 of the SRM dated April 01/05 and was distributed in 4 July 2005 on the CD/DVD issue Apr. 01/05.

In the incorrect formula, an ''×'' (multiplication) has been replaced with a ''+'' (addition) when the data was converted in the system and if this formula is followed, you may receive a result outside of the allowed tolerance.

Incorrect balance, outside the tolerance of the aileron control surface, may lead to vibrations that in [the] worst case can result in flutter.

The hard copy of the manual, SAAB 2000 SRM, is correct.

The CD/DVD dated Oct 01/05, marked ''Reissue'', includes a correct SAAB SRM revision 22.

The corrective action includes identifying ailerons that have been balanced after July 4, 2005, until the effective date of this AD. If balanced incorrectly, they must be rebalanced.

Actions and Compliance

(f) Within one month after the effective date of this AD, unless already done, do the following actions.

(1) Identify ailerons that have been balanced after July 4, 2005. If balanced incorrectly, they must be rebalanced before further flight in accordance with Saab Service Bulletin 2000–57–040, dated February 23, 2006.

(2) As of the effective date of this AD, the aileron balancing procedure contained in the CD/DVD ''Issue Date: Apr 01/05'' including the Saab SAAB 2000 SRM at Revision 21 and the CD/DVD ''Issue Date: Oct 01/05'' including SRM at Revision 22 may not be used.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Borfitz, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone 227–2677; 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 Emergency Airworthiness Directive 2006–0053–E, dated February 22, 2006, and Saab Service Bulletin 2000–57–040, dated February 23, 2006.

Material Incorporated by Reference

(i) You must use Saab Service Bulletin 2000–57–040, dated February 23, 2006, including Attachment 1, dated April 1, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

(3) You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19199 Filed 10–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27010; Directorate Identifier 2006–NM–259–AD; Amendment 39–15214; AD 2007–20–04]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes and Model A310 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to all Airbus Model A300 and A310 airplanes, and certain Model A300–600 series airplanes. That AD currently requires an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary. That AD also requires an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary. That AD also requires installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. This new AD requires, for certain airplanes, installation of bonding on an additional bracket and modification of the fuel/defuel valves on the left-hand wing. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

DATES: This AD becomes effective November 7, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 7, 2007.

On August 29, 2006 (71 FR 42026, July 25, 2006), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tom Stafford, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–15–09, amendment 39–14689 (71 FR 42026, July 25, 2006). The existing AD applies to all Airbus Model A300, and Model A310 airplanes; and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). The supplemental NPRM was published in the **Federal Register** on June 20, 2007 (72 FR 33929). The supplemental NPRM proposed to require an inspection of the wing and center fuel tanks to determine if certain P-clips are installed and corrective action if necessary; an inspection of electrical bonding points of certain equipment in the center fuel tank for the presence of a blue coat and related investigative and corrective actions if necessary; and installation of new bonding leads and electrical bonding points on certain equipment in the wing, center, and trim fuel tanks, as necessary. That supplemental NPRM also proposed to require, for certain airplanes, installation of bonding on an additional bracket; and for certain other airplanes, modification of the fuel/defuel valves on the left-hand wing.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Revise Compliance Times and To Put New Actions in a Separate Rule

Air Transport Association (ATA), on behalf of its member American Airlines (AA), is concerned with the administrative burden of the supplemental NPRM. The commenters point out that the supplemental NPRM contains multiple compliance periods for the required actions. The commenters believe that the multiple compliance periods should be consolidated into one compliance period. AA states that the scope of the existing AD along with the work added by the supplemental NPRM makes the proposed AD unwieldy to implement. AA states that considerable planning and procurement schedules must be accommodated for each additional AD, which disrupts planning that is already in place. The commenters state that the scope change described in the supplemental NPRM would have been more appropriately mandated as a separate rule.

We do not agree that the compliance times should be consolidated into one compliance period. In developing the compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet, the practical aspects of an orderly inspection or modification to the fleet during regular maintenance periods, the availability of required parts, and the time necessary for the rulemaking process. We also considered the compliance periods specified by the European Aviation Safety Agency (EASA) and the airplane manufacturer. We have determined that the proposed compliance times following the effective date of the AD are appropriate. We have not revised the AD in this regard.

However, we do agree that the scope change in the supplemental NPRM is better mandated as a separate rule for reasons the commenters stated. Since we issued the supplemental NPRM, the EASA has revised its airworthiness directive to 2006–0325 R1, dated July 25, 2007. (We cited the original issue of EASA airworthiness directive 2006–0325, dated October 23, 2006, as the parallel airworthiness directive in the supplemental NPRM.) Revision 1 of the EASA airworthiness directive removes the procedures in Airbus Service Bulletin A300–28–6064 from its stated actions. Airbus Service Bulletin A300–28–6064 includes procedures for Model A300–600 series airplanes. That service bulletin contains the scope change to which the commenters referred. R1 of the EASA airworthiness directive also removes Model A300–600 series airplanes from its applicability. As a result, we have revised the AD to do the following:

- Remove paragraph (k) of the supplemental NPRM. That paragraph contains the scope change cited by the commenters. We have re-identified subsequent paragraphs accordingly.
- Remove Model A300–600 series airplanes from the applicability. EASA is considering additional rulemaking regarding the unsafe condition for Model A300–600 series airplanes. Once the EASA airworthiness directive is approved, we will consider additional rulemaking for Model A300–600 series airplanes.
- Remove Model A300–600 service bulletins from Table 1 of the supplemental NPRM.
- Remove the costs information for Model A300–600 series airplanes from the Costs of Compliance section.
- Revise the Related Information (paragraph (n) of the supplemental NPRM) to refer to Revision 1 of the EASA airworthiness directive.

Conclusion

We have carefully reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 92 Model A300 and A310 airplanes of the affected design in the U.S. fleet. The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD. For some actions, the estimated work hours and cost of parts in the following table depend on the airplane configuration.

ESTIMATED COSTS

Model	Action	Work hours	Cost of parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
A300 airplanes	Inspect wing and center fuel tanks for P-clips (required by AD 2006–15–09).	40	None	$3,200	29	$92,800.
	Install bonding leads/points in wing and center fuel tank (required by AD 2006–15–09).	Between 136 and 155.	Between $3,800 and $5,200.	Between $14,680 and $17,600.	29	Between $425,720 and $510,400.
A310 airplanes	Inspect wing and center fuel tanks for P-clips (required by AD 2006–15–09).	40	None	$3,200	63	$201,600.

ESTIMATED COSTS—Continued

Model	Action	Work hours	Cost of parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
	Install bonding leads/points in wing and center fuel tank (required by AD 2006–15–09).	Between 248 and 285.	Between $8,840 and $9,190.	Between $28,680 and $31,990.	63	Between $1,806,840 and $2,015,370.
	Inspect and install bonding leads/points in the trim fuel tank (required by AD 2006–15–09).	Between 53 and 61.	Between $50 and $70.	Between $4,290 and $4,950.	63	Between $270,270 and $311,850.
	Install bonding for slat track 11 canister bracket (new action).	2	$30	$190	63	$11,970.

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14689 (71 FR 42026, July 25, 2006) and by adding the following new airworthiness directive (AD):

2007–20–04 Airbus: Amendment 39–15214. Docket No. FAA–2007–27010; Directorate Identifier 2006–NM–259–AD.

Effective Date

(a) This AD becomes effective November 7, 2007.

Affected ADs

(b) This AD supersedes AD 2006–15–09.

Applicability

(c) This AD applies to all Model A300 and A310 airplanes, certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to ensure continuous electrical bonding protection of equipment in the wing, center, and trim fuel tanks and to prevent damage to wiring in the wing and center fuel tanks, due to failed P-clips used for retaining the wiring and pipes, which could result in a possible fuel ignition source in the fuel tanks.

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.

Restatement of the Requirements of AD 2006–15–09

Service Bulletin References

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of the service bulletins identified in Table 1 of this AD, as applicable.

TABLE 1.—SERVICE BULLETIN REFERENCES

For Airbus—	And the actions specified in—	Use Airbus Service Bulletin—	Dated—
Model A300 airplanes	paragraph (g) of this AD	A300–28–0081	July 20, 2005.
	paragraph (h) of this AD	A300–28–0079	September 29, 2005; or Revision 01, dated June 6, 2006. After the effective date of this AD, only Revision 01 may be used.
Model A310 airplanes	paragraph (g) of this AD	A310–28–2143	July 20, 2005.
	paragraph (h) of this AD	A310–28–2142	August 26, 2005; or Revision 01, dated July 17, 2006. After the effective date of this AD, only Revision 01 may be used.

TABLE 1.—SERVICE BULLETIN REFERENCES—Continued

For Airbus—	And the actions specified in—	Use Airbus Service Bulletin—	Dated—
	paragraph (i) of this AD	A310–28–2153	July 20, 2005.

Inspection and Corrective Actions

(g) Within 59 months after August 29, 2006 (the effective date of AD 2006–15–09): Do a general visual inspection of the right and left wing fuel tanks and center fuel tank, if applicable, to determine if any NSA5516–XXND– and NSA5516–XXNJ–type P-clips are installed for retaining wiring and pipes in any tank, and do all applicable corrective actions before further flight after the inspection, by accomplishing all the actions specified in the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Installation of Bonding Leads and Points for Wing and Center Fuel Tanks

(h) Within 59 months after August 29, 2006: Do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, by accomplishing all the actions specified in the service bulletin.

(1) In the center fuel tank, if applicable, do a general visual inspection of the electrical bonding points of the equipment identified in the service bulletin for the presence of a blue coat, and do all related investigative and corrective actions before further flight after the inspection.

(2) In the left and right wing fuel tanks and center fuel tank, if applicable, install bonding leads and electrical bonding points on the equipment identified in the service bulletin.

Installation of Bonding Leads and Points for the Trim Fuel Tank

(i) For Model A310 airplanes equipped with a trim fuel tank: Within 59 months after August 29, 2006, install a new bonding lead(s) on the water drain system of the trim fuel tank and install electrical bonding points on the equipment identified in the service bulletin in the trim fuel tank, by accomplishing all the actions specified in the service bulletin, as applicable.

New Requirements of This AD

Installation of Bonding for Slat Track Canister 11 Bracket

(j) For all Model A310 airplanes on which the actions specified in Airbus Service Bulletin A310–28–2142, dated August 26, 2005, have been done before the effective date of this AD: Within 50 months after the effective date of this AD, install bonding for the slat track canister 11 bracket, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–28–2142, Revision 01, dated July 17, 2006.

Parts Installation

(k) As of August 29, 2006, no person may install any NSA5516–XXND–or NSA5516–XXNJ–type P-clip for retaining wiring and pipes in any wing, center, or trim fuel tank, on any airplane.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) 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) AMOCs approved previously in accordance with AD 2006–15–09 are approved as AMOCs for the corresponding provisions of this AD.

Related Information

(m) European Aviation Safety Agency airworthiness directive 2006–0325 R1, dated July 25, 2007, also addresses the subject of this AD.

Material Incorporated by Reference

(n) You must use the service information listed in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—ALL MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Revision level—	Date—
A300–28–0079	Original	September 29, 2005.
A300–28–0079	01	June 6, 2006.
A300–28–0081	Original	July 20, 2005.
A310–28–2142	Original	August 26, 2005.
A310–28–2142	01	July 17, 2006.
A310–28–2143	Original	July 20, 2005.
A310–28–2153	Original	July 20, 2005.

(1) The Director of the Federal Register approved the incorporation by reference of the service bulletins listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Revision level—	Date—
A300–28–0079	01	June 6, 2006.
A310–28–2142	01	July 17, 2006.

(2) On August 29, 2006 (71 FR 42026, July 25, 2006), the Director of the Federal Register approved the incorporation by reference of the service bulletins listed in Table 4 of this AD.

TABLE 4.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Airbus Service Bulletin—	Dated—
A300–28–0079	September 29, 2005.
A300–28–0081	July 20, 2005.
A310–28–2142	August 26, 2005.
A310–28–2143	July 20, 2005.
A310–28–2153	July 20, 2005.

(3) Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19206 Filed 10–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–27015; Directorate Identifier 2006–NM–169–AD; Amendment 39–15215; AD 2007–20–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318–111 and A318–112 Airplanes and Model A319, A320, and A321 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding two existing airworthiness directives (ADs). One AD applies to all Airbus Model A319 and A320 airplanes and currently requires repetitive ultrasonic inspections to detect fatigue cracking in the wing/fuselage joint cruciform fittings, and corrective actions if necessary. The other AD applies to all Airbus Model A319, A320, and A321 airplanes and currently requires a revision to the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA). This new AD requires new revisions to the ALS of the ICA to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures; and accomplishment of the repetitive ultrasonic inspections of the wing/fuselage joint cruciform fittings in accordance with the revised ALS of the ICA. This AD also adds airplanes to the applicability. This AD results from issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. We are issuing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements and to prevent failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective November 7, 2007.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 7, 2007.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

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:

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket 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.

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2004–03–06, amendment 39–13450 (69 FR 5909, February 9, 2004) and AD 2005–02–09, amendment 39–13954 (70 FR 3871, January 27, 2005). AD 2004–03–06 applies to all Airbus Model A319 and A320 airplanes, and AD 2005–02–09 applies to all Airbus Model A319, A320, and A321 airplanes. That NPRM was published in the **Federal Register** on January 26, 2007 (72 FR 3768). That NPRM proposed to require new revisions to the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness (ICA) to incorporate service life limits for certain items and inspections to detect fatigue cracking, accidental damage, or corrosion in certain structures; and accomplishment of the repetitive ultrasonic inspections of the wing/fuselage joint cruciform fittings in accordance with the revised ALS of the ICA. That NPRM also proposed to add airplanes to the applicability.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Support for the NPRM

Airbus supports the NPRM. Northwest Airlines and United Airlines agree with the intent of the NPRM.

Request To Incorporate Certain Service Information

The Air Transport Association (ATA), on behalf of its member U.S. Airways, requests that we incorporate the following documents into this AD: Airbus Operator Information Telex (OIT) 999.0049/06, dated April 14, 2006; Airbus OIT 999.0055/06/CL, dated May 4, 2006; and the Airbus A318/A319/A320/A321 Scheduled Maintenance Data (SMD). The commenters further request that we revise this AD to allow operators to use later revisions of Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96 (hereafter referred to as the ''Airbus ALI''), as acceptable for compliance with the requirements of this AD. As justification for its request, US Airways states that Airbus will be revising the SMD and ALI on a regular basis.

We agree to refer to Airbus ALI, Issue 08, dated March 2006 (approved by the European Aviation Safety Agency (EASA) on January 4, 2007); and Issue 09, dated November 2006 (approved by the EASA on May 21, 2007); as appropriate sources of service information for accomplishing the actions required by paragraph (i) of this AD. We have also revised paragraph (j)

of this AD accordingly. In the NPRM, we referred to Airbus ALI, Issue 7, dated December 2005 (approved by the EASA on February 7, 2006), as the appropriate source of service information. Issue 08 of the Airbus ALI adds Model A320–215 and –216 airplanes and Model A321–214 airplanes to the applicability of certain ALI tasks. Since these airplanes have not yet been type certificated in the U.S., incorporating Issue 08 of the Airbus ALI into this AD does not expand the scope of the AD. Issue 09 of the Airbus ALI extends the compliance time for certain ALI tasks and adds new tasks for Model A318–121 and –122 airplanes. This AD does not apply to Model A318–121 and –122 airplanes, since Issue 09 of the Airbus ALI was approved as part of the type certification basis for the Model A318–121 and –122 airplanes. Therefore, incorporating Issue 09 of the Airbus ALI into this AD does not expand the scope of the AD.

We do not agree to allow the use of future revisions to the Airbus ALI because we are prohibited from referring to documents that do not yet exist. Additionally, we do not agree to refer to the other service information requested by the commenters, since this AD only mandates incorporation of Issue 7, 08, or 09 of the Airbus ALI and Sub-parts 1–2 and 1–3 of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006.

Request To Extend Grace Period

United Airlines requests that, if ALI Tasks 552007–01–1 and 552007–01–2 are required, we add an additional grace period for accomplishing these tasks. As justification, United Airlines states that a longer grace period is needed to account for the development of new tooling or a non-destructive inspection method that could produce more conclusive findings than the current inspection method. United Airlines states that it has discussed this subject with Airbus, and that Airbus and the EASA are reviewing the matter. United Airlines further states that Airbus has not provided allowable damage limits in Chapter 55–21–11, page series 101, of the Airbus Structural Repair Manual (SRM) for acceptable findings, which would permit proceeding without repair until the next inspection. United Airlines believes that Airbus is pursuing such relief; however, the timing is unknown.

We agree to extend the grace period for accomplishing ALI Task 552007–01–1 from 20 months to 40 months, in accordance with Issue 09 of the Airbus ALI. As discussed previously, we have revised paragraphs (i) and (j) of this AD to refer to Issue 09 of the Airbus ALI. However, we do not agree to extend the grace period for ALI Task 552007–01–2. The commenter has not recommended a specific amount of time for extending the compliance time, or provided data showing that an extension in the compliance time would provide an acceptable level of safety. If data are submitted to substantiate that such an adjustment would provide an acceptable level of safety, under the provisions of paragraph (l) of this AD, we might approve the request for an adjustment to the compliance time. Further, if the EASA issues a new airworthiness directive to extend the compliance time for these tasks or to revise the task instructions, we will consider further rulemaking. We have not revised this AD in this regard.

Request To Exclude Certain ALI Tasks

The ATA, on behalf of its member United Airlines, and Northwest Airlines (NWA) request that we exclude ALI Tasks 552007–01–1 and 552007–01–2 from the requirements of this AD. These ALI tasks involve thermographic inspections to detect the presence of water in the carbon fiber composite structure of the elevator control surfaces. United Airlines states that, based on inspections it has conducted, this method of inspection has not provided conclusive evidence of water ingression; its findings were limited to manufacturing defects. United Airlines also states that the inspection process is questionable, and that there is no effective non-destructive verification tool currently available to validate the presence of water. United Airlines asserts that the current process is more destructive to the elevator, as the skins and core in the area were removed and subsequently repaired.

United Airlines also states that these ALI tasks were incorporated into the Airbus ALI without MSG–3 Analysis review by the Industry Structures Working Group. United Airlines states that composite structures are not subject to fatigue-based analysis and, therefore, do not fit into the Airbus ALI. United Airlines also states that, to date, it has not identified any cases of delamination on the elevators inspected by the same techniques in accordance with AD 2002–18–01 and the ALI. United Airlines further states that Airbus has not reported any in-service incidents resulting from elevator aerodynamic limitations.

NWA states that the tasks should be required by an AD-mandated service bulletin instead of including the tasks in the Airbus ALI. NWA asserts that the elevator water ingression resulted from a design problem that would more appropriately be managed through the service bulletin process. NWA states that including the tasks in the ALI document diminishes visibility of the unsafe condition and avoids coordination between the manufacturer and operators in identifying the scope and corrective actions for the unsafe condition. NWA also states that including the tasks into the ALI document increases the risk of record retention and compliance issues. NWA further states that inclusion of non-fatigue-based inspections for easily removable parts into the Airbus ALI could potentially change NWA's maintenance program. NWA asserts that safety items of this complexity demand rigorous and thorough review prior to implementation, which can best be achieved through the airworthiness concern coordination process that has been successfully used for years by the industry.

We do not agree to exclude ALI Tasks 552007–01–1 and 552007–01–2 from the requirements of this AD. The commenters have not provided any data to indicate that these inspections are not effective, or that there is no unsafe condition. In addition, section 25.571 of the Federal Aviation Regulations (14 CFR 25.571) does not differentiate between removable and non-removable structures, and tracking elevator time would be required regardless of whether the problem was addressed by a service bulletin or the Airbus ALI. Although we agree that the ALIs primarily deal with fatigue issues, FAA Advisory Circular 20–107A, ''Composite Aircraft Structure,'' dated April 25, 1984, states that the effects of temperature, humidity, and other environmental factors that might result in material property degradation should be addressed in the damage tolerance evaluation. Water ingress in the elevator structure is clearly an environmental factor that could result in an unsafe condition. Operators were given due process by publication of the NPRM and the Airbus ALI. Therefore, we have not changed this AD in this regard.

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

The following table provides the estimated costs, at an average labor rate of $80 per hour, for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
ALS revision(required by AD 2005–02–09)	1	$80	720	$57,600
ALS revision (new action)	1	80	720	57,600

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–13450 (69 FR 5909, February 9, 2004) and amendment 39–13954 (70 FR 3871, January 27, 2005) and by adding the following new airworthiness directive (AD):

2007–20–05 Airbus: Amendment 39–15215. Docket No. FAA–2007–27015; Directorate Identifier 2006–NM–169–AD.

Effective Date

(a) This AD becomes effective November 7, 2007.

Affected ADs

(b) This AD supersedes AD 2004–03–06 and AD 2005–02–09.

Applicability

(c) This AD applies to all Airbus Model A318–111, A318–112, A319, A320, and A321 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25.1529–1.

Unsafe Condition

(d) This AD results from issuance of new and more restrictive service life limits and structural inspections based on fatigue testing and in-service findings. We are issuing this AD to detect and correct fatigue cracking, accidental damage, or corrosion in principal structural elements and to prevent failure of certain life limited parts, which could result in reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2005–02–09

Revise Airworthiness Limitations Section (ALS)

(f) For all Model A319, A320, and A321 airplanes: Within 6 months after March 3, 2005 (the effective date of AD 2005–02–09), revise the ALS of the Instructions for Continued Airworthiness in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent); or the European Aviation Safety Agency (EASA) (or its delegated agent). One approved method of compliance is incorporating Airbus A318/A319/A320/A321 Maintenance Planning Document (MPD), sub-Section 9–1–2, ''Life Limited Parts,'' and sub-Section 9–1–3, ''Demonstrated Fatigue Life Parts,'' both Revision 06, both dated June 13, 2003.

Note 2: Airbus Service Information Letter 32–098, dated December 22, 2003, may be used as a source of service information for managing life limited and demonstrated fatigue life parts that were not previously tracked.

(g) For all Model A319, A320, and A321 airplanes; except Model A319 airplanes on which Airbus Modifications 28238, 28162, and 28342 were incorporated during production: Within 6 months after March 3, 2005, revise the ALS of the Instructions for Continued Airworthiness in accordance with a method approved by the Manager, International Branch, ANM–116; or the

DGAC (or its delegated agent); or the EASA (or its delegated agent). One approved method of compliance is incorporating both Airbus A318/A319/A320/A321 MPD, sub-Section 9–2, ''Airworthiness Limitation Items,'' Revision 06, dated June 13, 2003; and Airbus A318/A319/A320/A321 Airworthiness Limitation Items (ALIs), Document AI/SE–M4/95A.0252/96, Issue 6, dated May 15, 2003 (approved by the DGAC on July 15, 2003).

New Requirements of This AD

Revise ALS To Incorporate Safe Life ALIs

(h) For all airplanes: Within 3 months after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Sub-part 1–2, ''Life Limits,'' and Sub-part 1–3, ''Demonstrated Fatigue Lives,'' of Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items, dated February 28, 2006 (hereafter referred to as ''ALS Part 1''). Accomplish the actions in ALS Part 1 at the times specified in ALS Part 1, except as provided by paragraph (j) of this AD. For Model A319, A320, and A321 airplanes, accomplishing the revision in this paragraph terminates the requirements of paragraph (f) of this AD.

Revise ALS To Incorporate Damage-Tolerant ALIs

(i) For all airplanes, except Model A319 airplanes on which Airbus Modifications 28238, 28162, and 28342 have been incorporated in production: Within 14 days after the effective date of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, Issue 7, dated December 2005 (approved by the EASA on February 7, 2006) (hereafter referred to as ''Issue 7 of the ALI''); Issue 08, dated March 2006 (approved by the EASA on January 4, 2007) (hereafter referred to as ''Issue 08 of the ALI''); or Issue 09, dated November 2006 (approved by the EASA on May 21, 2007) (hereafter referred to as ''Issue 09 of the ALI''). Accomplish the actions in Issue 7, Issue 08, or Issue 09 of the ALI at the times specified in Issue 7, Issue 08, or Issue 09 of the ALI, as applicable, except as provided by paragraph (j) of this AD. For Model A319, A320, and A321 airplanes, accomplishing the revision in this paragraph terminates the requirements of paragraph (g) of this AD.

Grace Period for New or More Restrictive Actions

(j) For any new or more restrictive life limit introduced with ALS Part 1, replace the part at the time specified in ALS Part 1 or within 6 months after the effective date of this AD, whichever is later. For any new or more restrictive inspection introduced with Issue 7, Issue 08, or Issue 09 of the ALI, do the inspection at the time specified in Issue 7, Issue 08, or Issue 09 of the ALI, as applicable, or within 6 months after the effective date of this AD, whichever is later.

No Alternative Life Limits, Inspections, or Inspection Intervals

(k) After the actions specified in paragraphs (h) and (i) of this AD have been accomplished, no alternative life limits, inspections, or inspection intervals may be used, except as provided by paragraphs (j) and (l) of this AD.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) 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.

Related Information

(m) EASA airworthiness directive 2006–0162, dated June 8, 2006; and EASA airworthiness direction 2006–0165, dated June 13, 2006; also address the subject of this AD.

Material Incorporated by Reference

(n) You must use the service information identified in Table 1 of this AD, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service information	Revision/issue level	Date
Airbus A318/A319/A320/A321 ALS Part 1—Safe Life Airworthiness Limitation Items.	Revision 00	February 28, 2006.
Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96.	Issue 7	December 2005.
Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96.	Issue 08	March 2006.
Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96.	Issue 09	November 2006.

(Issue 7 of Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, contains the following errors: The Summary of Changes is comprised of 11 pages, which are all identified as Page 2—LEP of Section LEP instead of Page 1—SOC [through] Page 11—SOC of Section SOC; the List of Effective Pages only refers to Page 1—SOC for the Summary of Changes. The List of Effective Pages is comprised of two pages, and both of those pages are identified as Page 2—LEP. The first page of Section 2 is identified as Page 6 of Section 1 and is not referred to in the List of Effective Pages. Issue 08 of Airbus A318/A319/A320/A321 Airworthiness Limitation Items, Document AI/SE–M4/95A.0252/96, contains the following errors: Pages 3—ROR and 2—SOC are not referred to in the List of Effective Pages. The List of Effective Pages are identified as Pages 1—SOC and 2—SOC, instead of 1—LEP and 2—LEP. The first page of Section 2 is identified as Page 6 of Section 1 and is not referred to in the List of Effective Pages.) The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on September 21, 2007.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19208 Filed 10–2–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30572; Amdt. No. 3238]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes in the National Airspace System, such as the commissioning of new navigational facilities, adding of new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 3, 2007. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 3, 2007.

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

For Examination—

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

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

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

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

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

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

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

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

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

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

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on September 21, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
08/29/07	TX	Corpus Christi	Corpus Christi Intl	7/4996	Rescind Notam Published In TL 07–21. TKOF Mins and Obstacle DP, Orig.
09/17/07	MO	Maryville	Northwest Missouri Regional	7/6239	Take-Off Minimums and (Obstacle) Departure Procedures Amdt 2.
09/17/07	NM	Tucumcari	Tucumcari Muni	7/6242	Take-Off Minimums and (Obstacle) Departure Procedures Amdt 2.
09/06/07	GA	Perry	Perry-Houston County	7/6070	VOR or GPS–A, Amdt 5.
09/06/07	GA	Perry	Perry-Houston County	7/6078	NDB or GPS Rwy 36, Amdt 3.
09/10/07	HI	Honolulu	Honolulu Intl	7/6466	RNAV (RNP) Rwy 26L, Orig.
09/11/07	MD	College Park	College Park	7/6545	TKOF Mins and Obstacle DP, Amdt 3A.

[FR Doc. E7–19242 Filed 10–2–07; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 752

[No. USN–2007–0012]

RIN 0703–AA83

Admiralty Claims

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its Admiralty Claims regulations concerning the scope of admiralty claims and the limit on the Secretary of the Navy's settlement authority on admiralty claims reflected in Chapter XII of the Manual of the Judge Advocate General (JAGMAN).

The Department of the Navy is updating its Admiralty Claims regulations to reflect the United States Code provisions.

DATES: This rule is effective February 6, 2007. Comments will be accepted on or before December 3, 2007.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

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

Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Commander Gregg A. Cervi, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 752. This amendment provides notice that the Judge Advocate General of the Navy has made administrative corrections to the Admiralty Claims regulations found in Chapter XII of the JAGMAN. It has been determined that invitation of public comment on this amendment would be impractical and unnecessary, and is therefore not required under the public rulemaking provisions of 32 CFR parts 336 and 701. However, interested persons are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions of 32 CFR part 752, or the instructions on which they are based. It has been determined that this final rule is not a major rule within the criteria specified in Executive Order 12866, as amended by Executive Order 13258, and does not have substantial impact on the public. This submission is a statement of policy and as such can be effective upon publication in the **Federal Register**.

Matters of Regulatory Procedure

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that 32 CFR part 752 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

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

It has been certified that 32 CFR part 752 does not contain a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 752 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR part 752 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 752

Claims, Vessels.

■ For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR part 752 as follows:

PART 752—ADMIRALTY CLAIMS

■ 1. The authority citation for 32 CFR part 752 is revised to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 5013, 5148 and 7621–7623; 32 CFR 700.105 and 700.331.

§ 752.1 [Amended]

■ 2. Section 752.1 is revised to read as follows:

§ 752.1 Scope.

This part applies to admiralty-tort claims. These include claims against the United States for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Navy, or damage caused by a maritime tort committed by an agent or employee of the Navy for which the Navy has assumed an obligation to respond for damage. Affirmative claims by the United States for damage caused by a vessel or floating object to Navy property are covered under this part.

§ 752.2 [Amended]

■ 3. Section 752.2 is amended in paragraph (a) by removing ''$1,000,000'' and adding ''$15,000,000'' in its place.

§ 752.3 [Amended]

■ 4. Section 752.3 is amended as follows:

■ a. Paragraph (a) is revised to read as set forth below; and

■ b. Paragraph (c) is amended by removing ''$100,000'' and adding ''$500,000'' in its place.

§ 752.3 Claims against the Navy.

(a) *Settlement authority.* 10 U.S.C. 7622 provides settlement authority for damage caused by a vessel in the naval service or by other property under the jurisdiction of the Department of the Navy; compensation for towage or salvage service, including contract salvage, rendered to a vessel in the naval service or to other property of the Navy; or damage caused by a maritime tort committed by any agent or employee of the Department of the Navy or by property under the jurisdiction of the Department of the Navy. The limit on the Secretary's settlement authority is payment of $15,000,000. A claim which is settled for an amount over $15,000,000 is certified to Congress for payment. Section 7622 provides that the Secretary may delegate his settlement authority in matters where the amount to be paid is not over $1,000,000. Under the Secretary's delegation, settlements not exceeding $500,000 may be effected by the Judge Advocate General. Under the Secretary's delegation, settlements not exceeding $250,000 may be effected by the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

* * * * *

§ 752.4 [Amended]

■ 6. Section 752.4 is amended in paragraph (b) by adding ''or for which the Department of the Navy has assumed an obligation to respond'' after ''Department of the Navy''.

Dated: September 26, 2007.

T.M. Cruz,

Lieutenant, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E7–19407 Filed 10–2–07; 8:45 am]

BILLING CODE 3810–FF–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0167–200734; FRL–8475–8]

Approval and Promulgation of Implementation Plans; Mississippi: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Mississippi State Implementation Plan (SIP) submitted on January 16, 2007. This revision addresses the requirements of EPA's Clean Air Interstate Rule (CAIR) promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006. EPA has determined that the SIP revision fully implements the CAIR requirements for Mississippi. As a result of this action, EPA will also withdraw, through a separate rulemaking, the CAIR Federal Implementation Plans (FIPs) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for Mississippi. The CAIR FIPs for all States in the CAIR region were promulgated on April 28, 2006, and subsequently revised on December 13, 2006.

CAIR requires States to reduce emissions of SO_2 and NO_X that significantly contribute to, and interfere with maintenance of, the National Ambient Air Quality Standards (NAAQS) for fine particulates ($PM_{2.5}$) and/or ozone in any downwind state. CAIR establishes State budgets for SO_2 and NO_X and requires States to submit SIP revisions that implement these budgets in States that EPA concluded did contribute to nonattainment in downwind states. States have the flexibility to choose which control measures to adopt to achieve the budgets, including participating in the EPA-administered cap-and-trade programs. In the SIP revision that EPA is approving today, Mississippi has met the CAIR requirements by electing to participate in the EPA-administered cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions for Mississippi.

DATES: This rule is effective on November 2, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R04–OAR–2007–0167. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information 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 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, Region 4, U.S. Environmental Protection Agency, 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: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What Action Is EPA Taking?

EPA is taking final action to approve a revision to Mississippi's SIP submitted on January 16, 2007. Mississippi adopts by reference most of the provisions of EPA's SO_2, NO_X annual, and NO_X ozone season model trading rules, with certain changes discussed below. In its SIP revision, Mississippi has met the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered State CAIR cap-and-trade programs addressing SO_2, NO_X annual, and NO_X ozone season emissions. Under this SIP revision, Mississippi is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. The SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone emissions and 40 CFR 51.124(o), with regard to SO_2 emissions.

EPA has determined that the SIP as revised will meet the applicable requirements of CAIR. As a result of this action, the Administrator of EPA will also issue a final rule to withdraw the FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Mississippi. The Administrator's action will delete and reserve 40 CFR 52.1284 and 40 CFR 52.1285, relating to the CAIR FIP obligations for Mississippi. The withdrawal of the CAIR FIPs for Mississippi is a conforming amendment that must be made once the SIP is approved because EPA's authority to issue the FIPs was premised on a deficiency in the SIP for Mississippi. Accordingly, EPA does not intend to offer an opportunity for a public hearing or an additional opportunity for written public comment on the withdrawal of the FIPs.

EPA proposed to approve Mississippi's request to amend the SIP on July 12, 2007 (72 FR 38051). In that proposal, EPA also stated its intent to withdraw the FIP, as described above. The comment period closed on August 13, 2007. No comments were received. EPA is finalizing the approval as proposed based on the rationale stated in the proposal and in this final action.

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

The 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 interfere with maintenance of the NAAQS for $PM_{2.5}$ 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 reduction requirements by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

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 (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective on 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, three years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS.

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 trading programs in their CAIR NO_X ozone season trading programs.

IV. Analysis of Mississippi's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

Today, EPA is taking final action to approve Mississippi's SIP revision that adopts the budgets established for the State in CAIR, i.e., 17,807 (2009–2014) and 14,839 (2015–thereafter) tons for NO_X annual emissions, 8,714 (2009–2014) and 7,262 (2015–thereafter) tons for NO_X ozone season emissions, and 33,763 (2010–2014) and 23,634 (2015–thereafter) tons for SO_2 emissions. Mississippi's SIP revision establishes these budgets as the total amount of allowances available for allocation for each year under the EPA-administered cap-and-trade programs.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone season model trading rules both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone season model rules are similar, there are some differences. For example, the NO_X annual model rule (but not the NO_X ozone season model rule) provides for a compliance supplement pool (CSP),

which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season model rule reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season model rule provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 model rule are also similar to the provisions of the NO_X annual and ozone season model rules. However, the SO_2 model rule is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 model rule uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing one ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA also used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for Federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

In this SIP revision, Mississippi has chosen to implement its CAIR budgets by requiring EGUs to participate in EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Mississippi has adopted with certain allowed changes discussed below, the CAIR model cap-and-trade rules for SO_2, NO_X annual, and NO_X ozone season emissions.

C. NO_X Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

States may establish in their SIP submissions a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to: (1) The cost to recipients of the allowances, which may be distributed for free or auctioned; (2) the frequency of allocations; (3) the basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and (4) the use of allowance set-asides and, if used, their size.

Mississippi has not replaced the provisions of the CAIR NO_X annual model trading rule concerning the allocation of NO_X annual allowances with its own methodology.

Mississippi has not replaced the provisions of the CAIR NO_X ozone season model trading rule concerning allowance allocations with its own methodology.

D. Allocation of NO_X Allowances From the Compliance Supplement Pool

The CAIR establishes a compliance supplement pool to provide an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the projected magnitude of the emission reductions required by CAIR in that State. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR annual NO_X model trading rule establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in the States.

Mississippi has not modified the provisions from the CAIR NO_X annual model trading rule concerning the allocation of allowances from the CSP. Mississippi has chosen to distribute CSP allowances using the allocation methodology provided in 40 CFR 96.143 and has adopted this section by reference.

E. Individual Opt-In Units

The opt-in provisions of the CAIR SIP model trading rules allow certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. States may adopt the CAIR opt-in provisions entirely or may adopt them but exclude one of the methodologies for allocating allowances. States may also decline to adopt the opt-in provisions at all.

Mississippi has chosen to allow non-EGUs meeting certain requirements to opt into the CAIR trading programs by adopting by reference the entirety of EPA's model rule provisions for opt-in units in the CAIR SO_2, CAIR NO_X annual, and CAIR NO_X ozone season trading programs.

V. Final Action

EPA is taking final action to approve Mississippi's full CAIR SIP revision submitted on January 16, 2007. Under this SIP revision, Mississippi is choosing to participate in the EPA-administered cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. EPA has determined that the SIP revision meets the applicable requirements in 40 CFR 51.123(o) and (aa), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(o), with regard to SO_2 emissions. EPA has determined that the SIP as revised will meet the requirements of CAIR. The Administrator of EPA will also issue, without providing an opportunity for a public hearing or an additional opportunity for written public comment, a final rule to withdraw the CAIR FIPs concerning SO_2, NO_X annual, and NO_X ozone season emissions for Mississippi. The Administrator's action will delete and reserve 40 CFR 52.1284 and 40 CFR 52.1285. EPA will take final action to withdraw the CAIR FIPs for Mississippi in a separate rulemaking.

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

This 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 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 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 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 December 3, 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, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 21, 2007.

J.I. Palmer, Jr.,

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 Z—Mississippi

■ 2. Section 52.1270(c) is amended under subchapter ''APC–S–1'' by adding a new entry in numerical order to read as follows:

§ 52.1270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
APC–S–1.	Air Emission Regulations for the Prevention, Abatement, and Control of Air Contaminants			
* * *	*	*	*	*
Section 14	Provision for the Clean Air Interstate Rule.	12/17/06	10/03/07 [Insert citation of publication].	
* * *	*	*	*	*

* * * * *

[FR Doc. E7–19320 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 07–06]

RIN 3072–AC33

Amendment to Regulations Governing the Filing of Proof of Financial Responsibility

September 27, 2007.

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

SUMMARY: The Federal Maritime Commission (''FMC'' or ''Commission'') amends its regulations governing proof of financial responsibility for ocean transportation intermediaries (''OTIs'') required to be filed prior to commencement of OTI services. The amendment reduces the amount of time an applicant has to file the requisite proof of financial responsibility from two years to 120 days, after approval of the applicant's license application. Upon expiration of the 120-day time period, if valid proof of financial responsibility has not been provided by the applicant, its OTI application will be considered invalid. Applications approved prior to the effective date of this Final Rule will continue to be subject to the two-year time period to submit valid proof of financial responsibility.

DATES: Effective November 5, 2007.

FOR FURTHER INFORMATION CONTACT: Sandra L. Kusumoto, Director, Bureau of Certification and Licensing, Federal Maritime Commission, 800 N. Capitol Street, NW., Room 970, Washington, DC 20573–0001.(202) 523–5787, e-mail: *skusumoto@fmc.gov.*

Amy W. Larson, General Counsel, Office of the General Counsel, Federal Maritime Commission, 800 N. Capitol Street, NW., Room 1018, Washington, DC 20573–0001. (202) 523–5740, e-mail: *generalcounsel@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission published a Notice of Proposed Rulemaking (''NPRM'') on July 25, 2007, in the **Federal Register**, 72 FR 40813–14, to amend its regulations at 46 CFR 515.25(a) to require an applicant for an OTI license to provide valid proof of financial responsibility within 120 days of approval of its application, prior to issuance of a license by the Commission's Bureau of Certification and Licensing. The current regulation allows an applicant two years from the date of approval in which to furnish proof of financial responsibility, failing which the application will be considered invalid by the Commission.

The Commission proposed this change for two reasons. First, if applicants illegally provide OTI services in the two years following approval but before procurement of financial responsibility, the statutory goal of protecting the shipping public is frustrated. Second, applicants' inability or unwillingness to procure financial responsibility may indicate questionable financial integrity, a key factor in establishing an applicant's fitness to perform OTI activities.

BCL staff analysis shows that the majority of new applicants obtain surety bonds within 120 days or less. Therefore, reducing the time for providing proof of valid financial responsibility to 120 days is unlikely to burden OTI applicants.

The Commission received two comments to its NPRM. The Transportation Intermediaries Association (''TIA''), whose members include OTIs, supports the Commission's proposal to reduce the amount of time from two years to 120 days. TIA states that its member companies are put at a competitive disadvantage when other OTIs do not comply with laws or regulations. The National Industrial Transportation League (''NITL'') also provided comments in support of the NPRM. NITL's members include OTIs and entities that use the services of OTIs. Both TIA and NITL believe that reducing the time for OTI applicants to provide proof of responsibility prior to offering OTI services will better protect the shipping public.

OTI applicants whose applications were approved prior to the effective date of the Final Rule will continue to have two years from approval in which to furnish proof of financial responsibility. If no proof is furnished within this period, the OTI application would be considered invalid, thereby requiring the filing of a new application. Any new application will be subject to the 120-day period for filing evidence of financial responsibility.

In addition, the Commission amends 46 CFR 515.25(a) by deleting reference to supplementary investigations for the determination of an applicant's continued qualification, if more than six months elapse between approval of the application and an applicant's submission of financial responsibility to the Commission. The supplementary investigations will become unnecessary due to the reduction of time the applicant is permitted to obtain financial responsibility. Removal of the option of supplementary investigation from 46 CFR 515.25(a) likewise necessitates removing paragraph 515.5(b)(3), since the collection of fees for supplementary investigations will no longer be applicable.

This rule is not a ''major rule'' under 5 U.S.C. 804(2) and therefore is not subject to review by the Office of Management and Budget's Office of Information and Regulatory Affairs.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. The rule directly applies to the licensing requirements of OTIs, which are regulated persons (or businesses) under the Commission's jurisdiction and

which qualify as small entities under the guidelines of the Small Business Administration. The rule will decrease the amount of time an applicant has to file the requisite proof of financial responsibility upon approval of applicant's license application, from two years to 120 days. The modifications in the rule will simplify the OTI licensing application process and increase administrative efficiency, while further serving to safeguard the shipping public from unlicensed operators. The rule imposes no new or additional cost burden on persons applying for an OTI license, nor will it have a harmful effect on the general public, the U.S. economy, or any of the regulated entities under the jurisdiction of the Commission. In its NPRM, the Commission stated its intention to certify this rulemaking. No comments from interested parties contested the Commission's certification. Thus, the rule is hereby certified.

The rule contains no additional information collection or recordkeeping requirements. Therefore, the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* do not apply.

List of Subjects in 46 CFR Part 515

Common carriers, Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries, Financial responsibility requirements, Reporting and recordkeeping requirements, Surety bonds.

■ Accordingly, the Federal Maritime Commission amends 46 CFR part 515 as follows:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

■ 1. The authority citation for part 515 is revised to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718 (recodified October 2006 as 46 U.S.C. 305, 40102, 40104, 40501–40503, 40901–40904, 41101–41106, 41107–41109, 41301–41302, 41305–41307, 42101, and 42301–42307); Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

§ 515.5 [Amended]

■ 2. In Sec. 515.5, remove paragraph (b)(3).

■ 3. Amend Sec. 515.25(a) by removing the fourth sentence and revising the last sentence to read as follows:

§ 515.25 Filing of proof of financial responsibility.

(a) * * * Should the applicant not file the requisite proof of financial responsibility within 120 days of notification, the Commission will consider the application to be invalid.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–19464 Filed 10–2–07; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XD08

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 29, 2007, through 2400 hrs, A.l.t., December 31, 2007.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (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 2007 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI is 1,334 metric tons as established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2007 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

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 directed fishing for Pacific cod by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 27, 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 § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: September 27, 2007.

Emily H. Menashes

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

[FR Doc. 07–4894 Filed 9–28–07; 2:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213032–7032–01]

RIN 0648–XD06

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 28, 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 27, 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 27, 2007.

Emily H. Menashes

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

[FR Doc. 07–4896 Filed 9–28–07; 2:30 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 191
Wednesday, October 3, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AI01

Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to provide updated fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels. The proposed rule would provide new PTS requirements based on updated analysis methods. This action is desirable because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. This action would reduce regulatory burden for licensees, specifically those licensees that expect to exceed the existing requirements before the expiration of their licenses, while maintaining adequate safety. These new requirements would be voluntarily utilized by any PWR licensee as an alternative to complying with the existing requirements.

DATES: Submit comments by December 17, 2007. Submit comments specific to the information collection aspects of this rule by November 2, 2007. Comments received after these dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number ''RIN 3150–AI01'' in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comment will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Submit comments via the Federal e-Rulemaking Portal *http://www.regulations.gov.* Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; E-mail *CAG@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *PDR@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. George Tartal, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–0016; e-mail: *GMT1@nrc.gov,* or Mr. Barry Elliot, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–2709; e-mail: *BJE@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

Pressurized thermal shock events are system transients in a pressurized water reactor (PWR) in which severe overcooling occurs coincident with high pressure. The thermal stresses caused by rapid cooling of the reactor vessel inside surface combine with the stresses caused by high pressure. The aggregate effect of these stresses is an increase in the potential for fracture if a preexisting flaw is present in a material susceptible to brittle failure. The ferritic, low alloy steel of the reactor vessel beltline adjacent to the core where neutron radiation gradually embrittles the material over the lifetime of the plant may be such a material.

The toughness of ferritic reactor vessel materials is characterized by a ''reference temperature for nil ductility transition'' (RT_{NDT}). RT_{NDT} is referred to as a ductile-to-brittle transition temperature. At temperatures below RT_{NDT} fracture occurs very rapidly, by cleavage, a behavior referred to as ''brittle.'' As temperatures increase above RT_{NDT}, progressively larger amounts of deformation occur before rapid cleavage fracture occurs. Eventually, at temperatures above approximately $RT_{NDT} + 60\,°F$, there is no longer adequate stress intensification to promote cleavage and fracture occurs by the slower mechanism of micro-void initiation, growth, and coalescence into the crack, a behavior referred to as ''ductile.''

At normal operating temperature, ferritic reactor vessel materials are usually tough. However, neutron

radiation embrittles the material over time, causing a shift in RT_{NDT} to higher temperatures. Correlations based on test results for unirradiated and irradiated specimens have been developed to calculate the shift in RT_{NDT} as a function of neutron fluence (the integrated neutron flux over a specified time of plant operation) for various material compositions. The value of RT_{NDT} at a given time in a reactor vessel's life is used in fracture mechanics calculations to determine the probability that assumed pre-existing flaws would propagate when the reactor vessel is stressed.

The Pressurized Thermal Shock (PTS) rule, 10 CFR 50.61, adopted on July 23, 1985 (50 FR 29937), establishes screening criteria below which the potential for a reactor vessel to fail due to a PTS event is deemed to be acceptably low. The screening criteria effectively define a limiting level of embrittlement beyond which operation cannot continue without further plant-specific evaluation. Regulatory Guide (RG) 1.154, ''Format and Content of Plant-Specific Pressurized Thermal Shock Analysis Reports for Pressurized Water Reactors,'' indicates that reactor vessels that exceed the screening criteria in the rule may continue to operate provided they can demonstrate a mean through-wall crack frequency (TWCF) from PTS-related events of no greater than 5×10^{-6} per reactor year.

Any reactor vessel with materials predicted to exceed the screening criteria in 10 CFR 50.61 may not continue to operate without implementation of compensatory actions or additional plant-specific analyses unless the licensee receives an exemption from the requirements of the rule. Acceptable compensatory actions are neutron flux reduction, other plant modifications to reduce PTS event probability or severity, and reactor vessel annealing, which are addressed in 10 CFR 50.61(b)(3), (b)(4), and (b)(7); and 10 CFR 50.66, respectively.

No currently operating PWR reactor vessel is projected to exceed the 10 CFR 50.61 screening criteria before the expiration of its 40 year operating license. However, several PWR reactor vessels are approaching the screening criteria, while others are likely to exceed the screening criteria during their first license renewal periods.

Technical Basis for the Proposed Amendment

The NRC's Office of Nuclear Regulatory Research (RES) has completed a research program to update the PTS regulations. The results of this research program conclude that the risk of through-wall cracking due to a PTS event is much lower than previously estimated. This finding indicates that the screening criteria in 10 CFR 50.61 are unnecessarily conservative and may impose an unnecessary burden on some licensees. Therefore, the NRC is proposing a new rule, 10 CFR 50.61a, which would provide alternative screening criteria and corresponding embrittlement correlations based on the updated technical basis. The updated embrittlement correlation is the projected increase in the Charpy V-notch 30 ft-lb transition temperature for reactor vessel materials resulting from neutron radiation and is calculated using equations 5 through 7 of the proposed rule. The proposed rule would be voluntary for all holders of a PWR operating license under 10 CFR part 50 or a combined license under 10 CFR part 52, although it is intended for licensees with reactor vessels that cannot demonstrate compliance with the more restrictive criteria in 10 CFR 50.61. The requirements of 10 CFR 50.61 would continue to apply to licensees who choose not to implement 10 CFR 50.61a.

The following two reports provide the technical basis for this rulemaking: (1) NUREG–1806, ''Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limit in the PTS Rule (10 CFR 50.61): Summary Report,'' and (2) NUREG–1874, ''Recommended Screening Limits for Pressurized Thermal Shock (PTS).'' These reports summarize and reference several additional reports on the same topic. The updated technical basis indicates that, after 60 years of operation, the risk of reactor vessel failure due to a PTS event is much lower than previously estimated. The updated analyses were based on information from three currently operating PWRs. Because the severity of the risk-significant transient classes (i.e., primary side pipe breaks, stuck open valves on the primary side that may later re-close) is controlled by factors that are common to PWRs in general, the NRC concludes that the TWCF results and resultant RT-based screening criteria developed from their analysis of three plants can be applied with confidence to the entire fleet of operating PWRs. This conclusion is based on an understanding of characteristics of the dominant transients that drive their risk significance and on an evaluation of a larger population of high embrittlement PWRs. This evaluation revealed no design, operational, training, or procedural factors that could credibly increase either the severity of these transients or the frequency of their occurrence in the general PWR population above the severity/frequency characteristic of the three plants that were modeled in detail.

The current guidance provided by Regulatory Guide 1.174, Revision 1, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' for large early release frequency (LERF) was used to relate the PTS screening criteria in 10 CFR 50.61a to an acceptable yearly limit of 1×10^{-6} per reactor year on reactor vessel TWCF. Although many post-through-wall cracking accident progressions are expected to lead only to core damage (which suggests a 1×10^{-5} events per year limit on TWCF per Regulatory Guide 1.174), uncertainties in the accident progression analysis led to the recommendation of adopting the more conservative TWCF limit of 1×10^{-6} per reactor year based on LERF.

The updated technical basis uses many different models and parameters to estimate the yearly probability that a PWR will develop a through-wall crack as a consequence of PTS loading. One of these models is a revised embrittlement correlation that uses information on the chemical composition and neutron exposure of low alloy steels in the reactor vessel's beltline region to estimate the resistance to fracture of these materials. Although the general trends of the embrittlement models in 10 CFR 50.61 and the proposed rule are similar, the form of the revised embrittlement correlation differs substantially from the correlation in the existing 10 CFR 50.61. The correlation in 10 CFR 50.61a has been updated to more accurately represent the substantial amount of reactor vessel surveillance data that has accumulated since the embrittlement correlation was last revised during the 1980s.

This proposed rule would differ from the current rule in that it would contain a requirement for licensees who choose to follow its requirements to analyze the results from the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) Section XI in service inspection volumetric examinations. This requirement would be provided in paragraph (e) of the proposed rule. The examinations and analyses would confirm that the flaw density and size in the licensee's reactor vessel beltline are bounded by the flaw density and size utilized in the technical basis. The technical basis was developed using a flaw density, spatial distribution, and size distribution determined from a small amount of experimental data, as

well as from physical models and expert elicitation. The experimental data included 22,210 cubic inches of weld metal, 3845 cubic inches of plate, and 1650 cubic inches of clad. The experimental data were obtained from samples removed from reactor vessel materials from cancelled plants (Shoreham and the Pressure Vessel Research Users Facility (PVRUF) vessel). The NRC considers that the analysis of the ASME Code inservice inspection volumetric examination is needed to confirm that the flaw density and size distributions in the reactor vessel to which the proposed rule may be applied are consistent with those in the technical basis because the experimental data was obtained from a limited number of reactor vessels.

Paragraph (g)(6)(ii)(c) of 10 CFR 50.55a requires licensees to implement Supplements 4 and 6 in Appendix VIII to ASME BPV Code Section XI after November 22, 2000. Supplement 4 contains qualification requirements for the reactor vessel inservice inspection volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness, whichever is larger. Supplement 6 contains qualification requirements for reactor vessel weld volumes other than those near the clad-to-base metal interface.

The performance of inspectors who have gone through the Supplement 4 qualification process has been documented in a paper by Becker (Becker, L., ''Reactor Pressure Vessel Inspection Reliability,'' Proceeding of the Joint EC–IAEA Technical Meeting on the Improvement in In-Service Inspection Effectiveness, Petten, the Netherlands, November 2002). Analysis of the results reported in this paper indicates that an inspector using a Supplement 4 qualification procedure would have an 80 percent probability of detecting a flaw with a through-wall extent of 0.1 inch and would have an approximately 99 percent probability of detecting a flaw with a through-wall extent of 0.3 inch. Therefore, there is an 80 percent or greater probability of detecting a flaw that contributes to crack initiation from PTS events in reactor vessels with embrittlement conditions characteristic of 1×10^{-6} per reactor-year TWCF when they are inspected using ASME BPV Code Section XI, Appendix VIII, Supplement 4 requirements.

The true flaw density for flaws with a through wall extent of between 0.1 and 0.3 inch can be inferred from the ASME Code examination results and the probability of detection. The proposed rule would require licensees to determine if:

(1) The indication density and size within the weld and base metal inservice inspection volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness are within the flaw density and size distributions that were used in the technical basis represented in Tables 2 and 3 in the proposed rule;

(2) Any indications within the weld and base metal inservice inspection volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness are larger than the sizes in Tables 2 and 3;

(3) Any indications between the clad-to-base metal interface and three-eights of the vessel thickness exceed the size allowable in ASME BPV Code Section XI, Table IWB–3510–1; or

(4) Any linear indications that penetrate through the clad into the welds or the adjacent base metal.

The technical basis for the proposed rule concludes that flaws as small as 0.1 inch deep contribute to TWCF and that nearly all of the contributions come from flaws in the range below 1 inch deep for reactor vessels with embrittlement characteristics of TWCF equal to 1×10^{-6} per reactor year. The peak contribution comes from flaws between 0.1 and 0.2 inch deep, because that is the range that has the maximum combined effect from the number of flaws, which is decreasing with flaw size, and their susceptibility to brittle fracture, which is increasing with flaw size. For weld flaws that exceed the sizes in the table, the risk analysis indicates that a single flaw can be expected to contribute a significant fraction of the 1×10^{-6}/reactor-year limit on TWCF. Therefore, if a flaw of that size is found in a reactor vessel, it is important to more accurately assess if its size and location with respect to the local level of embrittlement challenge the regulatory limit.

The technical basis for the proposed rule indicates that flaws buried deeper than 1 inch from the inner surface of the reactor vessel are not as susceptible to brittle fracture as similar size flaws located closer to the inner surface. Therefore, the proposed rule would not require the comparison of the density of such flaws, but still would require large flaws, if discovered, to be evaluated for contributions to TWCF if they are within the inner three-eights of the vessel thickness. This requirement would be provided in paragraph (e)(4)(iv) of the proposed rule. The limitation for flaw acceptance, specified in ASME Code Section XI Table IWB–3510–1, approximately corresponds to the threshold for flaw sizes that can make a significant contribution to TWCF if present in reactor vessel material at this depth. Therefore, this proposed rule would require these flaws to be evaluated for contribution to TWCF in addition to the other evaluations for such flaws that are prescribed in the ASME Code.

The numerical values in Tables 2 and 3 of the proposed rule would represent the number of flaws in each size range that were derived from the technical basis. Table 2 for the weld flaws is limited to flaw sizes that are frequent enough to be expected to occur in most plants. Similarly, Table 3 for the plate and forging flaws stops at the maximum flaw size that was modeled for these materials in the technical basis. If one or more larger flaws are found in a reactor vessel, they must be evaluated to ensure that they are not causing the TWCF for that reactor vessel to exceed the regulatory limit.

Surface cracks that penetrate through the stainless steel clad into the welds or the adjacent base metal were not included in the technical basis because these types of flaws have not been observed in the beltline of an operating PWR reactor vessel. However, flaws of this type were observed in the Quad Cities Unit 2 reactor vessel head in 1990 (NUREG–1796, ''Safety Evaluation Report related to the License Renewal of the Dresden Nuclear Power Station, Units 2 and 3 and Quad Cities Nuclear Power Station, Units 1 and 2''). The observed cracks had a maximum depth into the base metal of approximately 6 mm (0.24 inch) and penetrated through the stainless steel clad. Quad Cities Units 2 and 3 are boiling water reactors which are not susceptible to PTS events and hence are not subject to 10 CFR 50.61. The cracking at Quad Cities Unit 2 was attributed to intergranular stress corrosion cracking (IGSCC) of the stainless steel cladding, which has not been observed in PWR reactor vessels, and hot cracking of the low alloy steel metal base. If these cracks were in the beltline region of a PWR, they would be a significant contributor to TWCF because of their size and location. The proposed rule would require licensees to determine if cracks of this type exist in the beltline weld region at each ASME Code Section XI ultrasonic examination. This requirement would be provided in paragraph (e)(2) of the proposed rule.

Development of Tables 2 and 3 Flaw Density and Size Screening Criteria

The ASME Code specifies that the dimension of flaws detected by nondestructive examination be

expressed to the nearest 0.05 inch for indications less than 1 inch. Hence, the examination results from the ASME Code volumetric examination will be reported in multiples of 0.05 inch with a range of ±0.025 inch. Therefore, Tables 2 and 3 in the proposed rule describe the flaw density in multiples of 0.05 inch with a size range of ±0.025 inch.

The ASME Code standard for reporting flaw sizes did not match the size increments in the technical basis. Therefore, the NRC staff developed a procedure to distribute the flaws used in the technical basis into ASME Code-sized ranges. This is explained in greater detail in the NRC staff document ''Development of Flaw Size Distribution Tables for Draft Proposed Title 10 of the Code of Federal Regulations (10 CFR) 50.61a'' (refer to ADAMS accession number ML070950392).

The values in Tables 2 and 3 of the proposed rule exceed the values for those size ranges that were developed from the laboratory analyses of the two reactor vessels. It was decided to allow licensees to use the Table 2 and 3 values instead of the values that would come from the laboratory results because it is still conservative to model all of the flaws as if they were the largest size for each of the ASME Code size ranges. In effect, some of the conservatism that was in the original risk modeling is being made available to licensees for demonstrating that the results of an individual plant's ASME Code examinations are consistent with the underlying technical basis.

Rulemaking Initiation

In SECY–06–0124, dated May 26, 2006, the NRC staff presented a rulemaking plan to the Commission to amend fracture toughness requirements for PWRs. In this SECY paper, the NRC staff proposed four options for rulemaking. The NRC staff recommended Option 3, which would allow licensees to voluntarily implement the less restrictive screening limits based on the updated technical basis and insert the updated embrittlement correlation into 10 CFR 50.61 to maintain regulatory consistency and implement the best state-of-the-art embrittlement correlation in both 10 CFR 50.61 and 10 CFR 50.61a. This recommendation was based on providing the necessary relief to licensees that would otherwise expend considerable resources to justify continued plant operation beyond the screening criteria in 10 CFR 50.61 (via compensatory actions, plant-specific analyses, annealing or exemption), while also requiring all licensees to recalculate their embrittlement metric to ensure that all plants' analyses are consistent.

In a Staff Requirements Memorandum (SRM) dated June 30, 2006, the Commission approved the initiation of the rulemaking as specified in Option 2 of the rulemaking plan. This option would require licensees to continue to meet the requirements of 10 CFR 50.61, which provides adequate protection against PTS events, without implementing the updated embrittlement correlation. For licensees whose reactor vessels do not meet the requirements of 10 CFR 50.61, Option 2 would allow licensees to voluntarily implement 10 CFR 50.61a which utilizes the less restrictive screening limits based on the updated technical basis as well as the updated embrittlement correlation. Accordingly, the proposed rule provides for a voluntary alternative to the current set of PTS requirements for any PWR licensee. The NRC considered requiring new plants to use the best available embrittlement correlation (i.e., the embrittlement correlation developed for the new rule). The NRC believes that such a requirement was not necessary to provide adequate protection of public health and safety. The NRC believes that imposing the existing 10 CFR 50.61, without modification, on new reactors would ensure that adequate protection concerns would be met. The NRC believes that the proposed rule's requirements should be a voluntary alternative available to new plants, if needed.

In implementing the rulemaking plan, the proposed rule would provide a new section, 10 CFR 50.61a, for the new set of fracture toughness requirements. The NRC decided that providing a new section containing the updated screening criteria and updated embrittlement correlations would be appropriate because the Commission directed the NRC staff to prepare a rulemaking which would allow current PWR licensees to implement the new requirements of 10 CFR 50.61a or continue to comply with the current requirements of 10 CFR 50.61. Alternatively, the NRC could have revised 10 CFR 50.61 to include the new requirements, which could be implemented as an alternative to the current requirements. However, providing two sets of requirements within the same regulatory section was considered confusing and/or ambiguous as to which requirements apply to which licensees. The proposed rule would provide a voluntary alternative to the current rule, which further prompted the NRC to keep the current, mandatory requirements separate from the new, voluntarily-implemented requirements. As a result, the proposed new rule would retain the current requirements in 10 CFR 50.61 for PWR licensees choosing not to implement the less restrictive screening limits, and would present new requirements in 10 CFR 50.61a as a voluntary relaxation for any PWR licensee.

II. Section-by-Section Analysis

Section 50.61—Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

Section 50.61 contains the current requirements for pressurized thermal shock screening limits and embrittlement correlations. Paragraph (b) of this section would be modified to reference the proposed new section, § 50.61a, as a voluntary alternative to compliance with the requirements of § 50.61. No changes are made to the current pressurized thermal shock screening criteria, embrittlement correlations, or any other related requirements in this section.

Section 50.61a—Alternate Fracture Toughness Requirements for Protection Against Pressurized Thermal Shock Events

Proposed new § 50.61a would contain pressurized thermal shock screening limits based on updated probabilistic fracture mechanics analyses. This new section would provide similar requirements to that of § 50.61, fracture toughness requirements for protection against pressurized thermal shock events for pressurized water nuclear power reactors. However, § 50.61a would differ extensively in how the licensee determines the resistance to fractures initiating from different flaws at different locations in the vessel beltline, as well as in the fracture toughness screening criteria. The proposed rule would require quantifying PTS reference temperatures (RT_{MAX-X}) for flaws along axial weld fusion lines, plates, forgings, and circumferential weld fusion lines, and comparing the quantified value against the RT_{MAX-X} screening criteria. Although comparing quantified values to the screening criteria is also required by the current § 50.61, the proposed § 50.61a would provide screening criteria that vary depending on material product form and vessel wall thickness. Further, the embrittlement correlation and the method of calculation of RT_{MAX-X} values in § 50.61a would differ significantly from that in § 50.61 as described in the technical basis for this rule. The new embrittlement correlation was developed using multivariable

surface-fitting techniques based on pattern recognition, understanding of mechanisms, and engineering judgement. The embrittlement database used for this analysis was derived primarily from the Power Reactor Embrittlement Data Base (PR–EDB) developed at Oak Ridge National Laboratory. The updated RT_{MAX-X} estimation procedures provide a more realistic (compared to the existing regulation) method for estimating the fracture toughness of reactor vessel materials over the lifetime of the plant.

Paragraph (a) would contain definitions for terms used in § 50.61a. It would also provide that terms defined in § 50.61 also have the same meaning in § 50.61a unless otherwise noted.

Paragraph (b) would describe the applicability of § 50.61a to PWRs as an alternative to the requirements of § 50.61. The requirements of this section would provide a voluntarily-implemented alternative to the current requirements of § 50.61 for any current PWR licensee or future holder of a PWR operating license or combined license.

Paragraph (c) would set forth the requirements governing NRC approval of a licensee's use of § 50.61a. The licensee would make the formal request to the NRC via a license amendment, and only upon approval of the license amendment by the NRC would a licensee be permitted to implement § 50.61a. In the licensee's amendment request, the required information would include (a) calculating the values of RT_{MAX-X} values as required by paragraph (c)(1), (b) examining and assessing flaws discovered by ASME Code inspections as required by paragraph (c)(2), and (c) comparing the RT_{MAX-X} values against the applicable screening criteria as required by paragraph (c)(3). In doing so, the licensee would also be required to utilize paragraphs (e)(1) through (e)(3), paragraph (f), and paragraph (g) in order to perform the necessary calculations, comparisons, examinations, assessments, and analyses.

Paragraph (d) would define the requirements for subsequent examinations and flaw assessments after initial approval to use § 50.61a has been obtained under the requirements of paragraph (c). It would also define the required compensatory measures or analyses to be taken if a licensee determines that the screening criteria will be exceeded. Paragraph (d)(1) would define the requirements for subsequent RT_{MAX-X} assessments consistent with the requirements of paragraphs (c)(1) and (c)(3). Paragraph (d)(2) would define the requirements for subsequent examination and flaw assessments utilizing the requirements of paragraphs (e)(1), (e)(1)(i), (e)(1)(ii), (e)(2), and (e)(3). Paragraphs (d)(3) through (d)(7) would define the requirements for implementing compensatory measures or plant-specific analyses should the value of RT_{MAX-X} be projected to exceed the PTS screening criteria in Table 1 of this section.

Paragraph (e) would define the requirements for verifying that the PTS screening criteria in § 50.61a are applicable to a particular reactor vessel. The proposed rule would require that verification be based on an analysis of test results from ultrasonic examination of the reactor vessel beltline materials required by Section XI of the ASME Code.

Paragraph (e)(1) would establish cumulative limits on flaw density and size within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume, which corresponds to a depth of approximately one inch from the clad-to-base metal interface. The allowable number of flaws provided in Tables 2 and 3 are cumulative values. If flaws exist in larger increments, the allowable number of flaws is the value in Table 2 or 3 for that increment minus the total number of flaws in all larger increments. Flaws in this inspection volume contribute approximately 97–99 percent to the TWCF at the screening limit.

Paragraph (e)(1)(i) would describe the flaw density limits for welds.

Paragraph (e)(1)(ii) would describe the flaw density limits for plates and forgings.

Paragraph (e)(1)(iii) would describe the specific ultrasonic examination and neutron fluence information to be submitted to the NRC. The NRC would utilize this information to evaluate whether plant-specific information gathered in accordance with this rule suggests that the NRC staff should generically re-examine the technical basis for the rule.

Paragraph (e)(2) would require that licensees verify that no clad-base metal interface flaws within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume open to the vessel inside surface. These types of flaws could have a substantial effect on the TWCF.

Paragraph (e)(3) would establish limits on flaw density and size beyond the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume to three-eights of the reactor vessel thickness from the interior surface. Flaws in this inspection volume contribute approximately 1–3 percent to the TWCF at the screening criteria. Flaws exceeding this limit could affect the TWCF. Flaws greater than three-eights of the reactor vessel thickness from the interior surface do not contribute to the TWCF at the screening limit.

Paragraph (e)(4) would establish requirements to be met if flaws exceed the limits in (e)(1) and (e)(3) or open to the inside surface of the reactor vessel. This section requires an analysis to demonstrate the reactor vessel would have a TWCF of less than 1×10^{-6} per reactor-year. The analysis could be a complete, plant-specific, probabilistic fracture mechanics analysis or could be a simplified analysis of flaw size, location and embrittlement to demonstrate that the actual flaws in the reactor vessel are not in locations that would cause the TWCF to be greater than 1×10^{-6} per reactor-year. This paragraph would be required to be implemented if the requirements of (e)(1) through (e)(3) are not satisfied.

Paragraph (e)(5) would describe the critical parameters to be addressed if flaws exceed the limits in (e)(1) and (e)(3) or if the flaws would open to the inside surface of the reactor vessel. This paragraph would be required to be implemented if the requirements of (e)(1) through (e)(3) are not satisfied.

Paragraph (f) would define the process for calculating RT_{MAX-X} values. These values would be based on the vessel's copper, manganese, phosphorus, and nickel weight percentages, reactor cold leg temperature, and neutron flux and fluence values, as well as the unirradiated RT_{NDT} of the product form in question.

Paragraph (g) would provide the necessary equations and variables required by paragraph (f) of this section.

Table 1 would provide the PTS screening criteria for comparison with the licensee's calculated RT_{MAX-X} values. Tables 2 and 3 would provide values to be used in paragraph (e) of this section. Tables 4 and 5 would provide values to be used in paragraph (f) of this section.

III. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility category ''NRC.'' Agreement State Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the

Atomic Energy Act or the provisions of Title 10 of the Code of Federal Regulations (10 CFR). Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

IV. Availability of Documents

The following table lists documents relating to this rulemaking which are available to the public and how they may be obtained.

Public Document Room (PDR). The NRC's Public Document Room is located at the NRC's headquarters at 11555 Rockville Pike, Rockville, MD 20852.

NRC's Electronic Reading Room (ERR). The NRC's electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

Document	PDR	Web	ERR (ADAMS)
Regulatory Analysis	X	X	ML070570383
OMB Supporting Statement	X	X	ML070570446
SECY–06–0124, May 26, 2006, Rulemaking Plan Request for Commission Approval	X	.....	ML060530624
SRM–SECY–06–0124, June 30, 2006, Staff Requirements—Commission Approval of Rulemaking Plan.	X	.....	ML061810148
NUREG–1796, ''Safety Evaluation Report Related to the License Renewal of the Dresden Nuclear Power Station, Units 2 and 3 and Quad Cities Nuclear Power Station, Units 1 and 2''.	X	.....	ML043060581
NUREG–1806, ''Technical Basis for Revision of the Pressurized Thermal Shock (PTS) Screening Limits in the PTS Rule (10 CFR 50.61): Summary Report''.	X	.....	ML061580318
NUREG–1874, ''Recommended Screening Limits for Pressurized Thermal Shock (PTS)''	X	.....	ML070860156
Regulatory Guide 1.154, ''Format and Content of Plant-Specific Pressurized Thermal Shock Analysis Reports for Pressurized Water Reactors''.	X	.....	ML003740028
Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis''.	X	.....	ML023240437
Memorandum from Elliot to Mitchell, dated April 3, 2007, ''Development of Flaw Size Distribution Tables for Draft Proposed Title 10 of the Code of Federal Regulations (10 CFR) 50.61a''.	X	.....	ML070950392

V. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the **ADDRESSES** caption of the preamble of this document.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical.

The NRC considered using American Society for Testing and Materials (ASTM) standard E–900, ''Standard Guide for Predicting Radiation-Induced Temperature Transition Shift in Reactor Vessel Materials. This standard contains a different embrittlement correlation than that of this proposed rule. However, the correlation developed by RES has been more recently calibrated to available data. As a result, ASTM standard E–900 is not a practical candidate for application in the technical basis for the proposed rule because it does not represent the broad range of conditions necessary to justify a revision to the regulations.

American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code requirements are utilized as part of the volumetric examination analysis requirements of the proposed rule. ASTM Standard Practice E 185, ''Standard Practice for Conducting Surveillance Tests for Light-Water Cooled Nuclear Power Reactor Vessels'' is incorporated by reference in 10 CFR 50 Appendix H and utilized to determine 30-foot-pound transition temperatures. These standards were selected for use in the proposed rule based on their use in other regulations within Part 50 and their applicability to the subject of the desired requirements.

The NRC will consider using other voluntary consensus standards if appropriate standards are identified.

VII. Finding of No Significant Environmental Impact: Environmental Assessment

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The basis for this determination is as follows:

Environmental Impacts of the Action

This environmental assessment focuses on those aspects of § 50.61a where there is a potential for an environmental impact. The NRC has concluded that there will be no significant radiological environmental impacts associated with implementation of the rule requirements for the following reasons:

(1) Section 50.61a would maintain the same functional requirements for the facility as the existing PTS rule in § 50.61 as a voluntary alternative to the existing rule. This proposed rule would establish screening criteria, limiting levels of embrittlement beyond which operation cannot continue without further plant-specific evaluation or modifications, as well as require calculation of the maximum embrittlement predicted at the end of the licensed period of operation. The screening criteria provide reasonable assurance that licensees operating below (predicted embrittlement less than) the screening criteria could endure a pressurized thermal shock event without fracture of vessel materials, thus assuring integrity of the reactor pressure vessel.

(2) The new rule is risk-informed and in accordance with the NRC's 1995 PRA policy statement and risk-informed regulation guidance. Sufficient safety margins are maintained to ensure that any potential increases in core damage frequency (CDF) and large early release frequency (LERF) resulting from

implementation of § 50.61a are negligible.

The action will not significantly increase the probability or consequences of accidents, result in changes being made in the types of any effluents that may be released off site, or result in a significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with this action.

With regard to potential nonradiological impacts, implementation of the rule requirements has no impact on the facility other than to provide a more realistic method of calculating PWR vessel fracture toughness with associated limits. Nonradiological plant effluents are not affected and there are no other environmental impacts. Therefore, the NRC concludes that there are no significant environmental impacts associated with the action.

Alternatives to the Action

As an alternative to the rulemaking described above, the NRC considered not taking the action (i.e., the ''no-action'' alternative). Not adopting the more realistic and less conservative regulation would result in no change in environmental impacts for current PWRs or those that would be expected for future PWRs under 10 CFR 50.61.

Agencies and Persons Consulted

The NRC staff developed the proposed rule and this environmental assessment. Under the NRC's stated policy, a copy of this environmental assessment will be provided to the state liaison officials as part of the publication of the proposed rule for public comment.

Conclusion

On the basis of this environmental assessment, the NRC concludes that the action would not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the action.

The determination of this environmental assessment is that no significant offsite impact to the public from this action would occur. However, the general public should note that the NRC is seeking public participation. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

VIII. Paperwork Reduction Act Statement

This proposed rule would contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This proposed rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 50, ''Alternate Fracture Toughness Requirements for Protection against Pressurized Thermal Shock Events (10 CFR 60.61 and 50.61a)'' proposed rule.

The form number if applicable: Not applicable.

How often the collection is required: Collections would be initially required for PWR licensees utilizing the requirements of 10 CFR 50.61a as a voluntary alternative to the requirements of 10 CFR 50.61. Collections would also be required, after voluntary implementation of the new § 50.61a, when any change is made to the design or operation of the facility that affects the calculated RT_{MAX-X} value. Collections would also be required during the scheduled periodic ultrasonic examination of beltline welds.

Who will be required or asked to report: Any PWR licensee voluntarily utilizing the requirements of 10 CFR 50.61a in lieu of the requirements of 10 CFR 50.61 would be subject to all of the proposed requirements in this rulemaking.

An estimate of the number of annual responses: 2.

The estimated number of annual respondents: 1.

An estimate of the total number of hours needed annually to complete the requirement or request: 264 hours (24 hours annually for recordkeeping plus 240 hours annually for reporting).

Abstract: The NRC is proposing to amend its regulations to provide updated fracture toughness requirements for protection against pressurized thermal shock (PTS) events for pressurized water reactor (PWR) pressure vessels. The proposed rule would provide new PTS requirements based on updated analysis methods. This action is necessary because the existing requirements are based on unnecessarily conservative probabilistic fracture mechanics analyses. This action would reduce regulatory burden for licensees, specifically those licensees that expect to exceed the existing requirements before the expiration of their licenses. These new requirements would be voluntarily utilized by any PWR licensee as an alternative to complying with the existing requirements.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in this proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Estimate of burden?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this notice.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by November 2, 2007 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also comment by telephone at (202) 395–3087.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Regulatory Analysis

The Commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comments on this draft regulatory analysis. Availability of the regulatory analysis is provided in Section IV. Comments on the draft regulatory analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading of this document.

In addition, the Commission also requests public comments on the cost and benefit of requiring PWR licensees to revise their vessel analyses if the updated embrittlement correlation were imposed in 10 CFR 50.61. This would differ from the proposed rule, which leaves the technical content of 10 CFR 50.61 unchanged.

X. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule would affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XI. Backfit Analysis

The NRC has determined that the requirements in this proposed rule do not constitute backfitting as defined in 10 CFR 50.109(a)(1). Therefore, a backfit analysis has not been prepared for this proposed rule.

The requirements of the current PTS rule, 10 CFR 50.61, would continue to apply to all PWR licensees, and would not change as a result of this proposed rule. The requirements of the proposed PTS rule, 10 CFR 50.61a, would not be required, but could be voluntarily utilized, by any PWR licensee. Licensees choosing to implement the proposed PTS rule would be required to comply with its requirements as a voluntary alternative to complying with the requirements of the current PTS rule. Because the proposed PTS rule would not be mandatory for any PWR licensee, but rather could be voluntarily implemented by any PWR licensee, the NRC finds that this amendment would not constitute backfitting.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 50.61, paragraph (b)(1) is revised to read as follows:

§ 50.61 Fracture toughness requirements for protection against pressurized thermal shock events.

* * * * *

(b) *Requirements.* (1) For each pressurized water nuclear power reactor for which an operating license has been issued under this part or a combined license issued under Part 52 of this chapter, other than a nuclear power reactor facility for which the certifications required under § 50.82(a)(1) have been submitted, the licensee shall have projected values of RT_{PTS} or RT_{MAX-X}, accepted by the NRC, for each reactor vessel beltline material for the EOL fluence of the material in accordance with this section or § 50.61a. For a licensee choosing to comply with this section, the assessment of RT_{PTS} must use the calculation procedures given in paragraph (c)(1) of this section, except as provided in paragraphs (c)(2) and (c)(3) of this section. The assessment must specify the bases for the projected value of RT_{PTS} for each vessel beltline material, including the assumptions regarding core loading patterns, and must specify the copper and nickel contents and the fluence value used in the calculation for each beltline material. This assessment must be updated whenever there is a significant [2] change in projected values of RT_{PTS}, or upon request for a change in the expiration date for operation of the facility.

* * * * *

3. Section 50.61a is added to read as follows:

§ 50.61a Alternate fracture toughness requirements for protection against pressurized thermal shock events.

(a) *Definitions.* Terms in this section have the same meaning as those set forth in 10 CFR 50.61(a), with the exception of the term ''ASME Code''.

(1) *ASME Code* means the American Society of Mechanical Engineers Boiler and Pressure Vessel Code, Section III, Division I, ''Rules for the Construction of Nuclear Power Plant Components,'' and Section XI, Division I, ''Rules for Inservice Inspection of Nuclear Power Plant Components,'' edition and addenda and any limitations and modifications thereof as specified in § 50.55a.

(2) RT_{MAX-AW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along axial weld fusion lines. RT_{MAX-AW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(3) RT_{MAX-PL} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found in plates in regions that are not associated with welds found in plates. RT_{MAX-PL} is determined under the provisions of paragraph (f) of this section and has units of °F.

(4) RT_{MAX-FO} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws in forgings that are not associated with welds found in forgings. RT_{MAX-FO} is determined under the provisions of paragraph (f) of this section and has units of °F.

(5) RT_{MAX-CW} means the material property which characterizes the reactor vessel's resistance to fracture initiating from flaws found along the circumferential weld fusion lines. RT_{MAX-CW} is determined under the provisions of paragraph (f) of this section and has units of °F.

(6) RT_{MAX-X} means any or all of the material properties RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, or RT_{MAX-CW} for a particular reactor vessel.

(7) φt means fast neutron fluence for neutrons with energies greater than 1.0 MeV. φt is determined under the provisions of paragraph (g) of this section and has units of n/cm^2.

(8) φ means average neutron flux. φ is determined under the provisions of paragraph (g) of this section and has units of n/cm^2/sec.

(9) ΔT_{30} means the shift in the Charpy V-notch transition temperature produced by irradiation defined at the 30 ft-lb energy level. The ΔT_{30} value is determined under the provisions of paragraph (g) of this section and has units of °F.

(10) *Surveillance data* means any data that demonstrates the embrittlement trends for the beltline materials, including, but not limited to, data from test reactors or surveillance programs at other plants with or without a surveillance program integrated under 10 CFR part 50, Appendix H.

(11) T_C means cold leg temperature under normal full power operating conditions, as a time-weighted average from the start of full power operation through the end of licensed operation. T_C has units of °F.

(b) *Applicability*. Each holder of an operating license under this part or holder of a combined license under part 52 of this chapter of a pressurized water nuclear power reactor may utilize the requirements of this section as an alternative to the requirements of 10 CFR 50.61.

(c) *Request for Approval*. Prior to implementation of this section, each licensee shall submit a request for approval in the form of a license amendment together with the documentation required by paragraphs (c)(1), (c)(2), and (c)(3) of this section for review and approval to the Director, Office of Nuclear Reactor Regulation (Director). The information required by paragraphs (c)(1), (c)(2), and (c)(3) of this section must be submitted for review and approval by the Director at least three years before the limiting RT_{PTS} value calculated under 10 CFR 50.61 is projected to exceed the PTS screening criteria in 10 CFR 50.61 for plants licensed under 10 CFR part 50 or 10 CFR part 52.

(1) Each licensee shall have projected values of RT_{MAX-X} for each reactor vessel beltline material for the EOL fluence of the material. The assessment of RT_{MAX-X} values must use the calculation procedures given in paragraphs (f) and (g) of this section, except as provided in paragraphs (f)(6) and (f)(7) of this section. The assessment must specify the bases for the projected value of RT_{MAX-X} for each reactor vessel beltline material, including the assumptions regarding future plant operation (e.g., core loading patterns, projected capacity factors, etc.); the copper (Cu), phosphorus (P), manganese (Mn), and nickel (Ni) contents; the reactor cold leg temperature (T_C); and the neutron flux and fluence values used in the calculation for each beltline material.

(2) Each licensee shall perform an examination and an assessment of flaws in the reactor vessel beltline as required by paragraph (e) of this section. The licensee shall verify that the requirements of paragraphs (e)(1) through (e)(3) have been met and submit all documented indications and the neutron fluence map required by paragraph (e)(1)(iii) to the Director in its application to utilize 10 CFR 50.61a. If analyses performed under paragraph (e)(4) of this section are used to justify continued operation of the facility, approval by the Director is required prior to implementation.

(3) Each licensee shall compare the projected RT_{MAX-X} values for plates, forgings, axial welds, and circumferential welds to the PTS screening criteria for the purpose of evaluating a reactor vessel's susceptibility to fracture due to a PTS event. If any of the projected RT_{MAX-X} values are greater than the PTS screening criteria in Table 1 of this section, then the licensee may propose the compensatory actions or plant-specific analyses as required in paragraphs (d)(3) through (d)(7) of this section, as applicable, to justify operation beyond the PTS screening criteria in Table 1 of this section.

(d) *Subsequent Requirements*. Licensees who have been approved to utilize 10 CFR 50.61a under the requirements of paragraph (c) of this section shall comply with the requirements of this paragraph.

(1) Whenever there is a significant change in projected values of RT_{MAX-X}, such that the previous value, the current value, or both values, exceed the screening criteria prior to the expiration of the plant operating license; or upon the licensee's request for a change in the expiration date for operation of the facility; a re-assessment of RT_{MAX-X} values documented consistent with the requirements of paragraph (c)(1) and (c)(3) of this section must be submitted for review and approval to the Director. If the Director does not approve the assessment of RT_{MAX-X} values, then the licensee shall perform the actions required in paragraphs (d)(3) through (d)(7) of this section, as necessary, prior to operation beyond the PTS screening criteria in Table 1 of this section.

(2) Licensees shall determine the impact of the subsequent flaw assessments required by paragraphs (e)(1)(i), (e)(1)(ii), (e)(2), and (e)(3) of this section and shall submit the assessment for review and approval to the Director within 120 days after completing a volumetric examination of reactor vessel beltline materials as required by Section XI of the ASME Code. If a licensee is required to implement paragraphs (e)(4) and (e)(5) of this section, a re-analysis in accordance with paragraphs (e)(4) and (e)(5) of this section is required within one year of the subsequent ASME Code inspection.

(3) If the value of RT_{MAX-X} is projected to exceed the PTS screening criteria, then the licensee shall implement those flux reduction programs that are reasonably practicable to avoid exceeding the PTS screening criteria. The schedule for implementation of flux reduction measures may take into account the schedule for review and anticipated approval by the Director of detailed plant-specific analyses which demonstrate acceptable risk with RT_{MAX-X} values above the PTS screening criteria due to plant modifications, new information, or new analysis techniques.

(4) If the analysis required by paragraph (d)(3) of this section indicates that no reasonably practicable flux reduction program will prevent the RT_{MAX-X} value for one or more reactor vessel beltline materials from exceeding the PTS screening criteria, then the licensee shall perform a safety analysis to determine what, if any, modifications to equipment, systems, and operation are necessary to prevent the potential for an unacceptably high probability of failure of the reactor vessel as a result of postulated PTS events if continued operation beyond the PTS screening criteria is to be allowed. In the analysis, the licensee may determine the properties of the reactor vessel materials based on available information, research results and plant surveillance data, and may use probabilistic fracture mechanics techniques. This analysis must be submitted to the Director at least three years before RT_{MAX-X} is

projected to exceed the PTS screening criteria.

(5) After consideration of the licensee's analyses, including effects of proposed corrective actions, if any, submitted under paragraphs (d)(3) and (d)(4) of this section, the Director may, on a case-by-case basis, approve operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria. The Director will consider factors significantly affecting the potential for failure of the reactor vessel in reaching a decision.

(6) If the Director concludes, under paragraph (d)(5) of this section, that operation of the facility with RT_{MAX-X} values in excess of the PTS screening criteria cannot be approved on the basis of the licensee's analyses submitted under paragraphs (d)(3) and (d)(4) of this section, then the licensee shall request a license amendment, and receive approval by the Director, prior to any operation beyond the PTS screening criteria. The request must be based on modifications to equipment, systems, and operation of the facility in addition to those previously proposed in the submitted analyses that would reduce the potential for failure of the reactor vessel due to PTS events, or on further analyses based on new information or improved methodology.

(7) If the limiting RT_{MAX-X} value of the facility is projected to exceed the PTS screening criteria and the requirements of paragraphs (d)(3) through (d)(6) of this section cannot be satisfied, the reactor vessel beltline may be given a thermal annealing treatment under the requirements of § 50.66 to recover the fracture toughness of the material. The reactor vessel may be used only for that service period within which the predicted fracture toughness of the reactor vessel beltline materials satisfy the requirements of paragraphs (d)(1) through (d)(6) of this section, with RT_{MAX-X} values accounting for the effects of annealing and subsequent irradiation.

(e) *Examination and Flaw Assessment Requirements.* The volumetric examinations results evaluated under paragraphs (e)(1), (e)(2), and (e)(3) of this section must be acquired using procedures, equipment and personnel that have been qualified under the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6.

(1) The licensee shall verify that the indication density and size distributions within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume [1] are within the flaw density and size distributions in Tables 2 and 3 of this section based on the test results from the volumetric examination. The allowable number of flaws specified in Tables 2 and 3 of this section represent a cumulative flaw size distribution for each ASME flaw size increment. The allowable number of flaws for a particular ASME flaw size increment represents the maximum total number of flaws in that and all larger ASME flaw size increments. The licensee shall also demonstrate that no flaw exceeds the size limitations specified in Tables 2 and 3 of this section.

(i) The licensee shall determine the allowable number of weld flaws for the reactor vessel beltline by multiplying the values in Table 2 of this section by the total length of the reactor vessel beltline welds that were volumetrically inspected and dividing by 1000 inches of weld length.

(ii) The licensee shall determine the allowable number of plate or forging flaws for their reactor vessel beltline by multiplying the values in Table 3 of this section by the total plate or forging surface area that was volumetrically inspected in the beltline plates or forgings and dividing by 1000 square inches.

(iii) For each indication detected in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume, the licensee shall document the dimensions of the indication, including depth and length, the orientation of the indication relative to the axial direction, and the location within the reactor vessel, including its azimuthal and axial positions and its depth embedded from the clad-to-base metal interface. The licensee shall also document a neutron fluence map, projected to the date of license expiration, for the reactor vessel beltline clad-to-base metal interface and indexed in a manner that allows the determination of the neutron fluence at the location of the detected indications.

(2) The licensee shall identify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, any indications within the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume that are located at the clad-to-base metal interface. The licensee shall verify that such indications do not open to the vessel inside surface using a qualified surface or visual examination.

(3) The licensee shall verify, as part of the examination required by paragraph (c)(2) of this section and any subsequent ASME Code, Section XI ultrasonic examination of the beltline welds, all indications between the clad-to-base metal interface and three-eights of the reactor vessel thickness from the interior surface are within the allowable values in ASME Code, Section XI, Table IWB–3510–1.

(4) The licensee shall perform analyses to demonstrate that the reactor vessel will have a through-wall crack frequency (TWCF) of less than 1×10^{-6} per reactor-year if the ASME Code, Section XI volumetric examination required by paragraph (c)(2) or (d)(2) of this section indicates any of the following:

(i) The indication density and size in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume is not within the flaw density and size limitations specified in Tables 2 and 3 of this section;

(ii) Any indication in the ASME Code, Section XI, Appendix VIII, Supplement 4 inspection volume that is larger [2] than the sizes in Tables 2 and 3 of this section;

(iii) There are linear indications that penetrate through the clad into the low alloy steel reactor vessel shell; or

(iv) Any indications between the clad-to-base metal interface and three-eights [3] of the vessel thickness exceed the size allowable in ASME Code, Section XI, Table IWB–3510–1.

(5) The analyses required by paragraph (e)(4) of this section must address the effects on TWCF of the known sizes and locations of all indications detected by the ASME Code, Section XI, Appendix VIII, Supplement 4 and Supplement 6 ultrasonic examination out to three-eights of the vessel thickness from the inner surface, and may also take into account other reactor vessel-specific information, including fracture toughness information.

(f) *Calculation* of RT_{MAX-X} values. Each licensee shall calculate RT_{MAX-X} values for each reactor vessel beltline material using φt. φt must be calculated using an NRC-approved methodology.

(1) The values of RT_{MAX-AW}, RT_{MAX-PL}, RT_{MAX-FO}, and RT_{MAX-CW} must be

[1] The ASME Code, Section XI, Appendix VIII, Supplement 4 weld volume is the weld volume from the clad-to-base metal interface to the inner 1.0 inch or 10 percent of the vessel thickness, whichever is greater.

[2] Table 2 for the weld flaws is limited to flaw sizes that are expected to occur and were modeled from the technical basis supporting this rule. Similarly, Table 3 for the plate and forging flaws stops at the maximum flaw size modeled for these materials in the technical basis supporting this rule.

[3] Because flaws greater than three-eights of the vessel wall thickness from the inside surface do not contribute to TWCF, flaws greater than three-eights of the vessel wall thickness from the inside surface need not be analyzed for their contribution to PTS.

determined using Equations 1 through 4 of this section.

(2) The values of ΔT_{30} must be determined using Equations 5 through 7 of this section, unless the conditions specified in paragraph (f)(6)(iv) of this section are met, for each axial weld fusion line, plate, and circumferential weld fusion line. The ΔT_{30} value for each axial weld fusion line calculated as specified by Equation 1 of this section must be calculated for the maximum fluence (φ_{FL}) occurring along a particular axial weld fusion line. The ΔT_{30} value for each plate calculated as specified by Equation 1 of this section must be calculated for tFL occurring along a particular axial weld fusion line. The ΔT_{30} value for each plate or forging calculated as specified by Equations 2 and 3 of this section are calculated for the maximum fluence (φt_{MAX}) occurring at the clad-to-base metal interface of each plate or forging. In Equation 4, the φt_{FL} value used for calculating the plate, forging, and circumferential weld RT_{MAX-CW} value is the maximum φ occurring for each material along the circumferential weld fusion line.

(3) The values of Cu, Mn, P, and Ni in Equations 6 and 7 of this section must represent the best estimate values for the material weight percentages. For a plate or forging, the best estimate value is normally the mean of the measured values for that plate or forging. For a weld, the best estimate value is normally the mean of the measured values for a weld deposit made using the same weld wire heat number as the critical vessel weld. If these values are not available, either the upper limiting values given in the material specifications to which the vessel material was fabricated, or conservative estimates (mean plus one standard deviation) based on generic data [4] as shown in Table 4 of this section for P and Mn, must be used.

(4) The values of $RT_{NDT(u)}$ must be evaluated according to the procedures in the ASME Code, Section III, paragraph NB–2331. If any other method is used for this evaluation, the licensee shall submit the proposed method for review and approval by the Director along with the calculation of RT_{MAX-X} values required in paragraph (c)(1) of this section.

(i) If a measured value of $RT_{NDT(u)}$ is not available, a generic mean value of $RT_{NDT(u)}$ for the class [5] of material must be used if there are sufficient test results to establish a mean.

(ii) The following generic mean values of $RT_{NDT(u)}$ must be used unless justification for different values is provided: 0 °F for welds made with Linde 80 weld flux; and −56 °F for welds made with Linde 0091, 1092, and 124 and ARCOS B–5 weld fluxes.

(5) The value of T_c in Equation 6 of this section must represent the weighted time average of the reactor cold leg temperature under normal operating full power conditions from the beginning of full power operation through the end of licensed operation.

(6) The licensee shall verify that an appropriate RT_{MAX-X} value has been calculated for each reactor vessel beltline material. The licensee shall consider plant-specific information that could affect the use of Equations 5 though 7 of this section for the determination of a material's ΔT_{30} value.

(i) The licensee shall evaluate the results from a plant-specific or integrated surveillance program if the surveillance data has been deemed consistent as judged by the following criteria:

(A) The surveillance material must be a heat-specific match for one or more of the materials for which RT_{MAX-X} is being calculated. The 30-foot-pound transition temperature must be determined as specified by the requirements of 10 CFR 50 Appendix H.

(B) If three or more surveillance data points exist for a specific material, the surveillance data must be evaluated for consistency with the model in Equations 5, 6, and 7 as specified by paragraph (f)(6)(ii) of this section. If fewer than three surveillance data points exist for a specific material, then Equations 5, 6, and 7 of this section must be used without performing the consistency check.

(ii) The licensee shall estimate the mean deviation from the model (Equations 5, 6 and 7 of this section) for the specific data set (i.e., a group of surveillance data points representative of a given material). The mean deviation from the model for a given data set must be calculated using Equations 8 and 9 of this section. The mean deviation for the data set must be compared to the maximum heat-average residual given in Table 5 or Equation 10 of this section and based on the material group into which the surveillance material falls and the number of available data points. The licensee shall determine, based on this comparison, if the surveillance data show a significantly different trend than the model predicts. The surveillance data analysis must follow the criteria in paragraphs (f)(6)(iii) through (f)(6)(iv) of this section. For surveillance data sets with greater than 8 shift points, the maximum credible heat-average residual must be calculated using Equation 10 of this section. The value of σ used in Equation 10 of this section must comply with Table 5 of this section.

(iii) If the mean deviation from the model for the data set is equal to or less than the value in Table 5 or the value using Equation 10 of this section, then the ΔT_{30} value must be determined using Equations 5, 6, and 7 of this section.

(iv) If the mean deviation from the model for the data set is greater than the value in Table 5 or the value using Equation 10 of this section, the ΔT_{30} value must be determined using the surveillance data. If the mean deviation from the model for the data set is outside the limits specified in Equation 10 of this section or in Table 5 of this section, the licensee shall review the data base for that heat in detail, including all parameters used in Equations 4, 5, and 6 of this section and the data used to determine the baseline Charpy V-notch curve for the material in an unirradiated condition. The licensee shall submit an evaluation of the surveillance data and its ΔT_{30} and RT_{MAX-X} values for review and approval by the Director no later than one year after the surveillance capsule is withdrawn from the reactor vessel.

(7) The licensee shall report any information that significantly improves the accuracy of the RT_{MAX-X} value to the Director. Any value of RT_{MAX-X} that has been modified as specified in paragraph (f)(6)(iv) of this section is subject to the approval of the Director when used as provided in this section.

(g) *Equations and variables used in this section.*

Equation 1: $RT_{MAX-AW} = MAX \{[RT_{NDT(u)-plate} + \Delta T_{30-plate}(\varphi t_{FL})], [RT_{NDT(u)-axialweld} + \Delta T_{30-axialweld}(\varphi t_{FL})]\}$

Equation 2: $RT_{MAX-PL} = RT_{NDT(u)-plate} + \Delta T_{30-plate}(\varphi t_{MAX})$

Equation 3: $RT_{MAX-FO} = RT_{NDT(u)-forging} + \Delta T_{30-forging}(\varphi t_{MAX})$

Equation 4: $RT_{MAX-CW} = MAX \{[RT_{NDT(u)-plate} + \Delta T_{30-plate}(\varphi t_{MAX})], [RT_{NDT(u)-circweld} + \Delta T_{30-circweld}(\varphi t_{MAX})], [RT_{NDT(u)-forging} + \Delta T_{30-forging}(\varphi t_{MAX})]\}$

Equation 5: $\Delta T_{30} = MD + CRP$

Equation 6: $MD = A \cdot (1 - 0.001718 \cdot T_C) \cdot (1 + 6.13 \cdot P \cdot Mn^{2.471}) \cdot \varphi t_e^{0.5}$

Equation 7: $CRP = B \cdot (1 + 3.77 \cdot Ni^{1.191}) \cdot f(Cu_e,P) \cdot g(Cu_e,Ni,\varphi t_e)$ VVVVVVV

[4] Data from reactor vessels fabricated to the same material specification in the same shop as the vessel in question and in the same time period is an example of "generic data."

[5] The class of material for estimating RTNDT(u) must be determined by the type of welding flux (Linde 80, or other) for welds or by the material specification for base metal.

Where:

P [wt − %] = phosphorus content
Mn [wt − %] = manganese content
Ni [wt − %] = nickel content
Cu [wt − %] = copper content
A = 1.140×10^{-7} for forgings
= 1.561×10^{-7} for plates
= 1.417×10^{-7} for welds
B = 102.3 for forgings
= 102.5 for plates in non-Combustion Engineering manufactured vessels
= 135.2 for plates in Combustion Engineering vessels
= 155.0 for welds

$\varphi t_e = \varphi t$ for φ greater than or equal to 4.39×10^{10} n/cm²/sec
$= \varphi t \cdot (4.39 \times 10^{10}/\varphi)^{0.2595}$ for φ less than 4.39×10^{10} n/cm²/sec

Where:

φ [n/cm²/sec] = average neutron flux
t [sec] = time that the reactor has been in full power operation
φt [n/cm²] = $\varphi \cdot t$
$f(Cu_e,P) = 0$ for $Cu \leq 0.072$
$= [Cu_e - 0.072]^{0.668}$ for $Cu > 0.072$ and $P \leq 0.008$
$= [Cu_e - 0.072 + 1.359 \cdot (P - 0.008)]^{0.668}$ for $Cu > 0.072$ and $P > 0.008$
and $Cu_e = 0$ for $Cu \leq 0.072$
= MIN (Cu, maximum Cu_e) for $Cu > 0.072$
and maximum $Cu_e = 0.243$ for Linde 80 welds
= 0.301 for all other materials
$g(Cu_e,Ni,\varphi t_e) = 0.5 + 0.5 \cdot \tanh\{[\log_{10}(\varphi t_e) + 1.1390 \cdot Cu_e - 0.448 \cdot Ni - 18.120] / 0.629\}$

Equation 8: Residual ® = measured ΔT_{30} − predicted ΔT_{30} (by Equations 5, 6, and 7)

Equation 9: Mean deviation for a data set of n data points =

$$\sum_{i=1}^{n} r_i / n$$

Equation 10: Maximum credible heat-average residual = $3\sigma/n^{0.5}$

Where:

n = number of surveillance shift data points (sample size) in the specific data set
σ = standard deviation of the residuals about the model for a relevant material group given in Table 5.

TABLE 1.—PTS SCREENING CRITERIA

Product form and RT MAX–Values	RT MAX–X limits [°F] for different vessel wall thicknesses [6] (T_{WALL})		
	$T_{WALL} \leq 9.5$ in.	9.5 in. < $T_{WALL} \leq$ 10.5 in.	10.5 in. < $T_{WALL} \leq$ 11.5 in.
Axial Weld RT_{MAX-AW}	269	230	222
Plate RT_{MAX-PL}	356	305	293
Forging without underclad cracks RT_{MAX-FO}	356	305	293
Axial Weld and Plate RT_{MAX-AW} + RT_{MAX-PL}	538	476	445
Circumferential Weld RT_{MAX-CW} [7]	312	277	269
Forging with underclad cracks RT_{MAX-FO}	246	241	239

TABLE 2.—ALLOWABLE NUMBER OF FLAWS IN WELDS

ASME section XI flaw size per IWA–3200	Range of through-wall extent (TWE) of flaw (in.)	Allowable number of cumulative flaws per 1000 inches of weld length in the ASME section XI appendix VIII supplement 4 inspection volume
0.05	0.025 ≤ TWE < 0.075	Unlimited
0.10	0.075 ≤ TWE < 0.125	166.70
0.15	0.125 ≤ TWE < 0.175	90.80
0.20	0.175 ≤ TWE < 0.225	22.82
0.25	0.225 ≤ TWE < 0.275	8.66
0.30	0.275 ≤ TWE < 0.325	4.01
0.35	0.325 ≤ TWE < 0.375	3.01
0.40	0.375 ≤ TWE < 0.425	1.49
0.45	0.425 ≤ TWE < 0.475	1.00

TABLE 3.—ALLOWABLE NUMBER OF FLAWS IN PLATES OR FORGING

ASME section XI flaw size per IWA–3200	Range of through-wall extent (TWE) of flaw (in.)	Allowable number of cumulative flaws per 1000 square inches of inside diameter surface area in forgings or plates in the ASME section XI appendix VIII supplement 4 inspection volume [8]
0.05	0.025 ≤ TWE < 0.075	Unlimited
0.10	0.075 ≤ TWE < 0.125	8.049
0.15	0.125 ≤ TWE < 0.175	3.146
0.20	0.175 ≤ TWE < 0.225	0.853
0.25	0.225 ≤ TWE < 0.275	0.293
0.30	0.275 ≤ TWE < 0.325	0.0756
0.35	0.325 ≤ TWE < 0.375	0.0144

TABLE 4.—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES

Materials	P	Mn
Plates	0.014	1.45
Forgings	0.016	1.11

TABLE 4.—CONSERVATIVE ESTIMATES FOR CHEMICAL ELEMENT WEIGHT PERCENTAGES—Continued

Materials	P	Mn
Welds	0.019	1.63

TABLE 5.—MAXIMUM HEAT-AVERAGE RESIDUAL [°F] FOR RELEVANT MATERIAL GROUPS BY NUMBER OF AVAILABLE DATA POINTS

Material group	σ [°F]	Number of available data points					
		3	4	5	6	7	8
Welds, for Cu > 0.072	26.4	45.7	39.6	35.4	32.3	29.9	28.0
Plates, for Cu > 0.072	21.2	36.7	31.8	28.4	26.0	24.0	22.5
Forgings, for Cu > 0.072	19.6	33.9	29.4	26.3	24.0	22.2	20.8
Weld, Plate or Forging, for Cu ≤ 0.072	18.6	32.2	27.9	25.0	22.8	21.1	19.7

Dated at Rockville, Maryland, this 27th day of September 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 07–4887 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 52

RIN 3150–AI19

Consideration of Aircraft Impacts for New Nuclear Power Reactor Designs

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is proposing to amend its regulations to require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval to assess the effects of the impact of a large, commercial aircraft on the nuclear power plant. Based on the insights gained from this assessment, the applicant shall include in its application a description and evaluation of design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the aircraft impact with reduced reliance on operator actions. The impact of a large, commercial aircraft is a beyond-design-basis event, and the NRC's requirements applicable to the design, construction, testing, operation, and maintenance of design features, functional capabilities, and strategies for design basis events would not be applicable to design features, functional capabilities, or strategies selected by the applicant solely to meet the requirements of this rule. The objective of this rule is to require nuclear power plant designers to perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

DATES: Submit comments on this proposed rule by December 17, 2007. Submit comments on the information collection aspects on this proposed rule by November 2, 2007. Comments received after the above dates will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after these dates.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AI19 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Submit comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You may submit comments on the information collections by the methods indicated in the Paperwork Reduction Act Statement.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Schneider, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1462; e-mail: *sxs4@nrc.gov* or Ms. Nanette Gilles, Office of New Reactors, U.S. Nuclear Regulatory Commission,

[6] Wall thickness is the beltline wall thickness including the clad thickness.

[7] RT_{PTS} limits contributes 1×10^{-8} per reactor year to the reactor vessel TWCF.

[8] Excluding underclad cracks in forgings.

Washington, DC 20555–0001; telephone 301–415–1180; e-mail: *nvg@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Currently Operating Power Reactors
III. Currently Approved Standard Design Certifications
IV. Renewal of a Standard Design Certification, Combined License, or Manufacturing License
V. Newly Designed Power Reactors
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I. Introduction

The Commission believes that it is prudent for nuclear power plant designers to take into account the potential effects of the impact of a large, commercial aircraft. The Commission has determined that the impact of a large, commercial aircraft is a beyond-design-basis event and has chosen an approach consistent with NRC's previous approach to such events. The overriding objective of this rule is to require nuclear power plant designers to perform a rigorous assessment of design and other features that could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions. In this manner, this rule would result in newly designed power reactor facilities being more inherently robust with regard to a potential aircraft impact than if they were designed in the absence of this rule. This rule thus provides an enhanced level of protection beyond that which is provided by the existing adequate protection requirements, which all operating power reactors are required to meet, and which would be provided by the proposed adequate protection requirements that the facilities will be required to meet when finalized (see the proposed 10 CFR part 73, ''Physical Protection of Plants and Materials,'' power reactor security requirements (71 FR 62663; October 26, 2006)).

The proposed rule would require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval, and those applicants with applications pending on the effective date of this rule (relevant applicants), to perform an aircraft impact assessment of the effects on the designed facility of the impact of a large, commercial aircraft. Based on the insights derived from that assessment, the application would have to include a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of an aircraft impact, addressing core cooling capability, containment integrity and spent fuel pool integrity. The applicant would be required to describe how such design and other features avoid or mitigate, to the extent practicable, the aircraft impact effects with reduced reliance on operator actions.

The Commission has determined that the impact of a large, commercial aircraft is a beyond-design-basis event. For this reason, the Commission-approved final design basis threat (DBT) does not include an aircraft attack. The NRC published its final DBT rule, Title 10, Section 73.1, ''Purpose and Scope,'' of the *Code of Federal Regulations* (10 CFR 73.1), in the **Federal Register** on March 19, 2007 (72 FR 12705). Two well-established bases support the exclusion of aircraft attacks from the DBT. First, it is not reasonable to expect a licensee with a private security force using weapons legally available to it to be able to defend against such an attack. Second, such an act is in the nature of an attack by an enemy of the United States. Power reactor licensees are not required to design their facilities or otherwise provide measures to defend against such an attack, as provided by 10 CFR 50.13, ''Attacks and Destructive Acts by Enemies of the United States; and Defense Activities.''

The Commission has addressed aircraft attacks by regulatory means other than the DBT rule in 10 CFR 73.1. By Order dated February 25, 2002 (Interim Compensatory Measures (ICM) Order), the Commission required all operating power reactor licensees to develop and adopt mitigative strategies to cope with large fires and explosions from any cause, including beyond-design-basis aircraft impacts (67 FR 9792; March 4, 2002). The Commission has proposed incorporating the continuing requirement to provide for such mitigative measures in the NRC's regulations in the proposed 10 CFR part 73 power reactor security requirements, specifically the proposed revisions to 10 CFR 73.55, ''Requirements for Physical Protection of Licensed Activities in Nuclear Power Reactors Against Radiological Sabotage,'' and Appendix C, ''Licensee Safeguards Contingency Plans,'' to 10 CFR part 73. If these requirements, which are promulgated on the basis of adequate protection of public health and safety and common defense and security, are finalized, all current and future power reactors must satisfy them.

The current requirements, in conjunction with the currently proposed revisions to the security regulations in 10 CFR 73.55 and Appendix C to 10 CFR part 73, will continue to provide adequate protection of the public health and safety and the common defense and security. Nevertheless, the Commission has decided to require relevant applicants to evaluate possible additional features to avoid or mitigate the effects of an aircraft impact beyond satisfying the current regulations and the proposed 10 CFR part 73 regulations (assuming they become final).

The Commission's DBT requirements (both orders and existing rules) are based on adequate protection of the public health and safety and common defense and security. As such, they are excepted from the cost-benefit analysis that otherwise would be required under 10 CFR 50.109, ''Backfitting.'' This new proposed rule to address the capability of newly designed power reactors relative to a potential aircraft impact is based both on enhanced public health and enhanced safety and common defense and security but is not necessary for adequate protection. Rather, it would be to enhance the facility's inherent robustness.

Requiring applicants for new reactor designs to perform a rigorous aircraft impact assessment and describe design features to address the effects of a beyond-design-basis aircraft impact is consistent with the NRC's historic approach to beyond-design-basis events and is consistent with the NRC's position in its ''Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants'' (50 FR 32138; August 8, 1985) (Agencywide Documents Access and Management System (ADAMS) Accession No. ML003711521). The policy statement notes, ''The Commission expects that vendors engaged in designing new standard [or custom] plants will achieve a higher standard of severe accident safety performance than their prior designs.'' The NRC reiterated that

regulatory approach in its ''Policy Statement on the Regulation of Advanced Nuclear Power Plants,'' dated July 8, 1986 (ADAMS Accession No. ML051660651), ''The Commission expects that advanced reactors would provide more margin prior to exceeding safety limits and/or utilize simplified, inherent, passive, or other innovative means to reliably accomplish their safety functions.'' This regulatory approach has demonstrated its success, as all designs subsequently submitted to and certified by the Commission represent substantial improvement in safety for operational events and accidents. Therefore, the NRC is proposing to require applicants for newly designed facilities to assess the effects of an aircraft impact on the designed facility.

The Commission considered the appropriate location for requirements on an aircraft impact assessment during its deliberations on the security assessment rulemaking (10 CFR 73.62) proposed by the NRC staff in SECY–06–0204, ''Proposed Rulemaking—Security Assessment Requirements for New Nuclear Power Reactor Designs (RIN 3150–AH92),'' dated September 26, 2006 (ADAMS Accession No. ML062300068). In its Staff Requirements Memorandum on SECY–06–0204, dated April 24, 2007 (ADAMS Accession No. ML071140119), the Commission disapproved the staff's recommended rulemaking as described in SECY–06–0204. The Commission directed the NRC staff to include the aircraft impact assessment requirements in 10 CFR part 52, ''Licenses, Approvals, and Certifications for Nuclear Power Plants,'' (72 FR 49352, August 28, 2007) to encourage reactor designers to incorporate practicable measures at an early stage in the design process. This proposed rule is the result of that effort.

This proposed rule would revise 10 CFR part 52 to require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval to assess aircraft impact assessments and describe the design features and other means to avoid or mitigate, to the extent practicable, the effects of an aircraft impact with reduced reliance on operator actions. This proposed rule renders as duplicative and therefore unnecessary the staff's proposed 10 CFR 73.62 rule to require security assessments. That rule would have required a security assessment which would include mitigation of large fires and explosions, a target set analysis, and design features to protect target sets against DBTs. The large fires and explosions provisions of that rule would be subsumed by this proposed 10 CFR part 52 aircraft impact rule. Sufficient target set provisions are included in the NRC's proposed changes to 10 CFR 73.55, which applicants for new facilities would have to satisfy if that rule is made final. Designers of new facilities are encouraged to account for the provisions of 10 CFR 73.55 in the facility design so as to minimize more costly, post-design features to meet those requirements. Accordingly, the proposed 10 CFR 73.62 is not necessary because the Commission is proposing a new 10 CFR part 52 aircraft impact assessment rule.

In contrast to its relation to a possible security assessment rule, however, the new 10 CFR part 52 aircraft impact assessment rule would complement the proposed revisions to 10 CFR 73.55 and Appendix C to 10 CFR part 73, to mitigate the effects of large fires and explosions. The proposed 10 CFR 73.55 and Appendix C to 10 CFR part 73 provisions on mitigating large fires and explosions codify the adequate protection requirement imposed on existing operating reactors by ICM Order, Item B.5.b. These provisions of the proposed 10 CFR part 73 rule, therefore, are necessary for adequate protection and must remain in regulations [1] that are applicable to all currently operating reactors and must be satisfied by all newly licensed reactors.

Regarding large fires and explosions, which are two likely effects of an aircraft impact, the proposed Appendix C to 10 CFR part 73 is limited to mitigative strategies ''using existing or readily-available resources,'' which effectively can be adapted to existing facilities. For example, certain facility features might be virtually cost-free if designed into the facility (e.g., spatially diverse containment penetrations) but effectively impossible to retrofit. Thus, strategies that were not required by ICM Order, Item B.5.b, and are not required by proposed 10 CFR 73.55 and Appendix C to 10 CFR part 73 because they do not use existing or readily available resources, might be implemented in new reactor designs because of the aircraft impact assessment rule. The proposed aircraft impact assessment rule does not deal with a design basis event but would result in facilities with additional features to avoid or mitigate the effects of an aircraft impact because they would be designed into the facility. Such features would reduce reliance on operator actions to cope with an aircraft impact event. Thus, this proposed rule is not necessary for adequate protection, but rather is an enhancement that will result in newly designed facilities being more inherently robust against aircraft impacts than the facilities not subject to this proposed rule.

In contrast to the adequate protection requirements of proposed 10 CFR 73.55 and Appendix C to 10 CFR part 73, a proposed rule that would enhance safety and security by requiring an evaluation of newly designed facilities to avoid or mitigate the effects of aircraft impacts is appropriate for inclusion in 10 CFR part 52. The NRC is therefore proposing to require applicants for newly designed reactors, which will have to satisfy the revised 10 CFR part 73 provisions if the rule is made final, to also perform an aircraft impact assessment under this proposed rule. However, the NRC expects that, compared to a licensee for a facility that was not designed to meet the requirements of the proposed rule, licensees for facilities that are designed to comply with the proposed rule would have much less of a need to develop specific procedures, guidance, or other strategies to cope with the loss of large areas of the plant due to explosions or fires in order to comply with the requirements in the proposed 10 CFR 73.55 and Appendix C to 10 CFR part 73. The Commission sees this as a significant benefit of this proposed rule; namely, that features to avoid or mitigate the effects of an aircraft impact are designed into the facility and will result in much less reliance on operator actions for such protection.

Consideration of a rule to require applicants for newly designed reactors to perform an aircraft impact assessment and describe design and other features addressing such impacts, which are beyond-design-basis scenarios, is similar to the Commission's consideration in the mid-1980's of new rules addressing accidents more severe than design basis accidents. The 1985 ''Policy Statement on Severe Reactor Accidents'' explained the Commission's conclusion that, although it was proposing criteria to show new reactor designs to be acceptable for severe accident concerns, then-existing plants posed no undue risk to public health

[1] By Order dated February 25, 2002 (ICM Order), the Commission required all operating power reactors to develop and adopt mitigative strategies to cope with large fires and explosions from any cause, including beyond-design-basis aircraft impacts (67 FR 9792; March 4, 2002).

and safety, and thus, there was no need for action on operating reactors based on severe accident risks. The Commission's reasoning in the severe accident context supports its conclusion that although new reactor designs should be assessed for aircraft impacts and designed to avoid or mitigate the effects of an aircraft impact, existing reactors and designs provide adequate protection of the public health and safety and common defense and security.

II. Currently Operating Power Reactors

The Commission has determined that the existing designs of currently operating nuclear power plants, together with the security program actions mandated by the NRC's orders (some of which are codified in the NRC's final DBT rulemaking and others of which are being incorporated into other NRC regulations), as well as the protection provided by other Federal, State, and local entities, provide an adequate level of protection to public health and safety and common defense and security against aircraft impacts. As a result of the events of September 11, 2001, the NRC has undertaken a series of actions to provide continued reasonable assurance of adequate protection to public health and safety and common defense and security at the United States commercial nuclear power facilities. The NRC has assessed the potential vulnerabilities of operating nuclear power reactors to aircraft impact, and it has issued orders and provided associated guidance to licensees for implementing a range of mitigative strategies. The results of these aircraft impact assessments were derived from detailed calculations of plant damage mechanisms (e.g., structural failures, shock and vibration effects, and fire effects). The NRC ensured that implementation of the February 25, 2002, ICM Order included measures to mitigate such scenarios.

The Commission's ICM Order, Item B.5.b, first established the requirement for licensees to implement certain mitigation measures at existing power reactors for these beyond-design-basis events. This requirement was specifically intended to address ''losses of large areas of a (reactor) plant due to fires and explosions.'' The Commission has since incorporated this requirement into the proposed rulemaking for 10 CFR 73.55 and Appendix C to 10 CFR part 73. Under the proposed 10 CFR part 73 rulemaking, future license applicants must identify and implement mitigative measures similar to those required for currently operating plants.

Most recently, the Commission published a final rule on March 19, 2007 (72 FR 12705), amending the DBT in 10 CFR 73.1. The DBT rule describes general attributes that nuclear power plant licensees must defend against with high assurance. This rulemaking enhanced the DBT by codifying generically applicable security requirements similar to those previously imposed by the Commission's April 29, 2003, DBT Orders.

On the basis of the previous information, the NRC concludes that existing power reactors pose no undue risk to public health and safety or common defense and security from the effects of an aircraft impact based on the Commission's specified aircraft characteristics. Therefore, the NRC is not applying the aircraft impact assessment requirement in this rulemaking to existing operating nuclear power plants.

III. Currently Approved Standard Design Certifications

The Commission has concluded that the proposed rule need not be applied to the four currently approved standard design certifications in Appendices A through D to 10 CFR part 52.[2] Therefore, applicants would not need to recertify these standard designs to meet this proposed rule. This follows from the Commission's determination that the aircraft impact rule is an enhancement above and beyond what is necessary for adequate protection and that the aircraft impact scenario, as previously explained, is a beyond-design-basis event. Just as the currently operating power reactor facilities continue to meet adequate protection requirements and do not need to meet this new aircraft impact rule, so too are the already certified standard designs sufficient to meet adequate protection design requirements. Any reactor facility built to one of these already-certified designs will, of course, have to satisfy all adequate protection requirements applicable to operating power reactors.

The original applicant (or successor in interest of any of the four current standard design certifications) may voluntarily seek to amend the standard design certification to add design features, functional capabilities, or strategies in accordance with the requirements of proposed 10 CFR 52.500, ''Aircraft Impact Assessment.'' The NRC encourages voluntary enhancement by the applicants for the four current standard design certifications because it will increase the already high levels of safety and security provided by these reactor designs. Applicants may implement these design modifications in different ways, including:

- Applications to amend the existing design certifications.
- Application for a new design certification based on the existing certification, but containing the design features, functional capabilities, and strategies identified as a result of this rule.
- Requests submitted by combined license applicants for plant-specific departures from the standard design, where the departure implements the modifications developed by the original design certification applicant's voluntary implementation of the provisions of the proposed 10 CFR 52.500 (these requests may be submitted by each individual combined license applicant, or they may be submitted by a group of combined license applicants under the provisions of Appendix N, ''Standardization of Nuclear Power Plant Designs: Combined Licenses to Construct and Operate Nuclear Power Reactors of Identical Design at Multiple Sites,'' to 10 CFR part 52 and subpart D, ''Additional Procedures Applicable to Proceedings for the Issuance of Licenses to Construct and/or Operate Nuclear Power Plants of Identical Design at Multiple Sites,'' to 10 CFR part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders.''

IV. Renewal of a Standard Design Certification, Combined License, or Manufacturing License

The NRC's proposed rulemaking does not require updating of the assessment of aircraft impacts required by proposed 10 CFR 52.500 as part of an application for either a renewed design certification under 10 CFR 52.57, ''Application for Renewal,'' a renewed combined license under 10 CFR 52.107, ''Application for Renewal,'' and 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' or a renewed manufacturing license under 10 CFR 52.177, ''Application for Renewal.'' The NRC's requirement for assessment of large, commercial aircraft impacts is not an aging-related matter, nor is it based on time-limited considerations. Hence, aircraft impacts under the proposed rule are outside the scope of any combined license renewal proceeding under 10 CFR part 54 and combined license holders do not need to update the assessment required by 10 CFR 52.500(b) at the license renewal stage. Similarly, aircraft impacts under

[2] The four standard design certifications currently in effect are the U.S. Advanced Boiling Water Reactor (ABWR) design (Appendix A), the System 80+ design (Appendix B), the AP600 design (Appendix C), and the AP1000 design (Appendix D).

the proposed rule are outside the scope of any manufacturing license renewal proceeding under 10 CFR 52.177.

V. Newly Designed Power Reactors

A. Introduction

Under this proposed rule, relevant applicants for newly designed power reactors would be required to undertake the following:

- Perform an assessment of the effects on the designed facility of a beyond-design-basis aircraft impact
- Evaluate potential design features, functional capabilities, and strategies for avoiding or mitigating the effects of a beyond-design-basis aircraft impact on the key safety functions of the facility
- Describe how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions

The proposed rule is based on the premise that it is desirable for future power reactors to avoid or mitigate the effects of the applicable aircraft impact through design features that reduce or eliminate the need for operator actions. Because this type of consideration needs to occur during the development of the design itself, the NRC directs the requirements at plant designers.

The NRC does not expect plant designers to demonstrate that design features alone, without any operator action or mitigative response activity, will practicably avoid or mitigate the effects of the beyond-design-basis aircraft impact. The NRC recognizes that the decision to rely on design features (as opposed to operator action or mitigative strategies) is complex, and often involves a set of trade-offs between competing considerations. The NRC's goal is that the designer implement a rigorous assessment process to ensure that the design process constitutes a reasoned approach for assessing the plant design to identify practicable design or other features that either minimize the effects of, or mitigate, a beyond-design-basis aircraft impact.

B. Description of Beyond-Design-Basis Aircraft Impact

Since September 11, 2001, the Commission has used state-of-the art technology to assess the effects of aircraft impacts on nuclear power plants. As part of a comprehensive review of security for NRC-licensed facilities, the NRC conducted detailed, site-specific engineering studies of a limited number of nuclear power plants to assess potential vulnerabilities of deliberate attacks involving large, commercial aircraft. In conducting these studies, the NRC consulted national experts from several Department of Energy laboratories using state-of-the-art structural and fire analyses. The agency also used realistic predictions of accident progression and radiological consequences.

The proposed rule sets forth a general description of the aircraft characteristics that are required to be used to perform the beyond-design-basis aircraft impact assessment. The assessment must be based on the Commission's specified aircraft characteristics used to define the beyond-design-basis impact of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at the low altitude representative of a nuclear power plant's low profile.

Beyond these general characteristics, the Commission will specify for plant designers in a Safeguards Information (SGI) guidance document more detailed characteristics of the large, commercial aircraft that should be used in the required assessment. Although the detailed aircraft characteristics will be described in an SGI guidance document and will not be publicly available because of their potential value to terrorists, the description of some of the factors used in selecting the parameters is offered to foster a better understanding of this rulemaking:

1. *The aircraft used by the terrorists on September 11, 2001.* The staff has reviewed the results of the September 11, 2001, attacks on the World Trade Center and the Pentagon. The NRC has used these reviews in previous studies for operating reactors. The NRC also used these reviews to make its decisions with respect to this rulemaking.

2. *Communications with other U.S. Government agencies.* Since September 11, 2001, the NRC has worked closely with the Department of Homeland Security, the Department of Defense, and other agencies both to understand their information on terrorist threats and to communicate the NRC's study results.

3. *Communications with foreign governments.* A number of foreign governments are considering the construction of new nuclear power plants. The NRC is communicating with the regulatory authorities in these countries to understand their requirements and to convey its own results and plans.

4. *Evaluations of commercial aircraft.* The NRC has studied the types, numbers, and characteristics of commercial aircraft flown in U.S. airspace.

Because this proposed rule is intended to provide added features to avoid or mitigate the effects of a beyond-design-basis event, the choice of aircraft characteristics and the scenario used for this analysis will not be linked to threat assessments or to any evolution of aircraft design. The proposed rule would require that the design-specific impact assessment use the Commission-specified aircraft characteristics as described in proposed 10 CFR 52.500(b). As stated previously, more specific details about the aircraft characteristics specified by the Commission will be contained in a separate guidance document under SGI controls. Because the guidance containing the more detailed aircraft characteristics will be SGI, the document will only be made available to those individuals with a need-to-know and who are otherwise qualified to have access to SGI. Plant designers (including their employees and agents) who meet the Commission's requirements for access to SGI would have access to the guidance document containing these more detailed characteristics in order to perform the assessments required by the proposed rule.

The Commission has carefully balanced the public interest in knowing the characteristics of the specific aircraft to be used in the aircraft impact assessment and the need for meaningful comment on specific details of the aircraft impact assessment. The result is an aircraft impact assessment proposed rule that describes the general aircraft characteristics which applicants are required to use in their aircraft impact assessments. The text of this proposed rule and the associated supplementary information, provide ample information to enable meaningful comment on what the aircraft impact assessment should entail. No additional information is necessary to understand or to comment on the proposed aircraft impact assessment rule. Members of the public can provide the Commission their views on this rulemaking regarding the design areas to be addressed in the assessment, functions to be evaluated for possible enhancement, and criteria for assessing practicability without having access to the more detailed SGI aircraft characteristics. Therefore, access to the proposed SGI aircraft characteristics contained in the regulatory guidance is not necessary to enable meaningful public comment on the proposed aircraft impact assessment rule.

This regulatory approach is similar to that used by the NRC in describing the DBT against which security programs under 10 CFR part 73 must defend. The general characteristics of the DBT appear in 10 CFR 73.1. More detailed information of a sensitive nature is contained in adversary characteristics documents. As is the case with the Commission's aircraft characteristics, the technical bases for these documents derive largely from intelligence information and contain SGI that must be withheld from public disclosure. They are available only on a need-to-know basis to those who are approved for access. In the final DBT rule, the NRC was careful to set forth rule text that does not compromise licensee security, but it also acknowledges the need to keep the public informed of the types of attacks against which nuclear power plants and Category I fuel cycle facilities are required to defend. The NRC is taking a similar approach in this proposed aircraft impact rule. This approach strikes the appropriate balance between public disclosure of the regulatory requirements governing nuclear power plants, and protection of public health and safety and common defense and security.

C. Aircraft Impact Assessment

Technical Issues

Because the aircraft impact is a beyond-design-basis event, the methods and acceptance criteria used should be based on realistic assumptions. The aircraft impact assessment would include the items detailed in the following paragraphs:

1. *Consideration of aircraft characteristics.* The assessment must consider a large, commercial aircraft of the type currently in use for long distance flights in the United States as described previously in this document and in 10 CFR 52.500(b). More detailed characteristics of the large, commercial aircraft to be used in this assessment will be contained in a separate guidance document under SGI controls.

2. *Plant functions, structures, systems, components, and locations to be assessed.* The critical functions required to be evaluated in the aircraft impact assessment include core cooling, containment integrity, and spent fuel pool integrity. Evaluation of the survivability of these functions, should consider not only the key components, but also power supplies, cable runs, and other components that support these functions. The evaluation may take credit for the availability of both safety and non-safety equipment. The assessment should evaluate whether the structures containing equipment that provides needed functions are likely to be affected by the specified large, commercial aircraft impact. Factors to be considered in the evaluation include the size and location of the structures and the presence of external impediments to impact.

3. *Damage mechanisms.* The assessment should model the structural response, shock and vibration effects, and fire effects of the postulated aircraft impact.

a. *Structural assessment.* The structural assessment should be based on a detailed structural model of the plant taking into account the nonlinear materials and geometric behavior. The assessment should consider both local and global (plant-wide) behavior, as well as thermal effects resulting from fire.

b. *Shock assessment.* The assessment should evaluate the local and global (plant-wide) shock and vibration effects resulting from the postulated impact.

c. *Fire assessment.* The fire assessment should consider the extent of structural damage and aviation fuel deposition, if any, and spread within the impacted buildings. The assessment should consider both short- and long-term fire effects.

Regulatory Treatment of the Assessment

The impact assessment is subject to audit and review by the NRC and, therefore, must be maintained by the applicant along with the rest of the information that forms the basis for the relevant application, consistent with paragraph (b) of 10 CFR 52.0, ''Scope; Applicability of 10 CFR Chapter I Provisions,'' 10 CFR 50.70, ''Inspections,'' and 10 CFR 50.71, ''Maintenance of Records, Making of Reports.'' The applicant does not need to submit the impact assessment—as opposed to the ''description and evaluation of the design features, functional capabilities, and strategies'' required by proposed 10 CFR 52.500(c)—to the NRC in its application.

Under the proposed rule, the NRC will confirm that the impact assessment was performed consistent with the regulatory requirements and related guidance documents. The NRC may take appropriate enforcement action for any violations of applicable NRC requirements, including, but not limited to, proposed 10 CFR 52.500, 10 CFR 52.4, ''Deliberate Misconduct,'' and 10 CFR 52.6, ''Completeness and Accuracy of Information.'' A failure to perform the assessment would be a violation of the rule. The NRC expects the assessment to be rigorous. Any assessment that is inadequate to reasonably assess the aircraft impact; to identify practicable design features, functional capabilities, or strategies; or to justify non-adoption of potentially advantageous design features, functional capabilities, or strategies, could be considered a violation of the rule.

The NRC's decision on an application subject to proposed 10 CFR 52.500 would be separate from any NRC determination that may be made with respect to the adequacy of the impact assessment which the rule does not require be submitted to the NRC. Applicants would only be required to submit a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact in their final safety analysis report (FSAR) with the understanding that the complete aircraft impact assessment would be available for NRC audit and review at the applicant's offices, if needed. The NRC expects that, generally, the information that it needs to perform its review of the application to assess the applicant's compliance with 10 CFR 52.500 would be that information contained in the applicant's FSAR. Therefore, the adequacy of the impact assessment would not be a matter which may be the subject of a contention submitted as part of a petition to intervene under 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.'' A person who seeks NRC rulemaking action with respect to a proposed standard design certification on the basis that the impact assessment is inadequate could submit comments in the notice and comment phase of that rulemaking. A person who seeks rulemaking action after the NRC has adopted a final design certification rule on the basis that the impact assessment performed for that design certification is inadequate could submit a petition for rulemaking under 10 CFR 2.802, ''Petition for Rulemaking,'' and 10 CFR 2.803, ''Determination of Petition,'' seeking to amend the standard design certification. A person who seeks agency enforcement-related action on a combined license or manufacturing license on the basis of an inadequate impact assessment could file a petition under 10 CFR 2.206, ''Requests for Action Under This Subpart.''

Once the applicant completes the impact assessment, accomplishes the evaluation required by proposed 10 CFR 52.500(c) based on insights gained from the proposed 10 CFR 52.500(b) assessment, and includes the description and evaluation required by proposed 10 CFR 52.500(c) in the FSAR,

the purpose of the impact assessment would be achieved. Accordingly, the proposed rule would not require the impact assessment to be updated, by either: (1) The design certification applicant whose application references a design approval, (2) the design certification applicant following the NRC's adoption of a final standard design certification rule, (3) a design approval holder, (4) a manufacturing license applicant or holder whose application references a design certification or design approval, (5) a combined license applicant or holder whose application references a design certification, design approval, or manufactured reactor, or (6) a combined license holder whose application does not reference a design certification, design approval, or manufactured reactor and is required to prepare its own assessment.

The provisions of 10 CFR 50.71(c) require that records that are required by the regulations in 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities,'' or 10 CFR part 52 must be retained for the period specified by the appropriate regulation. If a retention period is not otherwise specified, the licensee must retain these records until the Commission terminates the facility license. Because proposed 10 CFR 52.500(b) would require the performance of the aircraft impact assessment, it falls under the category of ''records that are required by the regulations'' and therefore, the licensee would be required to retain the assessment until the Commission terminates the facility license. The NRC also expects to add specific provisions to each standard design certification rule for a design covered by proposed 10 CFR 52.500 governing retention of the aircraft impact assessment by both the applicant for the design certification (including an applicant after the Commission has adopted a final standard design certification rule) and a licensee who references that design certification. The NRC expects to require applicants and licensees to retain the assessment required by 10 CFR 52.500(b) throughout the pendency of the application and for the term of the certification or license (including any period of renewal). An example of such requirements can be found in any of the current design certification rules, Section X, ''Records and Reporting,'' of Appendices A through D of 10 CFR part 52.

As discussed in Section VIII, ''Specific Request for Comments,'' of this document, the NRC is requesting comments on whether, *in lieu* of the specific design certification rule provisions or reliance on 10 CFR 50.71(c), it should adopt as part of the final 10 CFR 52.500 rulemaking a specific provision that would explicitly mandate the retention of the assessment. Such a provision, to be included in an additional paragraph of proposed 10 CFR 52.500, would also set forth the proposed period of retention for the assessment as the term of the design certification, combined license, or manufacturing license.

D. Evaluation of Design Features, Functional Capabilities, and Strategies

Technical Issues

The proposed rule would require designers of new facilities to describe how the design features, functional capabilities, and strategies adopted based on the insights of the aircraft impact assessment avoid or mitigate the effects of the aircraft impact. Plant structures critical to maintaining facility safety functions should be designed, if practicable, such that an impact does not result in structural failure, and aircraft parts and jet fuel do not enter the structures. In circumstances in which an impact results in aircraft parts and jet fuel entering structures or affecting equipment, plant structures and layouts should be evaluated with respect to maintaining key safety functions by addressing equipment survivability following the entry of aircraft parts and jet fuel and key safety functions are accomplished notwithstanding the resulting internal damage resulting from structural loads, shock and vibration, and fire.

As discussed previously, the Commission has issued orders to operating plants requiring mitigation of the effects of losing large areas of the plant from fires and explosions. These requirements include some reliance on operator actions, such as realigning systems to ensure continued core cooling following the loss of a large area. Because this proposed rule would apply to newly designed facilities before construction of the facility, the Commission expects that improvements can be made in the plant's design that have the same result as operator actions credited in operating plants. Thus, these designs should have reduced reliance, relative to current operating plants, on operator actions.

The proposed rule would require applicants to describe how the design features, functional capabilities, and strategies avoid or mitigate, ''to the extent practicable,'' the effects of the applicable aircraft impact with reduced reliance on operator actions. The NRC intends this standard to include those design features, functional capabilities, and strategies that are realistically and reasonably feasible from a technical engineering perspective. For example, the NRC believes it may be practicable to employ new technologies currently in use in the commercial nuclear power industry or in another industry. Alternatively, it would not be practicable to introduce a design feature that could have adverse safety or security consequences under a different operational or accident scenario. This consideration of practicability allows the designers to evaluate potential competing technical factors, such as the response to earthquakes, while at the same time addressing aircraft impacts.

Nuclear power plants are inherently very robust, secure structures designed to withstand tornadoes, hurricanes, earthquakes, floods, and other severe events. They have redundant and diverse safety equipment so that if an active component becomes unavailable, another component or system will satisfy its function. The results of the Commission's evaluation of postulated aircraft impacts on operating reactors reinforced the value of design features such as the following:

- Reinforced concrete walls
- Redundancy and spatial separation of key systems, structures and components
- Diversity of power supplies
- Compartmentalization of interior structures with pressure resisting concrete walls and doors

The NRC expects the required evaluation to consider the value of such design features and of possible improvements in these and other features. The applicant must base the evaluation on insights gained from the impact assessment performed under proposed 10 CFR 52.500(b).

Regulatory Treatment of the Evaluation

The NRC will confirm that the evaluation required by 10 CFR 52.500(c) was performed and that the FSAR includes the necessary description and evaluation of the design and other features adopted to avoid or mitigate, to the extent practicable, the potential effects of the applicable, beyond-design-basis aircraft impact. The NRC will review the evaluation contained in the application and reach a conclusion as to whether the applicant has conducted an evaluation reasonably formulated to identify practicable design and other features to avoid or mitigate the potential effects of the applicable, beyond-design-basis aircraft impact. However, NRC's review of the adequacy of the evaluation, and the effectiveness and practicability of the applicant-

selected features, capabilities, and strategies, are separate and distinct from the NRC's determination whether to issue a final standard design certification rule, a final design approval, a combined license, or a manufacturing license. Therefore, as is the case with the impact assessment, the NRC will use its established audit and review process to ensure the evaluation and determination of practicability was performed consistent with the regulatory requirements and related guidance documents. The NRC may take appropriate enforcement action for any violation of applicable NRC requirements. Inasmuch as the adequacy of the evaluation and the practicability of the applicant-selected features, capabilities, and strategies, are separate and distinct from the approval of the final design in the design certification, design approval, combined license, or manufacturing license, there would be no issue resolution associated with the assessment regarding the lack of effectiveness or practicability of potential design features, functional capabilities, and strategies not selected by the applicant for inclusion in the certified design.

The NRC is proposing that the design features, functional capabilities, or strategies credited for avoiding or mitigating the effects of an aircraft impact be described in Chapter 19 of the FSAR, which addresses severe accidents. The design features may include structures or features unchanged from the plant design as it existed before the aircraft impact assessment (e.g., an existing wall is found to be effective), structures or features included in the plant design but enhanced to improve the response to an aircraft impact (e.g., an existing wall is made stronger), or new structures or features added solely to address aircraft impacts (e.g., a new wall). The regulatory treatment of the design features (e.g., how changes to the features are controlled) depends on which of the above categories apply. For example, a design feature added specifically to avoid or mitigate the effects of an aircraft impact would be controlled only by requirements specifically for control of those design features added in this proposed rule or requirements that the NRC expects to add to future design certifications that would be subject to proposed 10 CFR 52.500. A safety-related structure credited in the aircraft impact assessment as a design feature would continue to be controlled by Appendix B to 10 CFR part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants;'' 10 CFR part 21, ''Reporting of Defects and Noncompliance;'' and other regulations establishing technical and administrative requirements on the non-aircraft impact functions, in addition to the proposed requirements for control of features to address aircraft impacts.

For combined licenses not referencing a certified design, the NRC is proposing to have change control governed by the requirements in a new 10 CFR 52.502, ''Control of Changes to FSAR Information,'' to address changes to any design features, functional capabilities, or strategies credited for avoiding or mitigating the effects of an aircraft impact for a combined license that does not reference a certified design. Specifically, the proposed 10 CFR 52.502(c) would require that, if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the FSAR, the licensee re-perform that portion of the evaluation required by proposed 10 CFR 52.500(c) that addresses the changed feature, capability, or strategy. The licensee would also be required to describe, in the re-evaluation, how the modified design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. Because this rule is being proposed to address a beyond-design-basis event, the NRC has determined that it is appropriate to apply the same standard to any licensee-proposed changes to features, capabilities, and strategies that would be applied during the original evaluation of those design features, functional capabilities, and strategies.

A combined license holder subject to proposed 10 CFR 52.500 (i.e., a licensee whose application does not reference a standard design certification, standard design approval, or manufactured reactor) may change the design features, functional capabilities, and strategies incorporated into the design, in accordance with proposed 10 CFR 52.502, without prior NRC review and approval, as long as the licensee re-performs that portion of the evaluation required by proposed 10 CFR 52.500(c) addressing the changed feature, capability, or strategy. The licensee must also describe, in the re-evaluation documented in a change to the FSAR, how the modified design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. Licensees' submittal of this updated information to the NRC will be governed by the existing FSAR update requirements in 10 CFR 50.71(e).

A design feature, functional capability, or strategy described in a standard design certification may not be changed generically except by notice and comment rulemaking, see 10 CFR 52.63, ''Finality of Standard Design Certifications,'' paragraphs (a)(1) and (2), and such a change must meet one of the criteria in 10 CFR 52.63(a)(1). All referencing combined licenses must implement any generic change to a design certification rule, as required by 10 CFR 52.63(a)(3).

The NRC expects to add a new change control provision to future design certification rules subject to proposed 10 CFR 52.500 to govern combined license holders referencing the design certification that request a departure from the design features, functional capabilities, or strategies in the referenced design certification. The new change control provision would require that, if the licensee changes the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the licensee must re-perform that portion of the evaluation required by proposed 10 CFR 52.500(c) addressing the changed feature, capability, or strategy. The licensee must also describe, in the re-evaluation documented in a change to the FSAR (*i.e.*, a plant-specific departure from the generic design control document), how the modified design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. Licensees' submittal of this updated information to the NRC will be governed by the reporting requirements in the applicable design certification rule. The NRC expects to continue, in future standard design certification rulemakings, its practice of adopting reporting requirements analogous to Section X.B of the four existing standard design certification rules. Licensees making changes to design features, capabilities, or strategies included in the certified design or in the plant-specific FSAR may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in the proposed 10 CFR 73.55 and Appendix C to 10 CFR part 73.

A design feature, functional capability, or strategy described in a standard design approval may not be changed generically except under an application for a new design approval. There are no provisions in 10 CFR part 52 for making generic changes to a

standard design approval. Paragraph (a) of Section 52.145, ''Finality of Standard Design Approvals; Information Requests,'' states that an approved design must be used by and relied upon by the NRC staff and the Advisory Committee on Reactor Safeguards in their review of any individual facility license application that incorporates by reference a standard design approval unless there exists significant new information that substantially affects the earlier determination or other good cause. Therefore, any changes to a design feature, functional capability, or strategy described in a standard design approval would be subject to review by the NRC in any application that references the design approval. Note that 10 CFR 52.131, ''Scope of Subpart,'' states that the an applicant may submit standard designs for a nuclear power reactor or major portions thereof. To the extent that a standard design approval is issued for only portion of a nuclear power reactor, any applicant referencing that design approval will have to separately comply with the requirements of 10 CFR 52.500 for any portion of the design not addressed in the design approval issued by the NRC.

Under the provisions of 10 CFR 52.171, ''Finality of Manufacturing Licenses; Information Requests,'' the holder of a manufacturing license may not make changes to the design features, functional capabilities, or strategies described in the FSAR without prior Commission approval. The request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90, ''Application for Amendment of License, Construction Permit, or Early Site Permit,'' and 10 CFR 50.92, ''Issuance of Amendment.''

Under the provisions of 10 CFR 52.171(b)(2), a combined license applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart may request a departure from the design features, functional capabilities, or strategies described in the FSAR for the manufactured reactor. The Commission will grant such a request only if it determines that the departure will comply with the requirements of 10 CFR 52.7, ''Specific Exemptions,'' and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

Once the evaluation required by proposed 10 CFR 52.500(c) is completed and the application includes descriptions of the design features, functional capabilities, and strategies, the purpose of the evaluation would be largely achieved. Thus, as with the assessment required by proposed 10 CFR 52.500(b), the applicant or licensee would not be required to update the paragraph (c) evaluation after the design certification, design approval, combined license, or manufacturing license is issued, or in an application for renewal under either 10 CFR 52.57, 10 CFR 52.107 and 10 CFR part 54, or 52.177. However, licensees would be required to maintain the paragraph (c) evaluation, inasmuch as proposed 10 CFR 52.79(a)(47) and 10 CFR 52.157(f)(32) require the proposed 10 CFR 52.500(c) evaluation and description to be included in the FSAR portion of the application.

Following issuance of a final design certification rule, the design certification applicant would not be required to update the evaluation so long as it does not request a significant change to any of the design features, functional capabilities, or strategies in the design certification. Similarly, the holder of a combined license or manufacturing license would not be required to update the evaluation so long as the licensee makes no significant change to the design features, functional capabilities, or strategies described in the FSAR.

As with the aircraft impact assessment required by proposed 10 CFR 52.500(b), in accordance with 10 CFR 50.71(c), each combined license holder and manufacturing license holder whose application was subject to proposed 10 CFR 52.500 would be required to retain the documentation supporting the proposed 10 CFR 52.500(c) evaluation for NRC review. With respect to a standard design certification, proposed 10 CFR 52.47(a)(28) would require the proposed 10 CFR 52.500(c) evaluation to be included in the FSAR submitted as part of the design certification application. The NRC acknowledges that the applicant for a standard design certification is not, per se, responsible for maintaining the FSAR information once a final design certification rule is adopted by the NRC. Nonetheless, the NRC continues to believe, for the reasons set forth in the statement of considerations for the first design certification rulemaking, see 62 FR 25800, May 19,1997, at 25813–25814, 25826, that the original standard design certification applicant should be required to maintain the accuracy of the design certification information. Therefore, in future standard design certification rulemakings, the NRC expects to continue its practice of adopting a records management requirement analogous to Section X.A of the four existing standard design certification rules. In addition to the information included in the FSAR for the design certification or combined license, the supporting documentation retained onsite should describe the methodology used in identifying and evaluating the practicability of potential features, capabilities, and strategies for inclusion in the design; and list the features, capabilities, and strategies that were considered but rejected, along with the basis for their rejection.

VI. Section-by-Section Analysis

Section 52.11 Information Collection Requirements: OMB Approval

Section 52.11 identifies the information collection requirements contained in 10 CFR part 52 approved by the Office of Management and Budget (OMB) as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC is proposing to modify paragraph (b) to include proposed 10 CFR 52.500 in the list of requirements with approved information collections.

Section 52.47 Contents of Applications; Technical Information

Section 52.47 identifies the required technical information to be included in an application for a standard design certification. The proposed rule would revise this section by adding a new paragraph (a)(28) requiring that the FSAR contain the information required by proposed 10 CFR 52.500, ''Aircraft Impact Assessment.'' This information, as currently set forth in paragraph (c) of proposed 10 CFR 52.500, is limited to the following:

1. A description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact; and

2. An evaluation of how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

The 10 CFR 52.47(a)(28) requirement applies only to those standard design certification applications which are subject to proposed 10 CFR 52.500, that is, those design certifications issued after the effective date of the final rule (see 10 CFR 52.500(a)) that do not reference a design approval. Thus, any standard design certification application not referencing a standard design approval that is docketed and under

review by the NRC but has not yet been issued in final form as of the effective date of the final 10 CFR 52.500 must amend its application to include the information required by final 10 CFR 52.500.

Section 52.79 Contents of Applications; Technical Information in Final Safety Analysis Report

Section 52.79 identifies the required technical information to be included in an FSAR submitted in a combined license application under 10 CFR part 52, subpart C, ''Combined Licenses.'' The proposed rule would revise this section by adding a new paragraph (a)(47) requiring that the FSAR contain the information required by proposed 10 CFR 52.500. This is the same type of information that an applicant for a standard design certification would need to submit, namely, the following:

1. A description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact; and

2. An evaluation of how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

Only those combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufactured reactor would be subject to 10 CFR 52.79(a)(47). Thus, a combined license application filed after the effective date of the final 10 CFR 52.500 and referencing a standard design certification, standard design approval, or manufactured reactor would not have to include the information required by 10 CFR 52.500. The NRC notes that this would be true even for a combined license application which references one of the four current standard design certifications (ABWR, 10 CFR part 52, Appendix A; System 80+, 10 CFR part 52, Appendix B; AP600, 10 CFR part 52, Appendix C; and AP1000, 10 CFR part 52, Appendix D). This is consistent with the requirements of 10 CFR 52.79(c), (d), and (e) which state that, if the combined license application references a standard design certification, standard design approval, or manufactured reactor, then the FSAR need not contain information or analyses submitted to the Commission in connection with the design certification, design approval, or manufacturing license, as applicable. By contrast, a combined license applicant not referencing a standard design certification, standard design approval, or manufactured reactor whose application is docketed and under review by the NRC but for which a license has not yet been issued as of the effective date of the final 10 CFR 52.500, must amend its application to include the information required by 10 CFR 52.500.

Section 52.137 Contents of Applications; Technical Information

Section 52.137 identifies the required technical information to be included in an application for a standard design approval. The proposed rule would revise this section by adding a new paragraph (a)(26) requiring that the FSAR contain the information required by proposed 10 CFR 52.500. This information, as currently set forth in paragraph (c) of proposed 10 CFR 52.500, is limited to the following:

1. A description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact; and

2. An evaluation of how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

The 10 CFR 52.137(a)(26) requirement applies only to those standard design approval applications which are subject to proposed 10 CFR 52.500, that is, those design approvals issued after the effective date of the final rule (see 10 CFR 52.500(a)). Thus, any standard design approval application that is docketed and under review by the NRC but has not yet been issued in final form as of the effective date of the final 10 CFR 52.500 must amend its application to include the information required by final 10 CFR 52.500.

Section 52.157 Contents of Applications; Technical Information in Final Safety Analysis Report

Section 52.157 identifies the required technical information to be included in an application for a manufacturing license. The proposed rule would revise this section by adding a new paragraph (f)(32) requiring that the FSAR contain the information required by proposed 10 CFR 52.500. This information, as currently set forth in paragraph (c) of proposed 10 CFR 52.500, is limited to the following:

1. A description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact; and

2. An evaluation of how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

The 10 CFR 52.157(f)(32) requirement applies only to those manufacturing license applications which are subject to proposed 10 CFR 52.500, that is, those manufacturing licenses issued after the effective date of the final rule that do not reference a design certification or design approval (see 10 CFR 52.500(a)). Thus, any manufacturing license application that is docketed and under review by the NRC but has not yet been issued in final form as of the effective date of the final 10 CFR 52.500 must amend its application to include the information required by final 10 CFR 52.500.

Section 52.303 Criminal Penalties

Section 52.303 identifies the regulations in 10 CFR part 52 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 of the Atomic Energy Act of 1954, as amended, which provides for criminal sanctions for willful violation of, attempted violation of, or conspiracy to violate, any regulation issued under Sections 161b, 161i, or 161o of the Act. The NRC is proposing to modify paragraph (b) to include proposed 10 CFR 52.500 and proposed 10 CFR 52.502 in the list of regulations not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 of the Act.

Subpart K—Additional Requirements

The NRC proposes to add a new subpart K, ''Additional Requirements,'' to 10 CFR part 52. This subpart would be reserved for requirements applicable only to the licenses, certifications, and approvals under 10 CFR part 52 that have unique characteristics which mitigate against placing them in other parts of 10 CFR Chapter I, ''Nuclear Regulatory Commission'' of Title 10.

Section 52.500 Aircraft Impact Assessment

Proposed 10 CFR 52.500 would be a new requirement for assessing a large, commercial aircraft impact at nuclear power plants and incorporating design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of such aircraft impacts.

Paragraph (a) would state that the requirements of this section would be applicable to all standard design

certifications issued after the effective date of the final rule that do not reference a standard design approval; standard design approvals issued after the effective date of the final rule; combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufactured reactor; and manufacturing licenses issued after the effective date of the final rule that do not reference a standard design certification or standard design approval. A design certification rule issued after the effective date of the final 10 CFR 52.500 rule that does not reference a design approval is subject to the requirements of the rule even if its application was filed before the effective date of the final 10 CFR 52.500 rule. Similarly, a design approval issued after the effective date of the final rule is subject to the requirements of the rule even if its application was filed before the effective date of the final rule. A combined license issued after the effective date of the final 10 CFR 52.500 rule that does not reference a design certification, design approval, or manufactured reactor would be subject to the requirements of the rule, even if its application was filed before the effective date of the final 10 CFR 52.500 rule. As noted earlier in the section-by-section discussion of proposed 10 CFR 52.79(a)(47) of this document, a combined license issued after the effective date of the final 10 CFR 52.500 rule referencing one of the four current standard design certifications, would not be subject to the requirements of proposed 10 CFR 52.500.

Paragraph (b) would require those applicants subject to proposed 10 CFR 52.500 to perform a design-specific assessment of the effects on the designed facility of the impact of a large, commercial aircraft (impact assessment). By ''design-specific,'' the NRC means that the impact assessment must address the specific design which is either the subject of the standard design certification, standard design approval, combined license, or manufacturing license application. The proposed rule would require that the design-specific impact assessment be based on Commission-specified general aircraft characteristics used to define the beyond-design-basis impact of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at the low altitude representative of a nuclear power plant's low profile. Beyond these general characteristics, the Commission will specify for plant designers in an SGI guidance document more detailed characteristics of the large, commercial aircraft to be used in the required assessment. This approach is discussed in more detail in Section V.B of the Supplementary Information of this document. Because the assessment of an aircraft impact is a beyond-design-basis event, the methods and acceptance criteria used in the assessment should be based on realistic assumptions.

Paragraph (c) would require the relevant applications to include a description and evaluation of the design features, functional capabilities, and strategies (features, capabilities, and strategies) to avoid or mitigate the effects of the aircraft impact that applicants must assess under paragraph (b). Design features, functional capabilities, and strategies could include such things as reinforced concrete walls (in the original design, modified, or added); redundancy and spatial separation of key systems, structures and components; diversity of power supplies; and compartmentalization of interior structures. The NRC expects the required assessment to include an evaluation of such features, capabilities, and strategies and of possible improvements in them. The evaluation of such design features, functional capabilities, and strategies must include core cooling capability, containment integrity, and spent fuel pool integrity.

The description of the features, capabilities, and strategies should be equivalent in detail to descriptions of other design features and functional capabilities addressing beyond-design-basis events or severe accidents which are required to be described in the design certification, design approval, combined license, or manufacturing license FSAR. However, the NRC reiterates that the aircraft impact at which these features, capabilities, and strategies are directed is not a design basis event. Therefore, these features, capabilities, and strategies need not meet the ''special treatment'' requirements [3] applicable to safety-related or important to safety structures, systems, and components.

The paragraph (c) evaluation should be a structured process which would require consideration of the insights gained by the impact assessment performed under proposed 10 CFR 52.500(b) and identify features, capabilities, and strategies which are practicable to include in the facility design. The evaluation should summarize the bases for the applicant's determination that the selected features, capabilities, and strategies incorporated into the facility design avoid or mitigate, to the extent practicable, the effects of the applicable, beyond-design-basis aircraft impact, with reduced reliance on operator actions. As with the impact assessment, the evaluation would address a beyond-design-basis event, and therefore, need not be performed in accordance with the NRC's ''special treatment'' requirements, such as the quality assurance/quality control requirements in Appendix B of 10 CFR part 50. The proposed 10 CFR 52.500(c) evaluation must be included in the FSAR in accordance with 10 CFR 52.47(a)(28), 10 CFR 52.79(a)(47), 10 CFR 52.137(a)(26), or 10 CFR 52.157(f)(32) and should address only those features, capabilities, and strategies selected by the applicant for inclusion in the plant design. In addition to describing and evaluating the incorporated design and other features, the application must describe how such design and other features, avoid or mitigate, to the extent practicable, the effects of the impact with reduced reliance on operator actions. The NRC intends this standard to include those design features, functional capabilities, and strategies which are realistically and reasonably feasible from a technical engineering perspective. For example, the NRC believes that it may be practicable to employ existing technologies currently in use in the commercial nuclear power industry or in another industry. However, it would not be practicable to introduce a design feature that could have adverse safety or security consequences under a different operational or accident scenario.

Inclusion of any SGI in the evaluation submitted in the FSAR as part of a relevant application must be in accordance with applicable requirements in 10 CFR part 73. The NRC will process and address requests for access to this information from the general public in accordance with the NRC's existing procedures.

Section 52.502 Control of Changes to FSAR Information

Paragraph (a) would state that, for standard design certifications which are subject to proposed 10 CFR 52.500, generic changes to the information

[3] See 10 CFR 50.69(b)(1)(I) through (xi) for a list of NRC's ''special treatment'' requirements for light water power reactors, which would not be applicable to the design features, functional capabilities, and strategies selected by the applicant in accordance with proposed 10 CFR 52.500.

required by 10 CFR 52.47(a)(28) to be included in the FSAR are governed by the applicable requirements of 10 CFR 52.63. A design feature, functional capability, or strategy described in a standard design certification may not be changed in the design certification except by notice and comment rulemaking, see 10 CFR 52.63(a)(1) and (2), and such a change must meet one of the criteria in 10 CFR 52.63(a)(1). Any generic change to a design certification rule must be implemented by all referencing combined licenses, as required by 10 CFR 52.63(a)(3).

Paragraph (b) would state that, for combined license applicants or holders which are not subject to proposed 10 CFR 52.500 but reference a standard design certification which is subject to proposed 10 CFR 52.500, proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification are governed by the change control requirements in the applicable design certification rule. A combined license holder referencing a standard design certification subject to proposed 10 CFR 52.500 (i.e., a design certification issued after the effective date of the final 10 CFR 52.500), who seeks to depart from the design features, functional capabilities, or strategies in the referenced design certification, would be governed by a new change control provision that the NRC expects to add to future design certification rules to which proposed 10 CFR 52.500 would apply. The new change control provision would require that, if the licensee changes the information required by proposed 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the licensee shall re-perform that portion of the evaluation required by proposed 10 CFR 52.500(c) addressing the changed feature, capability, or strategy, and describe, in the re-evaluation, how the remaining design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

Paragraph (c) would state that, for combined licenses which are subject to proposed 10 CFR 52.500, if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the FSAR, then the licensee shall re-perform that portion of the evaluation required by 10 CFR 52.500(c) addressing the changed feature, capability, or strategy, and describe, in the re-evaluation, how the modified design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. The NRC believes that, because this rule is being proposed to address a beyond-design-basis event, it is appropriate to apply the same standard that was applied during the original evaluation of design features, functional capabilities, and strategies to any licensee-proposed changes to such features, capabilities, and strategies.

Paragraph (d) would state that, for manufacturing licenses which are subject to 10 CFR 52.500, generic changes to the information required by 10 CFR 52.157(f)(32) to be included in the final safety analysis report are governed by the applicable requirements of 10 CFR 52.171. Paragraph (b)(1) of 10 CFR 52.171 does not allow the holder of a manufacturing license to make changes to the design of the nuclear power reactor authorized to be manufactured without prior Commission approval. Any request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 and 10 CFR 50.92.

Paragraph (e) would state that, for combined license applicants or holders which are not subject to 10 CFR 52.500 but reference a manufactured reactor which is subject to 10 CFR 52.500, proposed departures from the information required by 10 CFR 52.157(f)(32) to be included in the FSAR for the manufacturing license are governed by the applicable requirements in 10 CFR 52.171(b)(2). Paragraph (b)(2) of 10 CFR 52.171 allows an applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart to request a departure from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the departure will comply with the requirements of 10 CFR 52.7, and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

VII. Guidance

The NRC staff is preparing new regulatory guidance on the requirements in proposed 10 CFR 52.500. This guidance is intended to provide an acceptable method by which relevant applicants can perform the assessment of aircraft impacts to meet the requirements of proposed 10 CFR 52.500. The proposed rule would require that the design-specific impact assessment use the Commission-specified general aircraft characteristics. A more detailed description of the aircraft characteristics that should be used in the assessment will be set forth in the regulatory guidance, which will be issued in draft form following publication of this proposed rule. Because the portion of this regulatory guidance describing the detailed aircraft characteristics is likely to contain SGI, that portion of the document will only be made available to those individuals with a need-to-know, and who are otherwise qualified to have access to SGI. A version of the document without the SGI would be made publicly available. Final publication of the regulatory guidance is planned to coincide with publication of the final rule. The Commission reiterates, however, that the commenters on this proposed rule need not await the publication of the draft guidance in order to be able to comment on the proposed rule, in as much as the rule and the supplementary information in this document are sufficient to comment on the substance of the proposed rule.

VIII. Specific Request for Comments

In addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:

1. *Inclusion of impact assessment in application.* The proposed rule does not require that the assessment of aircraft impacts that would be mandated by proposed 10 CFR 52.500(b) be included in the FSAR or otherwise submitted as part of the application for a standard design certification, standard design approval, combined license, or manufacturing license. However, the NRC is proposing that a description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact be included in the FSAR submitted with the relevant application. In addition, the FSAR must contain an evaluation of how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. The NRC is seeking specific comments on the desirability, or lack thereof, of requiring, in the final rule, that applicants include the aircraft impact assessment required by proposed 10 CFR 52.500(b) in the FSAR or another part of the application.

2. *Acceptance criteria.* The acceptance criterion contained in proposed 10 CFR 52.500 by which the

NRC may judge the required assessment and evaluation is the practicability criterion addressed in paragraph (c), that is, that the applicant must describe how the ''design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.'' The NRC is considering adding an additional acceptance criterion to proposed 10 CFR 52.500 for judging the acceptability of the applicant's aircraft impact assessment and evaluation. The NRC is seeking specific comments on the desirability, or lack thereof, of adding an additional acceptance criterion in the final rule beyond the proposed rule's practicability criterion. Such an additional acceptance criterion could read, for example:

> The application must also describe how such design features, functional capabilities, and strategies will provide reasonable assurance that any release of radioactive materials to the environment will not produce public exposures exceeding 10 CFR part 100 guidelines.

3. *Records retention.* The proposed rule relies on the general record retention requirements in 10 CFR 50.71(c) for retention of the assessment required by proposed 10 CFR 52.500 for combined license and manufacturing license applicants subject to proposed 10 CFR 52.500. The NRC intends to similarly rely on a general design certification rule provisions for retention of the assessment required by proposed 10 CFR 52.500 for design certification applicants and combined license and manufacturing license holders that reference a design certification. The NRC is requesting specific comments on whether, in lieu of the specific design certification rule provisions or reliance on 10 CFR 50.71(c), the NRC should adopt as part of the final 10 CFR 52.500 rulemaking a specific provision that would explicitly mandate the retention of the assessment. Such a provision, would be included in an additional paragraph of final 10 CFR 52.500, and would set forth the proposed period of retention. Inclusion of a generic records retention requirement in final 10 CFR 52.500 would preclude the need for the NRC to include a specific records retention provision in each standard design certification subject to final 10 CFR 52.500. The NRC requests comments on whether such a provision should be included in final 10 CFR 52.500, together with specific reasons in support of the commenter's position.

The NRC also requests comments on the appropriate period for retention of the assessment, evaluation, and supporting documentation. The NRC is considering the following alternatives:

- For a standard design certification, combined license, and manufacturing license the period of NRC review prior to NRC final action on the application.
- For a standard design certification and manufacturing license, the duration of the design certification or manufacturing license (i.e., the period during which the design certification or manufactured reactor may be referenced, including any renewal).
- For a standard design certification or manufacturing license, until the licensee of the final referencing license has submitted a certification under 10 CFR 50.82(a), or the final referencing license has been terminated.
- For a combined license, when the licensee has submitted a certification under 10 CFR 50.82(a), or the combined license has been terminated.

4. *Requests to amend existing standard design certifications to address aircraft impacts.* The NRC has concluded that it does not need to apply the proposed rule to the four currently approved standard design certifications, as discussed in detail in Section III of the Supplementary Information of this document. Nonetheless, the original applicant (or successor in interest of any of the four current standard design certifications) may request an amendment to the standard design certification to add design features, functional capabilities, or strategies in accordance with the requirements of 10 CFR 52.500. The NRC encourages such requests for amendment by the applicants for the four current standard design certifications because it will further enhance the already high levels of safety and security provided by these reactor designs. These design modifications may be implemented in different ways as described in Section III of the Supplementary Information of this document. However, under the proposed rule, there are no standards, other than those contained in 10 CFR 52.63(a), for judging changes to the design to address the effects of an aircraft impact. The NRC requests specific comments on whether it should use the same criterion to judge amendments to an existing design certification as it would use on a new design certification applicant under the proposed 10 CFR 52.500.

5. *Applicability to future 10 CFR part 50 license applicants.* The NRC is proposing to apply the requirements in proposed 10 CFR 52.500 to 10 CFR part 52 applicants only, specifically, to applicants for standard design certifications issued after the effective date of the final rule that do not reference a standard design approval; standard design approvals issued after the effective date of the final rule; combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufactured reactor; and manufacturing licenses issued after the effective date of the final rule that do not reference a standard design certification or standard design approval. However, the NRC is considering extending the applicability of the proposed 10 CFR 52.500 requirements to future applicants for construction permits under 10 CFR part 50. The NRC requests specific comments on the desirability, or lack thereof, of extending, to future 10 CFR part 50 construction permit applicants, the applicability of the proposed requirements to perform an aircraft impact assessment and to evaluate the design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the applicable, beyond-design-basis aircraft impact.

6. *Addition of technical requirements to 10 CFR part 52.* In the recent revision to 10 CFR part 52, the NRC took a comprehensive approach to reorganizing 10 CFR part 52 and making conforming changes throughout 10 CFR Chapter I, ''Nuclear Regulatory Commission,'' to reflect the licensing and approval processes in 10 CFR part 52. In that rulemaking, the NRC reviewed the existing regulations in 10 CFR Chapter I to determine if the existing regulations needed to be modified to reflect the licensing and approval processes in 10 CFR part 52. In making conforming changes involving 10 CFR part 50 provisions, the NRC adopted the general principle of keeping the technical requirements in 10 CFR part 50 and maintaining all applicable procedural requirements in 10 CFR part 52. This proposed aircraft impact rule represents a departure from that general principle in that it proposes to include specific technical requirements in 10 CFR part 52 and would create a separate subpart for inclusion of future, similar, technical requirements. The NRC is considering relocating the proposed aircraft impact requirements from 10 CFR 52.500 to a new section in 10 CFR part 50 in order to maintain the general principle it established in the comprehensive 10 CFR part 52 rulemaking. The NRC requests specific comments on the desirability, or lack

thereof, of relocating the proposed aircraft impact requirements from 10 CFR 52.500 to a new section in 10 CFR part 50.

7. *Applicability to design approvals and manufacturing licenses.* The proposed rule would apply to future design approvals or manufacturing licenses. In the recent comprehensive rulemaking on 10 CFR part 52, the NRC strived for a high level of consistency in the requirements for design certifications, design approvals, and manufacturing licenses, given the similarity in the regulatory functions of these three processes. However, it is not clear that there will be future design approval applications, in light of the NRC's recent determination to remove the design approval as a prerequisite for obtaining a design certification. Similarly, there does not appear to be any near-term interest in obtaining a manufacturing license for the manufacture of a nuclear power plant. Therefore, the NRC is considering eliminating the applicability of the proposed 10 CFR 52.500 requirements to future applicants for design approvals and manufacturing licenses. The NRC requests specific comments on the desirability, or lack thereof, of eliminating the applicability of the proposed 10 CFR 52.500 requirements to future applicants for design approvals and manufacturing licenses.

8. *Scope of design evaluated.* The proposed 10 CFR 52.500 would be applicable to all standard design certifications, standard design approvals, and manufacturing licenses issued after the effective date of the final rule and to all combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufacturing license. However, the proposed rule does not address the difference in the scope of the facility design that would be considered by an applicant for a standard design certification, standard design approval, or manufacturing license and the scope of the design that would be considered by a combined license applicant. For a standard design certification, standard design approval, or manufacturing license, the applicant is required to address only a subset of the facility design that a combined license applicant is required to address. In general, a design certification, design approval, or manufacturing license applicant is required to address such items as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems. In contrast, a combined license applicant also must address site-specific design features, such as the ultimate heat sink. Combined license applicants that do not reference a design certification, design approval, or manufactured reactor could address such site-specific design features in their evaluation of design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. However, the proposed rule does not impose any requirements on a combined license applicant that references a design certification, design approval, or manufactured reactor with regard to addressing the potential effects of an aircraft impact on such site-specific portions of the design. The proposed rule could, therefore, introduce an inconsistency in the treatment of combined license applicants that reference a design certification, design approval, or manufactured reactor and combined license applicants that submit a custom design. Therefore, to ensure consistent treatment of all combined license applicants, the NRC is considering an alternative approach in the final rule. One approach that the NRC is considering is to adopt additional requirements for combined license applicants that reference a design certification, design approval, or manufactured reactor that would require such applicants to evaluate that portion of the design excluded from the design certification, design approval, or manufactured reactor for additional design features, functional capabilities, or strategies to avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. Alternatively, the NRC is considering limiting the scope of the evaluation for combined license applicants not referencing a design certification, design approval, or manufactured reactor to that portion of the design that would otherwise be covered in a design certification, design approval, or manufacturing license application, which would include the majority of the facility considered most vulnerable to an aircraft impact. The NRC requests specific comments on the desirability, or lack thereof, of adopting one of these alternative approaches in the final rule.

IX. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland 20852.

NRC's Electronic Reading Room (ERR). The NRC's public electronic reading room is located at *http://www.nrc.gov/reading-rm.html.*

Document	PDR	Web	ERR (ADAMS)
Environmental Assessment	X	X	ML072200262
SRM–SECY–06–0204 (April 24, 2007)	X	X	ML071140119
SECY–06–0204, ''Proposed Rulemaking—Security Assessment Requirements for New Nuclear Power Reactor Designs'' (September 26, 2006).	X	X	ML062300068
NUREG/BR–0184, ''Regulatory Analysis Technical Evaluation Handbook'' (January 1997)	X	.....	ML050190193
NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' Revision 4 (September 2004).	X	X	ML042820192

X. Plain Language

The Presidential memorandum ''Plain Language in Government Writing'' published June 10, 1998 (63 FR 31883) directed that the Government's documents be in clear and accessible language. The NRC requests comments on the proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the NRC as explained in the **ADDRESSES** caption of this notice.

XI. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this

rule is classified as compatibility ''NRC.'' Compatibility is not required for Category ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act or the provisions of 10 CFR. Although an Agreement State may not adopt program elements reserved to the NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws. Category ''NRC'' regulations do not confer regulatory authority on the State.

XII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. The NRC is not aware of any voluntary consensus standard that could be used instead of the proposed Government-unique standards. The NRC will consider using a voluntary consensus standard if an appropriate standard is identified.

XIII. Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A to 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

The determination of this environmental assessment is that there will be no significant offsite impact to the public from this action. However, the general public should note that the NRC is seeking public participation; availability of the environmental assessment is provided in Section IX of this document. Comments on any aspect of the environmental assessment may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The NRC has sent a copy of the environmental assessment and this proposed rule to every State Liaison Officer and requested their comments on the environmental assessment.

XIV. Paperwork Reduction Act Statement

This proposed rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). This rule has been submitted to the Office of Management and Budget for review and approval of the information collection requirements.

Type of submission, new or revision: Revision.

The title of the information collection: 10 CFR part 52; ''Consideration of Aircraft Impacts for New Nuclear Power Reactor Designs,'' proposed rule.

The form number if applicable: N/A.

How often the collection is required: One time; to be submitted with each application for a design certification not referencing a design approval, a design approval, a combined license not referencing a design certification, design approval, or manufactured reactor; or a manufacturing license not referencing a design certification or design approval.

Who will be required or asked to report: Designers and any person eligible under the Atomic Energy Act to apply for a design certification, design approval, combined license, or manufacturing license for a nuclear power plant.

An estimate of the number of annual responses: 1.

The estimated number of annual respondents: 1.

An estimate of the total number of hours needed annually to complete the requirement or request: 3,960 hours.

Abstract: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval to assess the effects of the impact of a large, commercial aircraft on the nuclear power plant. Based on the insights gained from this assessment, the applicant shall include in its application a description and evaluation of design features, functional capabilities, and strategies to avoid or mitigate the effects of the aircraft impact. The evaluation of such design features, functional capabilities, and strategies must include core cooling capability, containment integrity, and spent fuel pool integrity. The impact of a large, commercial aircraft is a beyond-design-basis event, and the NRC's requirements applicable to the design, construction, testing, operation, and maintenance of design features, functional capabilities, and strategies for design basis events would not be applicable to design features, functional capabilities, or strategies selected by the applicant solely to meet the requirements of this rule. The objective of this rule is to require nuclear power plant designers to perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?
2. Is the estimate of burden accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

A copy of the OMB clearance package may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. The OMB clearance package and rule are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 60 days after the signature date of this document.

Send comments on any aspect of these proposed information collections, including suggestions for reducing the burden and on the above issues, by November 2, 2007 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, Nathan Frey, Office of Information and Regulatory Affairs, NEOB–10202 (3150–0151), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *Nathan_J._Frey@omb.eop.gov* or comment by telephone at 202–395–4650.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond

to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XV. Regulatory Analysis

The NRC has prepared a regulatory analysis on this proposed rule and has included it in this **Federal Register** document. The analysis examines the costs and benefits of the alternatives considered by the NRC.

1. Statement of the Problem and Objective

This proposed rule would amend 10 CFR part 52 to require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval to assess the effects of the impact of a large, commercial aircraft on the nuclear power plant. Based on the insights gained from this assessment, the applicant would need to include in its application a description and evaluation of design features, functional capabilities, and strategies to avoid or mitigate the effects of the aircraft impact. The objective of this rule is to require nuclear power plant designers to perform a rigorous assessment of design features that could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

2. Identification of Regulatory Alternatives

The only alternative considered was to conduct a rulemaking to require applicants to perform an aircraft impact assessment on newly designed facilities because the Commission directed the NRC staff in a staff requirements memorandum dated April 24, 2007, to so revise the regulations. However, the NRC staff considers the no-action alternative as the baseline from which to measure the costs and benefits of the proposed rule.

The regulations in 10 CFR part 52 would be amended to require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval, and those applicants with applications pending on the effective date of this rule, (relevant applicants) to perform an aircraft impact assessment of the effects on the designed facility of the impact of a large, commercial aircraft. Based on the insights derived from this assessment, the application would need to include a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of an aircraft impact, addressing core cooling capability, containment integrity, and spent fuel pool integrity. The applicant would need to describe how such design and other features avoid or mitigate, to the extent practicable, the aircraft impact effects with reduced reliance on operator actions. The proposed rule would result in newly designed power reactor facilities being more inherently robust with regard to a potential aircraft impact than if they were designed in the absence of this rule.

3. Analysis of Values and Impacts of Proposed Rulemaking

3.1 Identification of Affected Attributes

The NRC identified the attributes that the proposed regulatory action could affect by using the list of potential attributes provided in Chapter 5 of NUREG/BR–0184, ''Regulatory Analysis Technical Evaluation Handbook,'' issued January 1997. Affected attributes include the following:

Public Health (Accident). The proposed regulatory action would reduce the risk that public health will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Occupational Health (Accident). The proposed regulatory action would reduce the risk that occupational health will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Offsite Property. The proposed regulatory action would reduce the risk that offsite property will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Onsite Property. The proposed regulatory action would reduce the risk that onsite property will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Industry Implementation. The proposed regulatory action would require applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval to assess the effects of the impact of a large, commercial aircraft on the nuclear power plant. Based on the insights gained from this assessment, the applicant would need to include in its application a description and evaluation of design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

NRC Implementation. Under the proposed regulatory action, the NRC would incur costs to develop guidance on performing an aircraft impact assessment, to review the actions taken by the applicant based on the insights gained from the assessment, and to review the assessment if the NRC needs additional information to verify compliance with this rule. The NRC would also incur the costs of completing this rulemaking.

Improvements in Knowledge. The proposed regulatory action would improve knowledge by ensuring that applicants for newly designed nuclear power facilities perform a rigorous assessment of the effects of the impact of a large, commercial aircraft on the designed facility. Based on the insights gained from this assessment, the applicant would need to include in its application a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the aircraft impact, addressing core cooling capability, containment integrity, and spent fuel pool integrity. The applicant would need to describe how such design and other features avoid or mitigate, to the extent practicable, the aircraft impact effects with reduced reliance on operator actions.

Safeguards and Security Considerations. The proposed regulatory action to address the capability of newly designed power reactors relative to a potential aircraft impact is based both on enhanced public health and enhanced safety and common defense and security but is not necessary for adequate protection.

Rather, it would be to enhance the facility's inherent robustness.

3.2 Methodology

This section describes the process used to evaluate benefits and costs associated with the proposed regulatory action. The benefits (values) come from any desirable changes in the affected attributes which are solely qualitative for the proposed regulatory action; the costs (impacts or burdens) come from any undesirable changes in the affected attributes (e.g., monetary costs, increased exposures). As described in Section 3.1 of this regulatory analysis, the attributes expected to be affected include public health (accident), occupational health (accident), offsite property, onsite property, industry implementation, NRC implementation, improvements in knowledge, and safeguards and security considerations.

Ideally, a cost-benefit analysis quantifies the overall costs and benefits of the regulatory options relative to each of these attributes. This analysis relies on a qualitative evaluation of several of the affected attributes (public health, occupational health, offsite property, onsite property, improvements in knowledge, and safeguards and security considerations) because of the difficulty in quantifying the impact of the current rulemaking. The proposed regulatory action would affect these attributes through the associated reduction in the risks of aircraft impact damage to core cooling, containment integrity, spent fuel pool integrity, and other structures, systems, and components.

The remaining attributes (industry implementation and NRC implementation) are evaluated quantitatively. Quantitative analysis requires a characterization of the universe, including factors such as the number of applicants and the scope of the aircraft impact assessment being performed. The NRC analyzed incremental costs and benefits of the proposed regulatory action relative to the baseline (i.e., the no-action alternative described in Section 2 of this regulatory analysis).

Under OMB guidance and NUREG/BR–0058, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' Revision 4, issued September 2004, the results of the cost analysis are presented as discounted flows of funds using 3- and 7-percent real discount rates.

3.3 Data

The NRC derived information on the estimated number of applications submitted for a new standard design certification that does not reference a standard design approval from industry announcements. Given the uncertainty in the number of (1) new standard design approvals; (2) combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and (3) new manufacturing licenses that do not reference a standard design certification or standard design approval, the NRC staff applied its professional judgment in this analysis.

3.4 Assumptions

The proposed regulatory action would apply only to applications for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval, and those applicants with applications pending on the effective date of this rule. It would not apply to (1) a standard design certification or combined license issued before the effective date of the final rule, (2) the design certification rule, (3) Appendices A through D to 10 CFR part 52, or (4) a nuclear power reactor with a current operating license.

3.5 Analysis

For Sections 3.5.1 through 3.5.4, the cost-benefit analysis of the proposed regulatory action is based on the assumed number of applicants in each category. In each case, industry would incur both implementation and operation costs. Furthermore, because all of the benefits are measured qualitatively in this analysis, only costs are included in these subsections.

This analysis uses $105 per hour for both NRC and industry staff rates. The annual results are derived as present values using the 3- and 7-percent discount rates as described in Appendix B to NUREG/BR–0184.

3.5.1 Standard Design Certification Applications Not Referencing a Standard Design Approval

In implementing the proposed regulatory action, standard design certification applicants would incur one-time costs to develop an SGI program, purchase an appropriate SGI storage container, perform the aircraft impact assessment, and incorporate the design features, functional capabilities, or strategies into the design based on the insights gained from the assessment. The NRC estimates that each applicant would spend 120 hours to develop the SGI program. Using the assumed staff rate of $105 per hour, the one-time cost of developing the SGI program would be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it would cost $2,500 to purchase an appropriate SGI storage container. Finally, the NRC estimates it would take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the proposed regulatory action is estimated to be $420,000.

For the standard design certification process, this analysis assumes that three applications would be affected by the proposed rule in the first year following promulgation of this rule, and thereafter, one application would be submitted every 4 years at years 4, 8, 12, 16, and 20. Table 1 shows the discounted flow of funds (using 3- and 7-percent discount rates) of the total industry implementation costs for standard design certification applications over a 20-year period.

With respect to industry operational costs, there would be recordkeeping costs for retention of the assessment, evaluation, and supporting documentation. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). However, for this analysis, it is assumed that it takes 4 years for the Commission to adopt the application as a final standard design certification rule, after which the records are retained by the applicant for 15 years as required by the standard design certification rule. Table 2 shows the discounted flow of funds of the recordkeeping costs (using 3- and 7-percent discount rates) for applications submitted over a 20-year period, using the schedule discussed previously.

TABLE 1.—SUMMARY OF INDUSTRY IMPLEMENTATION COSTS FOR STANDARD DESIGN CERTIFICATION APPLICANTS

Year	Number of standard design certification applications	Operating costs	
		Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
1	3	1,200	1,200
4	1	320	370
8	1	240	330
12	1	190	290
16	1	140	260
20	1	110	230
Total	8	2,200	2,680

TABLE 2.—SUMMARY OF INDUSTRY OPERATING COSTS FOR STANDARD DESIGN

Year*	Number of standard design certification applications	Implementation costs	
		Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
1	3	6.6	10
4	1	1.7	3
8	1	1.3	2.6
12	1	1.0	2.3
16	1	0.74	2.1
20	1	0.53	1.8
Total	8	11.87	21.8

* Analysis assumes that it takes 4 years for the Commission to adopt the application as a final standard design certification rule, after which the records are retained by the applicant for 15 years.

3.5.2 Standard Design Approval Applications

Under the proposed regulatory action, an applicant for a standard design approval would need to comply with the requirements for an aircraft impact assessment in 10 CFR 52.500. However, the NRC staff concludes that it is unlikely that a request for a standard design would be submitted to the NRC for approval during the next 20 years. Therefore, no cost-benefit analysis was done for a standard design approval.

3.5.3 Combined License Applications Not Referencing a Standard Design Certification, Standard Design Approval, or Manufactured Reactor

Although the NRC concludes that there is a low probability of a combined license applicant not referencing a standard design certification, standard design approval, or manufactured reactor, this analysis assumes that one application would be submitted to the NRC in year 10 following promulgation of the rule.

In implementing the proposed regulatory action, combined license applicants would incur one-time costs to develop an SGI program, purchase an appropriate SGI storage container, perform the aircraft impact assessment, and incorporate the design features, functional capabilities, and strategies into the design based on the insights gained from the assessment. The NRC estimates that each applicant would spend 120 hours to develop the SGI program. Assuming a staff rate of $105 per hour, the one-time cost of developing the SGI program would be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it would cost $2,500 to purchase an appropriate SGI storage container. Finally, the NRC estimates it would take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the proposed regulatory action is estimated to be $420,000. For one application submitted in year 10, following promulgation of the rule, the discounted flow of funds of the implementation costs are $310,000 and $210,000 using 3- and 7-percent discount rates, respectively.

With respect to industry operational costs, there would be recordkeeping costs for retention of the assessment, evaluation, and supporting documentation. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). For this analysis, it is assumed that it takes 4 years for the Commission to approve the application, after which the records are retained by the licensee for 60 years, at which time the Commission terminates the facility license. The discounted flow of funds of the recordkeeping costs for one application are $5,400 and $1,700 using 3- and 7-percent discount rates, respectively.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($420,000) which when discounted is $310,000 (using a 3-percent discount rate) and $210,000 (using a 7-percent discount rate). The operating costs are $5,400 and $1,700 using the 3- and 7-percent discount rates as shown above. Therefore, the total discounted industry costs are $315,400 and $211,700 using 3- and 7-percent discount rates, respectively.

3.5.4 Manufacturing License Applications Not Referencing a Standard Design Certification or Standard Design Approval

Although the NRC concludes that there is a low probability of a manufacturing license application not referencing a standard design certification or standard design approval, this analysis assumes that one application would be submitted to the NRC in year 10 following promulgation of the rule.

In implementing the proposed regulatory action, manufacturing license applicants would incur one-time costs to develop an SGI program, purchase an appropriate SGI storage container, perform the aircraft impact assessment, and incorporate the design features, functional capabilities, and strategies into the design based on the insights gained from the assessment. The NRC estimates that each applicant would spend 120 hours to develop the SGI program. Assuming a staff rate of $105 per hour, the one-time cost of developing the SGI program would be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it would cost $2,500 to purchase an appropriate SGI storage container. Finally, the NRC estimates it would take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the proposed regulatory action is estimated to be $420,000. For one application submitted in year 10, following promulgation of the rule, the discounted flow of funds of the implementation costs are $310,000 and $210,000 using 3- and 7-percent discount rates, respectively.

With respect to industry operational costs, there would be recordkeeping costs for retention of the assessment, evaluation, and supporting documentation. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). For this analysis, it is assumed that it takes 4 years for the Commission to approve the application, after which the records are retained by the licensee for 15 years, at which time the Commission terminates the license. The discounted flow of funds of the recordkeeping costs for one application are $3,300 and $2,200 using 3- and 7-percent discount rates, respectively.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($420,000) which when discounted is $310,000 (using a 3-percent discount rate) and $210,000 (using a 7-percent discount rate). The operating costs are $3,300 and $2,200 using the 3- and 7-percent discount rates as shown above. Therefore, the total discounted industry costs are $313,300 and $212,200 using 3- and 7-percent discount rates, respectively.

3.5.5 NRC Implementation

Cost to Review the Applicant's Results. The NRC would incur costs to review the applicant's actions in response to the requirements of the proposed rule. The one-time cost to (1) review the actions taken by each applicant for a new standard design certification that does not reference a standard design approval; a combined license that does not reference a standard design certification, standard design approval, or manufactured reactor; and a new manufacturing license that does not reference a standard design certification or standard design approval, and (2) review the assessment if the NRC requires additional information to verify compliance with this rule is estimated to be $17,000 (1 staff-month × 4 weeks/month × 40 hours × $105/hour).

As an example, the total NRC cost for the first year of implementing the proposed rule is the present value of the costs of reviewing three applications for standard design certifications and reviewing the assessments at $51,000 for all three applications. This corresponds to a net present value of $50,000 (using a 3-percent discount rate) and $48,000 (using a 7-percent discount rate).

Cost to Develop Guidance. The NRC would incur 0.5 full-time equivalent (FTE) of staff time to develop guidance to support implementation of the proposed regulatory action. The cost for this action is estimated to be $76,000 (0.5 FTE at $152,000/FTE).

Cost to Provide Training. The NRC would incur costs to develop a training course to instruct NRC staff on the proposed changes to 10 CFR part 52. Assuming that it would take 20 staff-hours to develop the training course, the cost is estimated to be $2,100 (20 staff-hours x $105/hour). The cost to train 20 people for 2 hours, plus the instructor's time of 2 hours is estimated to be $4,400 (21 people × 2 hours × $105/hour). The total cost to the NRC to provide training for the proposed regulatory action is estimated to be $7,000.

Cost of the Regulatory Action. The NRC would incur 2.2 FTE of staff time and $150,000 in contractor support to complete this rulemaking after publishing the proposed rule. The cost of this action is estimated to be $484,000 (2.2 FTE at $152,000/FTE + $150,000).

Table 3 shows the discounted flow of funds of the total NRC implementation costs for the proposed regulatory action over 20 years.

TABLE 3.—SUMMARY OF NRC IMPLEMENTATION COSTS

Year	Application		Implementation costs	
	Number reviewed	Category*	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
1	3	DC	48	50
4	1	DC	13	15
8	1	DC	10	13
10	1	COL	9	13
10	1	ML	9	13
12	1	DC	8	12
16	1	DC	6	11
20	1	DC	4	9
Cost to Review All Applications			107	136
Cost to Develop Guidance			76	76
Cost to Provide Training			7	7

TABLE 3.—SUMMARY OF NRC IMPLEMENTATION COSTS—Continued

Year	Application		Implementation costs	
	Number reviewed	Category*	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
Cost of the Regulatory			484	484
Total (rounded)			670	700

* DC = design certification. COL = combined license application. ML = manufacturing license application.

3.5.6 Impacts to Other Stakeholders

The NRC staff has not identified any impacts to other stakeholders or the Agreement States. However, the proposed action would lead to an increase in public confidence because nuclear power plant designers would perform a rigorous assessment of design and other features that could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

3.5.7 Qualitative Benefits of the Proposed Action

The benefits of the proposed rule can be evaluated only on a qualitative basis. The analysis estimates that the proposed action would result in qualitative benefits in public health (accidental), occupational health (accidental), offsite property, onsite property, improvements in knowledge, and safeguards and security considerations.

Specifically, the benefits would include improvements in knowledge because applicants for new power reactor designs would need to evaluate the design features, functional capabilities, and strategies to avoid or mitigate the effects of the aircraft impact, addressing core cooling capability, containment integrity, and spent fuel pool integrity. If the effects are not assessed by facility designers, it would be more difficult to enhance the inherent robustness of the facility to avoid or mitigate the effects of the aircraft impact. Furthermore, designers of new facilities would need to describe how the design features, functional capabilities, and strategies adopted based on the insights of the assessment avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions. In this manner, this proposed rule would result in newly designed nuclear power reactor facilities being more inherently robust with regard to a potential aircraft impact than if they were designed in the absence of this rule.

In addition, because the impact of a large, commercial aircraft is a beyond-design-basis event, this rule would provide an enhanced level of protection beyond that which is provided by the existing adequate protection requirements, which all operating facilities are required to meet, and the proposed adequate protection requirements that facilities will be required to meet if they are made final (see Section I of this document).

4. Presentation of Results

Table 4 summarizes the results of the NRC's cost-benefit analysis for industry.

TABLE 4.—SUMMARY OF TOTAL INDUSTRY COSTS FOR PROPOSED ACTION

Category of application*	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
Implementation Costs		
DC	2,200	2,680
COL	210	310
ML	210	310
Operating Costs		
DC	11.87	21.8
COL	1.7	5.4
ML	2.2	3.3
Total (rounded)	2,600	3,300

* DC = design certification. COL = combined license application. ML = manufacturing license application.

Table 5 shows the total costs of the proposed regulatory action.

TABLE 5.—SUMMARY OF INDUSTRY AND NRC COSTS

	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
Industry	2,600	3,300
NRC	670	700

TABLE 5.—SUMMARY OF INDUSTRY AND NRC COSTS—Continued

	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
Total (rounded)	3,300	4,000

5. Decision Rationale

The total present-valued costs of this proposed action are $4.0 million and $3.3 million for 3- and 7-percent discount rates, respectively. The benefits are expressed only qualitatively and are discussed in Section 3.5.7 of this regulatory analysis. As noted previously, the key benefit is improvements in knowledge because applicants for new standard design certifications that do not reference a standard design approval; new standard design approvals; combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor; and new manufacturing licenses that do not reference a standard design certification or standard design approval would need to assess the effects of the impact of a large, commercial aircraft on the nuclear power plant. Based on the insights gained from this assessment, nuclear power plant designers could provide additional inherent protection to avoid or mitigate, to the extent practicable, the effects of an aircraft impact, with reduced reliance on operator actions.

6. Implementation Schedule

After publication of the proposed rule in the **Federal Register** and consideration and resolution of the public comments, the NRC would publish a final rule which would become effective 30 days after publication.

The Commission requests public comments on the draft regulatory analysis. Interested persons may submit comments on the draft analysis to the NRC as indicated under the **ADDRESSES** heading.

XVI. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVII. Backfit Analysis

The NRC has determined that neither the backfit rule, 10 CFR 50.109, nor any of the finality provisions in 10 CFR part 52, apply to this proposed rule and, therefore, a backfit analysis is not required, because the proposed rule does not contain any provisions that would impose backfitting as defined in the backfit rule, nor does it contain provisions that would require a finding of compliance or adequate protection under the finality provisions in 10 CFR part 52.

The proposed rule applies only to applicants for a standard design certification not referencing a standard design approval; a standard design approval; a combined license not referencing a standard design certification, standard design approval, manufacture reactor; or a manufacturing license not referencing a standard design certification or standard design approval that are pending at the time of or submitted after the effective date of the final rule. There are no existing combined licenses or manufacturing licenses protected by the backfitting restrictions in 10 CFR 50.109 or the finality provisions in 10 CFR part 52. To the extent that the proposed rule would revise the requirements for future design certifications, combined licenses, or manufacturing licenses the requirements would not constitute backfitting or otherwise be inconsistent with the finality provisions in 10 CFR part 52, because the requirements are prospective in nature and effect. Neither the backfit rule nor the finality provisions in 10 CFR part 52 were intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 52.

List of Subjects in 10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR part 52.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

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

Authority: Secs. 103, 104, 161, 182, 183, 185, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2235, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

2. In § 52.11, paragraph (b) is revised to read as follows:

§ 52.11 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 52.7, 52.15, 52.16, 52.17, 52.29, 52.35, 52.39, 52.45, 52.46, 52.47, 52.57, 52.63, 52.75, 52.77, 52.79, 52.80, 52.93, 52.99, 52.110, 52.135, 52.136, 52.137, 52.155, 52.156, 52.157, 52.158, 52.171, 52.177, 52.500, and appendices A, B, C, D, and N of part 52.

3. In § 52.47, paragraph (a)(28) is added to read as follows:

§ 52.47 Contents of applications; technical information.

* * * * *

(a) * * *

(28) For applications for standard design certifications which are subject to 10 CFR 52.500, the information required by 10 CFR 52.500.

* * * * *

4. In § 52.79, paragraph (a)(47) is added to read as follows:

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) * * *

(47) For applications for combined licenses which are subject to 10 CFR 52.500, the information required by 10 CFR 52.500.

* * * * *

5. In § 52.137, paragraph (a)(26) is added to read as follows:

§ 52.137 Contents of applications; technical information.

* * * * *

(a) * * *

(26) For applications for standard design approvals which are subject to 10 CFR 52.500, the information required by 10 CFR 52.500.

* * * * *

6. In § 52.157, paragraph (f)(32) is added to read as follows:

§ 52.157 Contents of applications; technical information in final safety analysis report.

* * * * *

(f) * * *

(32) For applications for manufacturing licenses which are subject to 10 CFR 52.500, the information required by 10 CFR 52.500.

7. In § 52.303, paragraph (b) is revised to read as follows:

§ 52.303 Criminal penalties.

* * * * *

(b) The regulations in part 52 that are not issued under Sections 161b, 161i, or 161o for the purposes of Section 223 are as follows: §§ 52.0, 52.1, 52.2, 52.3, 52.7, 52.8, 52.9, 52.10, 52.11, 52.12, 52.13, 52.15, 52.16, 52.17, 52.18, 52.21, 52.23, 52.24, 52.27, 52.28, 52.29, 52.31, 52.33, 52.39, 52.41, 52.43, 52.45, 52.46, 52.47, 52.48, 52.51, 52.53, 52.54, 52.55, 52.57, 52.59, 52.61, 52.63, 52.71, 52.73, 52.75, 52.77, 52.79, 52.80, 52.81, 52.83, 52.85, 52.87, 52.93, 52.97, 52.98, 52.103, 52.104, 52.105, 52.107, 52.109, 52.131, 52.133, 52.135, 52.136, 52.137, 52.139, 52.141, 52.143, 52.145, 52.147, 52.151, 52.153, 52.155, 52.156, 52.157, 52.158, 52.159, 52.161, 52.163, 52.165, 52.167, 52.171, 52.173, 52.175, 52.177, 52.179, 52.181, 52.301, 52.303, 52.500, and 52.502.

8. A new subpart K—Additional Requirements and § 52.500 are added to read as follows:

Subpart K—Additional Requirements

Sec.
52.500 Aircraft impact assessment.
52.502 Control of changes to FSAR information.

Subpart K—Additional Requirements

§ 52.500 Aircraft impact assessment.

(a) The requirements of this section apply to all standard design certifications issued after [EFFECTIVE DATE OF FINAL RULE] that do not reference a standard design approval; standard design approvals issued after [EFFECTIVE DATE OF FINAL RULE]; combined licenses issued after [EFFECTIVE DATE OF FINAL RULE] that do not reference a standard design certification, standard design approval, or manufactured reactor; and manufacturing licenses issued after [EFFECTIVE DATE OF FINAL RULE] that do not reference a standard design certification or standard design approval.

(b) Each applicant for a standard design certification not referencing a standard design approval; a standard design approval; a combined license not referencing a standard design certification, standard design approval, manufacture reactor; or a manufacturing license not referencing a standard design certification or standard design approval shall perform a design-specific assessment of the effects on the designed facility of the impact of a large, commercial aircraft. Such assessment must be based on the Commission's specified aircraft characteristics used to define the beyond-design-basis impact of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at the low altitude representative of a nuclear power plant's low profile.

(c) Based upon the insights gained from the aircraft impact assessment as stated in paragraph (b) of this section, the application must include a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact. The evaluation of such design features, functional capabilities, and strategies must include core cooling capability, containment integrity, and spent fuel pool integrity. The application must describe how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

§ 52.502 Control of changes to FSAR information.

(a) For standard design certifications which are subject to 10 CFR 52.500, generic changes to the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report are governed by the applicable requirements of 10 CFR 52.63.

(b) For combined license applicants or holders which are not subject to 10 CFR 52.500 but reference a standard design certification which is subject to 10 CFR 52.500, proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report for the standard design certification are governed by the change control requirements in the applicable design certification rule.

(c) For combined licenses which are subject to 10 CFR 52.500, if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the final safety analysis report, then the licensee shall re-perform that portion of the evaluation required by 10 CFR 52.500(c) addressing the changed feature, capability, or strategy, and describe, in the re-evaluation, how the modified design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.

(d) For manufacturing licenses which are subject to 10 CFR 52.500, generic changes to the information required by 10 CFR 52.157(f)(32) to be included in the final safety analysis report are governed by the applicable requirements of 10 CFR 52.171.

(e) For combined license applicants or holders which are not subject to 10 CFR 52.500 but reference a manufactured reactor which is subject to 10 CFR 52.500, proposed departures from the information required by 10 CFR 52.157(f)(32) to be included in the final safety analysis report for the manufacturing license are governed by the applicable requirements in 10 CFR 52.171(b)(2).

Dated at Rockville, Maryland, this 27th day of September 2007.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 07–4886 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–29354]

RIN 1625–AA87

Security Zone; Nawiliwili Harbor, Kauai, HI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to create a security zone in the waters of Nawiliwili Harbor, Kaui, and on the land of the jetty south of Nawiliwili

Park, including the jetty access road commonly known as Jetty Road. This zone is intended to enable the Coast Guard and its law enforcement partners to better protect people, vessels, and facilities in and around Nawiliwili Harbor in the face of non-compliant obstructers who have impeded, and threaten to continue impeding, the safe passage of the Hawaii Superferry in Nawiliwili Harbor. This rule would complement, but not replace or supersede, existing regulations that establish a moving 100-yard security zone around large passenger vessels like the Hawaii Superferry.

DATES: Comments and related material must reach the Coast Guard on or before October 24, 2007.

ADDRESSES: You may submit comments and related material, identified by Coast Guard docket number USCG–2007–29354, to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Quincy Adams, U.S. Coast Guard Sector Honolulu at (808) 522–8264.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include the docket number for this rulemaking (USCG–2007–29354), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered.

All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov.*

Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. If, as we anticipate, we make this temporary final rule effective less than 30 days after publication in the **Federal Register**, we will explain in that publication, as required by 5 U.S.C. 553(d)(3), our good cause for doing so.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to Lieutenant (Junior Grade) Quincy Adams at U.S. Coast Guard Sector Honolulu, Sand Island Parkway, Honolulu, Hawaii 96819–4398, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Hawaii Superferry (HSF) is a 349-foot large passenger vessel documented by the U.S. Coast Guard with an endorsement for coastwise trade, and certificated for large passenger vessel service in the United States. The HSF, operating Hawaii's first inter-island vehicle-passenger service, is intended to provide service among the islands of Oahu, Maui and Kauai.

The HSF enters Kauai at Nawiliwili Harbor, a federally maintained waterway. During the HSF's inaugural commercial trip to Kauai on August 26, 2007, nearly 40 swimmers and obstructers on kayaks and surfboards blocked Nawiliwili Harbor's navigable channel entrance to prevent the lawful entry of the HSF into Kauai. Many of the obstructers entered the water from the jetty that is south of Nawiliwili Park, which is adjacent to the Matson shipping facility in Nawiliwili Harbor. Other demonstrators ashore on the jetty threw rocks and bottles at Coast Guard personnel who were conveying detained obstructers to shore. Coast Guard Station Kauai resources were eventually able to clear the channel for the HSF's arrival while also ensuring the personal safety of the waterborne obstructers. The HSF was able to dock on August 26, 2007.

On the following day, August 27, 2007, approximately 70 persons entered the water again to block the channel entrance, thereby preventing the HSF from docking in Nawiliwili Harbor. Due to the difficulty of maneuvering in the small area of Nawiliwili, and in the interest of ensuring the safety of the protesters, the HSF's master chose not to enter the channel until the Coast Guard cleared the channel of obstructers. However, because the vessel remained outside the harbor, and because the obstructers did not approach within 100 yards of the vessel, the existing security zone for large passenger vessels (33 CFR 165.1410) did not provide the Coast Guard with the authority to control obstructer entry into Nawiliwili Harbor or clear the channel of obstructers before the HSF commenced its transit into the harbor.

After waiting 3 hours, and with nearly 20 obstructers still in the water actively blocking the HSF, the HSF was forced to return to Oahu without mooring in Kauai. This decision was made by the Superferry's master, in consultation with company officials.

As a result of the events of August 26 through 27, 2007, the HSF voluntarily suspended operations between Oahu and Kauai on August 28, 2007. HSF's goal, however, was and is to resume operations between Oahu and Kauai as soon as possible. As of September 26, 2007, there are no, nor have there been, state court injunctions or other legal prohibitions on the HSF resuming operations between Oahu and Kauai.

Responding to these unexpected events, the Coast Guard's Fourteenth District Commander established a temporary fixed security zone in Nawiliwili Harbor. That emergency rulemaking established a temporary security zone in order to prevent persons and vessels from endangering themselves and HSF passengers and crew by attempting to impede the vessel's passage after it commences the difficult transit into the harbor. That rule, which became effective September 1, 2007, was issued by the Coast Guard's Fourteenth District Commander on August 31, 2007 (72 FR 50877, September 5, 2007).

Several events have occurred since August 31, 2007, that have precluded

the HSF from resuming commercial service between Oahu and Kauai, notwithstanding the existence of an effective temporary rule that permits activation of a fixed security zone to clear Nawiliwili Harbor for its arrivals and departures. The HSF's parent company is involved in litigation in Maui that has resulted in a temporary restraining order prohibiting HSF commercial service between Oahu and Maui. That litigation is still unresolved. Also, several groups have initiated a lawsuit in Kauai to enjoin the Superferry from operating between Oahu and Kauai; that lawsuit is still ongoing as well. The HSF was scheduled to resume commercial service between Oahu and Kauai on September 26, 2006, but voluntarily decided not to resume service on that date due to considerations of safety and the public interest. As before, however, the HSF could resume operations to Kauai at any time, since there are no federal or state legal impediments to such operations.

The purpose of this proposed temporary rule is several-fold. First, by designating significant portions of the waters of Nawiliwili Harbor as a security zone, activated for enforcement 60 minutes before the HSF's arrival into the zone through 10 minutes after its departure from the zone, the temporary rule would provide the Coast Guard and its law enforcement partners the authority to prevent persons and vessels from endangering themselves and the HSF passengers and crew by attempting to impede the vessel's passage after it commences the difficult transit into the harbor. Extending the security zone to Nawiliwili Jetty and its access road would provide law enforcement personnel with the authority necessary to control access into the water so the HSF may enter and depart the harbor safely and unimpeded by obstructers. Furthermore, closing off the jetty and its access road would prevent violent protesters from continuing to impede law enforcement operations and endanger law enforcement personnel by throwing rocks, bottles, and other dangerous objects. Finally, the security zone would make land adjacent to the harbor available for law enforcement purposes, and in fact would be used by the Patrol Commander (the person in overall command of all waterborne law enforcement assets present in Nawiliwili Harbor enforcing the security zone) as the command post during any Superferry protests.

This NPRM proposes a rule that would be the successor to the original temporary final rule that is set to expire on October 31, 2007. There is continued uncertainty regarding when, if ever, the HSF might resume service into Nawiliwili Harbor. The resolve of obstructers to continue attempting to impede the Superferry's passage into and through Nawiliwili Harbor, should it indeed resume service there, has been vocally manifested. Therefore, the Coast Guard has determined there is a need to ensure that law enforcement personnel will still have a fixed security zone available to them beyond the expiration date of the original temporary final rule to facilitate the safe arrival of the HSF, should it again return to Nawiliwili Harbor. This is the reason for this proposed rulemaking.

The proposed rule would be in effect from November 1, 2007, until December 31, 2007. It is reasonably anticipated that the need for a fixed security zone of this nature will no longer be needed on Kauai after December 31, 2007, though the Coast Guard may, if necessary, draft further rules as necessary and appropriate to ensure safe operation of the HSF in and around Nawiliwili Harbor.

Discussion of Proposed Rule

This proposed rule would create a security zone in most of the waters of Nawiliwili Harbor, and on Nawiliwili Jetty in Nawiliwili Harbor. The security zone would be activated for enforcement 60 minutes before the Hawaii Superferry's arrival into the zone, and would remain activated for 10 minutes after the Hawaii Superferry's departure from the zone. The activation of the zone for enforcement would be announced by marine information broadcast and by a red flag, illuminated after sunset, displayed from Pier One and the Harbor Facility Entrance on Jetty Road. During its period of activation and enforcement, entry into the land and water areas of the security zone would be prohibited without the permission of the Captain of the Port, Honolulu, or his or her designated representative.

In preparing this proposed temporary rulemaking, the Coast Guard made sure to consider the rights of lawful protestors. To that end, the Coast Guard excluded from the security zone two regions which create a sizeable area of water in which demonstrators may lawfully assemble and convey their message in a safe manner to their intended audience. These areas include the waters west of a line running from the southeastern-most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. These areas of the harbor not included in the security zone are completely accessible to anyone who desires to enter the water, and are fully visible to observers ashore, at the HSF mooring facility, aboard the HSF when transiting the harbor, and from the air.

The Coast Guard also took into account the lawful users of Nawiliwili Harbor in its creation of this rule. As previously noted, the rule will only be activated 1 hour before the HSF's arrival into port, and will be deactivated 10 minutes after the HSF departs the port. The harbor is fully available to all users during the period when the zone is not activated. Furthermore, the rule affords persons desirous of using the harbor, even during a period when the zone is activated, with the opportunity to request permission of the Captain of the Port to do so.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This expectation is based on the short activation and enforcement duration of the security zone created by this temporary rule, as well as the limited geographic area affected by the security zone.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While we are aware that the affected area has small entities, including canoe and boating clubs and small commercial businesses that provide recreational services, we anticipate that there will be little or no impact to these small entities due to the narrowly tailored scope of the temporary rule, and to the fact that such

entities can request permission from the Captain of the Port to enter the security zone when it is activated.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) Quincy Adams, U.S. Coast Guard Sector Honolulu, (808) 522–8264. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children. While some obstructers used small children in obstruction tactics, both on land and on shore, during the August 26 and 27 Superferry arrivals into Kauai, and while online forums and other sources indicate that organizers are actively recruiting adolescents and small children with the intent of putting them into harm's way as obstructers of the Superferry's passage should it ever again approach and enter Nawiliwili Harbor, any heightened harm faced by children as a result of these tactics has no relation to the creation of this rule. Instead, those heightened risks are entirely the product of persons who recruit and employ adolescents and children to put themselves at risk of death or serious physical injury by attempting to physically obstruct the passage of a large passenger vessel in a small harbor.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES.** We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a new temporary § 165.T14–161 to read as follows:

§ 165.T14–161 Security Zone; Nawiliwili Harbor, Kauai, HI.

(a) *Location.* The following land areas, and water areas from the surface of the water to the ocean floor, are a security zone that is activated as described in paragraph (c) of this section, and enforced subject to the provisions of paragraph (d) of this section: All waters of Nawiliwili Harbor, Kauai, shoreward of the Nawiliwili Harbor COLREGS DEMARCATION LINE (See 33 CFR 80.1450), excluding the waters west of a line running from the southeastern most point of the breakwater of Nawiliwili Small Boat Harbor due south to the south shore of the harbor, and excluding the waters from Kalapaki Beach south to a line extending from the western most point of Kukii Point due west to the Harbor Jetty. The land of the jetty south of Nawiliwili Park including the jetty access road, commonly known as Jetty Road, is included within the security zone.

(b) *Effective period.* This section is effective from November 1, 2007, through December 31, 2007. It will be activated for enforcement pursuant to paragraph (c) of this section.

(c) *Enforcement periods.* The zone described in paragraph (a) of this section will be activated for enforcement 60 minutes before the Hawaii Superferry's arrival into the zone and remain activated for 10 minutes after the Hawaii Superferry's departure from the zone. The activation of the zone for enforcement will be announced by marine information broadcast, and by a red flag, illuminated between sunset and sunrise, displayed from Pier One and the Harbor Facility Entrance on Jetty Road.

(d) *Regulations.* (1) Under 33 CFR 165.33, entry by persons or vessels into the security zone created by this section and activated as described in paragraph (c) of this section is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his or her designated representatives. Operation of any type of vessel, including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, within the security zone is prohibited. If a vessel is found to be operating within the security zone without permission of the Captain of the Port, Honolulu, and refuses to leave, the vessel is subject to seizure and forfeiture.

(2) All persons and vessels permitted in the security zone must comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard and other persons permitted by law to enforce this regulation. Upon being hailed by an authorized vessel or law enforcement officer using siren, radio, flashing light, loudhailer, voice command, or other means, the operator of a vessel must proceed as directed.

(3) If authorized passage through the security zone, a vessel must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or his or her designated representatives. While underway with permission of the Captain of the Port or his or her designated representatives, no person or vessel is allowed within 100 yards of a the Hawaii Super Ferry when it is underway, moored, position-keeping, or at anchor, unless authorized by the Captain of the Port or his or her designated representatives.

(4) When conditions permit, the Captain of the Port, or his or her designated representatives, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within the security zone in order to ensure navigational safety.

(e) *Enforcement officials.* Any Coast Guard commissioned, warrant, or petty officer, and any other person permitted by law, may enforce the regulations in this section.

Dated: September 26, 2007.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fourteenth Coast Guard District.

[FR Doc. 07–4893 Filed 9–28–07; 3:29 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2007–0601–200730; FRL–8477–2]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina; Redesignation of the Raleigh-Durham-Chapel Hill 8-Hour Ozone Nonattainment Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 7, 2007, the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NCDENR), submitted a request to redesignate the Raleigh-Durham-Chapel Hill 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS); and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Raleigh-Durham-Chapel Hill Area. The Raleigh-Durham-Chapel Hill 8-hour ozone nonattainment area (the ''Triangle Area'') is comprised of Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entireties, and Baldwin, Center, New Hope and Williams Townships in Chatham County. In this action, EPA is proposing to approve the 8-hour ozone redesignation request for the Triangle Area. Additionally, EPA is proposing to approve the 8-hour ozone maintenance plan for the Triangle Area, including the motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO_X) and an insignificance determination for volatile organic compounds (VOC) emissions from motor vehicles. This proposed approval of North Carolina's redesignation request is based on EPA's determination that North Carolina has demonstrated that the Triangle Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Triangle 8-hour ozone nonattainment area has attained the 8-hour ozone standard. Further, in this action, EPA is also describing the status of its transportation conformity adequacy determination for the new 2008 and 2017 MVEBs for NO_X, and for the insignificance determination for VOC contribution from motor vehicle emissions to the 8-hour ozone pollution, that are contained in the 8-hour ozone maintenance plan for the Triangle Area.

DATES: Comments must be received on or before November 2, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0601, by one of the following methods:

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

(b) *E-mail: ward.nacosta@epa.gov.*

(c) *Fax:* (404) 562–9019.

(d) *Mail:* EPA–R04–OAR–2007–0601, 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.

(e) *Hand Delivery or Courier:* Nacosta C. Ward, 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–2007–0601. 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: Ms. Nacosta C. Ward of the Regulatory Development Section, in the 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) 562–9140. Ms. Nacosta Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What Proposed Actions Are EPA Taking?

EPA is proposing to take two related actions, which are summarized below and described in greater detail throughout this notice of proposed rulemaking: (1) To redesignate the Triangle Area to attainment for the 8-hour ozone NAAQS; and (2) to approve North Carolina's 8-hour ozone maintenance plan into the North Carolina SIP, including the associated MVEBs for NO_X and the VOC insignificance determination. In addition, and related to today's proposed actions, EPA is also notifying the public of the status of EPA's adequacy determination for the Triangle Area subarea [1] NO_X MVEBs and the insignificance determination for VOC emission contribution from motor vehicles to 8-hour ozone pollution in the Triangle Area.

First, EPA is proposing to determine that the Triangle Area has attained the 8-hour ozone standard, and that the Triangle Area has met the other requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is now proposing to approve a request to change the legal designation of the Triangle Area from nonattainment to attainment for the 8-hour ozone NAAQS.

Second, EPA is proposing to approve North Carolina's 8-hour ozone maintenance plan for the Triangle Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Triangle Area in attainment of the 8-hour ozone NAAQS through 2017. Consistent with the CAA, the maintenance plan that EPA is proposing to approve today also includes 2008 and 2017 subarea MVEBs for NO_X, and an insignificance determination regarding the contribution of VOC emissions from

[1] The term ''subarea'' refers to the portion of the area, in a nonattainment or maintenance area, for which the MVEB applies. In this case, the ''subareas'' are established at the county level so this indicates that the MVEBs cover individual counties and also indicates to transportation conformity implementers in this area that there are separate county-level MVEBs for each county in this area. *EPA's Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards* explains more about the possible geographical extent of a MVEB, how these geographical areas are defined, and how transportation conformity is implemented in these different geographical areas.

motor vehicles to the ozone pollution in the Triangle Area. Today, EPA is proposing to approve (into the North Carolina SIP) the 2008 and 2017 subarea NO_X MVEBs and the VOC insignificance determination, that are included as part of North Carolina's maintenance plan for the Triangle Area for the 8-hour ozone NAAQS. The VOC insignificance determination applies to the entire Triangle Area, whereas the NO_X MVEBs are subarea MVEBs that apply to individual counties within the Triangle Area. Please see Section V of this rulemaking for a listing of the MVEBs for these individual counties.

Third, EPA is also notifying the public of the status of EPA's adequacy process for the newly-established 2008 and 2017 subarea NO_X MVEBs, and its insignificance determination for VOC for the Triangle Area. The adequacy comment period for the Triangle Area's 2008 and 2017 subarea NO_X MVEBs, and the VOC insignificance determination began on March 21, 2007, with EPA's posting of the availability of North Carolina's maintenance plan submittal on EPA's Adequacy Web site (*http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*). The adequacy comment period for these subarea MVEBs, and the VOC insignificance determination closed on April 20, 2007. No adverse comments were received during the adequacy public comment period. Please see section VIII of this proposed rulemaking for further explanation of this process, and for more details on the MVEBs and the VOC insignificance determination.

Today's notice of proposed rulemaking is in response to North Carolina's June 7, 2007, SIP submittal, which supersedes North Carolina's March 12, 2007, submittal that included a request for parallel processing. The June 7, 2007, submittal requests the redesignation of the Triangle Area, and includes a SIP revision addressing the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What Is the Background for EPA's Proposed Actions?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and VOC react in the presence of sunlight to form ground-level ozone. NO_X and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (*i.e.*, 0.084 ppm when rounding is considered). (See, 69 FR 23857 (April 30, 2004) for further information.) Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I, ''*Comparisons with the Primary and Secondary Ozone Standards*'' states:

> The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm.

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Triangle 8-hour ozone nonattainment area was designated using 2001–2003 ambient air quality data. The **Federal Register** document making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857).

The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase 1 8-hour ozone implementation rule (69 FR 23857) (Phase 1 Rule), signed on April 15, 2004, and published April 30, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values.

Durham and Wake Counties, and the Dutchville Township portion of Granville County were originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694). Durham and Wake Counties, and the Dutchville Township portion of Granville County were redesignated as attainment for the 1-hour ozone standard on April 18, 1994 (59 FR 18300). On April 30, 2004, EPA designated the Triangle Area (of which Durham and Wake Counties, and the Dutchville Township portion of Granville County are a part) as a ''basic'' 8-hour ozone nonattainment area (see, 69 FR 23857, April 30, 2004). Thus, on June 7, 2007, when North Carolina submitted its final redesignation request, the Triangle Area was classified under subpart 1 of the CAA, and was obligated to meet only the subpart 1 requirements.

Various aspects of EPA's Phase 1 Rule were challenged in court. On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated EPA's Phase 1 Rule (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist. (SCAQMD)* v. *EPA,* 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the Rule that had been successfully challenged. Therefore, the Phase 1 Rule provisions related to classifications for areas currently classified under subpart 2 of title I, part D of the CAA as 8-hour nonattainment areas, the 8-hour attainment dates and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS remain effective. The June 8th decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas

under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8th decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS. The June 8th decision clarified that the Court's reference to conformity requirements for anti-backsliding purposes was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations, which is already required under EPA's conformity regulations. The Court thus clarified that 1-hour conformity determinations are not required for anti-backsliding purposes.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation, and do not prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of the Triangle Area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. Consequently, it is possible that this Area could, during a remand to EPA, be reclassified under subpart 2. Although any future decision by EPA to classify this area under subpart 2 might trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Triangle Area was classified under subpart 1 and was obligated to meet only subpart 1 requirements. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. September 4, 1992, Calcagni Memorandum (''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also, Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan). See, *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation). See, *e.g.* also, 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking, (*Sierra Club* v. *Whitman,* 285 F. 3d 63 (D.C. Cir. 2002)), in which the Court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the area by applying to it for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect at the time it submitted its redesignation request.

With respect to the requirements under the 1-hour standard ozone standard, only the Durham and Wake Counties, and the Dutchville Township portion of Granville County of the Triangle Area were originally designated as a moderate nonattainment area for the 1-hour ozone standard on November 6, 1991 (56 FR 56694); the remainder of the Triangle Area was designated as attainment. Durham and Wake Counties, and the Dutchville Township portion of Granville County were redesignated as attainment for the 1-hour ozone standard on April 18, 2004 (59 FR 18300). Therefore, the entire Triangle Area was redesignated to attainment of the 1-hour ozone standard prior to its nonattainment designation for the 8-hour ozone standard. As a result, the Triangle Area is considered to be a 1-hour attainment area subject to a CAA section 175A maintenance plan for the 1-hour standard. The D.C. Circuit Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8th decision, clarified that for those areas with 1-hour MVEBs in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until they are replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

First, there are no conformity requirements relevant for the Triangle Area redesignation request, such as a transportation conformity SIP. It is EPA's longstanding policy that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation, and Federal conformity rules apply where state rules have not been approved. See, 40 CFR 51.390; see also, *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding EPA's interpretation). See also, 60 FR 62748 (Dec. 7, 1995) (redesignation of Tampa, Florida). Durham and Wake Counties, and the Dutchville Township portion of Granville County, currently have a fully approved 1-hour ozone transportation conformity SIP, which was approved on December 27, 2002 (67 FR 78983).

Second, with regard to the three other anti-backsliding provisions for the 1-hour standard that the D.C. Circuit Court found were not properly retained, Durham and Wake Counties, and the Dutchville Township portion of Granville County comprise an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision

requirements no longer apply to this area because it was redesignated to attainment of the 1-hour standard. As a result, the decisions in *SCAQMD* should not alter any requirements that would preclude EPA from finalizing the redesignation of the Triangle Area to attainment for the 8-hour ozone standard.

As noted earlier, in 2006, the ambient ozone data for the Triangle Area indicated no further violations of the 8-hour ozone NAAQS, using data from the 3-year period of 2004–2006 to demonstrate attainment. As a result, on June 7, 2007, North Carolina requested redesignation of the Triangle Area to attainment for the 8-hour ozone NAAQS. The redesignation request included three years of complete, quality-assured ambient air quality data for the ozone seasons (April 1st until October 31st) of 2004–2006, indicating that the 8-hour ozone NAAQS has been achieved for the entire Triangle Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;
7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;
8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;
9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and
10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Proposing These Actions?

On June 7, 2007, North Carolina requested redesignation of the Triangle 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA's evaluation indicates that North Carolina has demonstrated that the Triangle Area has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of the CAA. EPA is also announcing the status of its adequacy determination for the 2008 and 2017 subarea NO_X MVEBs, and the VOC insignificance determination, which are relevant to the requested redesignation.

V. What Is the Effect of EPA's Proposed Actions?

EPA's proposed actions establish the bases upon which EPA may take final action on the issues being proposed for approval today. Approval of North Carolina's redesignation request would change the legal designation of the Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entireties, and Baldwin, Center, New Hope and Williams Townships in Chatham County for the 8-hour ozone NAAQS found at 40 CFR part 81. Approval of North Carolina's request would also incorporate into the North Carolina SIP, a plan for the Triangle Area for maintaining the 8-hour ozone NAAQS in the Area through 2017. This maintenance plan includes contingency measures to remedy future violations of the 8-hour ozone NAAQS. The maintenance plan also establishes subarea NO_X MVEBs and provides a VOC insignificance determination for the Triangle Area. The following Table identifies the subarea NO_X MVEBs for the year 2008 and 2017 for this Area.

TABLE 1.—TRIANGLE SUBAREA NO_X MVEBS

[Kilograms per day]

County	2008	2017
Chatham	1,565	948
Durham	13,106	4,960
Franklin	2,048	1,139
Graham	4,649	1,714
Johnston	12,583	5,958
Orange	9,933	3,742
Person	1,359	791
Wake	36,615	16,352

Approval of North Carolina's maintenance plan would also result in approval of the subarea NO_X MVEBs, and the VOC insignificance determination. Additionally, EPA is

notifying the public of the status of its adequacy determination for the 2008 and 2017 subarea NO_X MVEBs, and its VOC insignificance determination, pursuant to 40 CFR 93.118(f)(1).

VI. What Is EPA's Analysis of the Request?

EPA is proposing to make the determination that the Triangle Area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met for the Triangle Area. The basis for EPA's determination for the area is discussed in greater detail below.

Criteria (1)—The Triangle Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Triangle Area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

EPA reviewed ozone monitoring data from ambient ozone monitoring stations in the Triangle Area for the ozone season from 2004–2006. This data has been quality assured and is recorded in AQS. The fourth high averages for 2004, 2005 and 2006, and the 3-year average of these values (i.e., design values), are summarized in the following Table:

TABLE 2.—ANNUAL 4TH MAX HIGH AND DESIGN VALUE CONCENTRATION FOR 8-HOUR OZONE FOR THE TRIANGLE AREA

[In parts per million]

COUNTY	Chatham	Durham	Franklin	Granville	Johnston	Person	Wake	
MONITOR (AIRS ID)	Pittsboro (#37–037–0004)	Duke Street (#37–063–0013)	Franklinton (#37–069–0001)	Butner (#37–077–0001)	West Johnston (#37–101–0002)	Bushy Fork (#37–145–0003)	Millbrook (#37–183–0014)	Fuquay Varina (#37–183–0016)
2004	0.068	0.074	0.077	0.081	0.074	0.076	0.075	0.077
2005	0.079	0.076	0.080	0.085	0.083	0.079	0.082	0.085
2006	0.066	0.075	0.074	0.075	0.072	0.071	0.078	0.072
Design Value	0.071	0.075	0.077	0.080	0.076	0.075	0.078	0.078

As discussed above, the design value for an area is the highest design value recorded at any monitor in the area. Therefore, the design value for the Triangle Area is 0.080 ppm, which meets the standard as described above. As discussed in more detail below, North Carolina has committed to continue monitoring in this area in accordance with 40 CFR part 58. The data submitted by North Carolina provides an adequate demonstration that the Triangle Area has attained the 8-hour ozone NAAQS.

Criteria (2)—North Carolina has a Fully Approved SIP Under Section 110(k) for the Triangle Area and Criteria (5)—has met all Applicable Requirements Under Section 110 and Part D of the CAA

Below is a summary of how these two criteria were met.

EPA has determined that North Carolina has met all applicable SIP requirements for the Triangle Area under section 110 of the CAA (general SIP requirements). EPA has also determined that the North Carolina SIP satisfies the criterion that it meet applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable, they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

a. The Triangle Area has met all Applicable Requirements Under Section 110 and Part D of the CAA

The September 4, 1992, Calcagni Memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also, Michael Shapiro Memorandum, (''SIP Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide NAAQS On or After November 15, 1992,'' September 17, 1993), and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See, section 175A(c) of the CAA; *Sierra Club*, 375 F.3d 537; see also, 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (NSR permit programs); provisions for

air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO_X SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted timely SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classifications are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation.

In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See, Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also, the discussion on this issue in the Cincinnati, Ohio redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no part D requirements for 8-hour standard became due prior to submission of the redesignation request. Therefore, as discussed above, for purposes of redesignation, they are not considered applicable requirements. Nonetheless, EPA notes it has previously approved provisions in the North Carolina SIP addressing section 110 elements under the 1-hour ozone NAAQS (See, 51 FR 19834, June 3, 1986). EPA believes that the section 110 SIP approved for the 1-hour ozone NAAQS is also sufficient to meet the requirements under the 8-hour ozone NAAQS (as well as satisfying the issues raised by the D.C. Circuit Court in the *SCAQMD* case).

Part D requirements. EPA has also determined that the North Carolina SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the Area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Triangle Area.

Part D, subpart 1 applicable SIP requirements. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498). No requirements applicable for purposes of redesignation under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the Area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1)), reasonable further progress (RFP) (section 172(c)(2)), and contingency measures (section 172(c)(9)).

In addition to the fact that no part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See, *Wall*, 265 F.3d 426 (upholding this interpretation). See also, 60 FR 62748 (December 7, 1995, Tampa, Florida).

NSR Requirements. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment.'' North Carolina has demonstrated that the Triangle Area will be able to maintain the standard without a part D NSR program in effect, and therefore, North Carolina need not have a fully approved part D NSR program prior to approval of the redesignation request. North Carolina's PSD program will become effective in the Triangle Area upon redesignation to attainment. See, rulemakings for Detroit, Michigan (60

FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the Triangle Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA.

b. The Triangle Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable North Carolina SIP for the Triangle Area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request, see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall*, 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. See, 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, North Carolina has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Triangle Area (59 FR 18300, April 18, 1994; and 69 FR 56163, September 20, 2004).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

Criteria (3)—The air quality improvement in the Triangle Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions

EPA believes that North Carolina has demonstrated that the observed air quality improvement in the Triangle Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state adopted measures. Additionally, new emissions control programs for fuels and motor vehicles will help ensure a continued decrease in emissions throughout the region.

TABLE 3.—TRIANGLE AREA EMISSION REDUCTIONS PROGRAMS

Mobile Sources
• Tier 2 Vehicle Standards
• Heavy Duty Gasoline and Diesel Highway Vehicle Standards
Nonroad Mobile Sources
• Large Nonroad Diesel Engines Rule
• Spark Ignition Engines and Recreational Standards
State and Local Measures
• Inspection and Maintenance (I/M) Program in Clean Air Bill
• NO_X SIP Call
• Clean Smokestacks Act
• Opening Burning Ban
• Air Toxics Control Program
• Prevention of Significant Deterioration
• Heavy Duty Diesel Engine Gap Filling Rule

Criteria (4)—The area has a fully approved maintenance plan pursuant to section 175A of the CAA

In its request to redesignate the Triangle Area to attainment, North Carolina submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS for at least 10 years after the effective date of redesignation to attainment.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State of North Carolina must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni Memorandum provides additional guidance on the content of a maintenance plan. The Calcagni Memorandum explains that an ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, North Carolina's maintenance plan includes all the necessary components and is approvable as part of the redesignation request.

b. Attainment Emissions Inventory

North Carolina selected 2005 as ''the attainment year'' for the Triangle Area for the purposes of demonstrating attainment of the 8-hour ozone NAAQS. This attainment inventory identifies the level of emissions in the area, which is sufficient to attain the 8-hour ozone standard. North Carolina began development of this attainment inventory by first developing a baseline emissions inventory for the Triangle Area. The year 2005 was chosen as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be developed for 2008, 2011, 2014, and 2017. Nonroad mobile emissions estimates were based on the EPA's NONROAD2005c model. On-road mobile source emissions were calculated using EPA's MOBILE6.2 emission factors model. The 2005 VOC and NO_X emissions, as well as the emissions for other years, for the Triangle Area were developed consistent with EPA guidance, and are summarized in Tables 4 and 5 in the following subsection.

c. Maintenance Demonstration

The June 7, 2007, final submittal includes a maintenance plan for the Triangle Area. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by providing information to support the demonstration that current and future emissions of VOC and NO_X remain at or below attainment year 2005 emissions levels. The year 2005 was chosen as the attainment year because it is one of the most recent three years (i.e., 2004, 2005, and 2006) for which the Triangle Area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2005 as the attainment year and includes future emission inventory projections for 2008, 2011, 2014, and 2017.

(iii) Identifies an ''out year,'' at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, subarea NO_X MVEBs were established for the last year (2017) of the maintenance plan. Additionally, North Carolina chose, through interagency consultation, to establish subarea MVEBs for the year 2008 for NO_X, and to determine insignificance for VOC for

the Triangle Area. See, section VII below.

(iv) Provides the following actual and projected emissions inventories, in tons per day (tpd) for the Triangle Area. See, Tables 4 and 5.

TABLE 4.—TRIANGLE AREA EMISSIONS OF VOC

[Tons per day]

Source category	2005	2008	2011	2014	2017
Point	12.28	13.24	14.45	15.61	16.94
Area	67.26	72.94	78.01	82.80	87.80
Mobile *	47.47	39.71	35.13	30.24	27.18
Nonroad **	30.78	26.24	23.99	23.28	23.01
Total	157.79	152.13	151.58	151.93	154.93
Safety Margin	N/A	5.66	6.21	5.86	2.86

* Calculated using MOBILE 6.2.
** Calculated using NONROAD2005c.

TABLE 5.—TRIANGLE AREA NO_X EMISSIONS

[tons per day]

Source category	2005	2008	2011	2014	2017
Point	38.37	33.55	34.50	35.43	35.04
Area	13.02	13.65	14.24	14.87	15.55
Mobile *	101.68	81.66	59.00	42.78	32.59
Nonroad **	38.42	34.90	31.09	26.52	22.25
Total	191.49	163.76	138.83	119.60	105.43
Safety Margin	N/A	27.73	52.66	71.89	86.06

* Calculated using MOBILE 6.2.
** Calculated using NONROAD2005c.

A safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. North Carolina has decided to allocate a portion of the available safety margin to the subarea NO_X MVEBs for the years 2008 and 2017 for the Triangle Area, and has calculated the safety margin in its submittal. See, Tables 4 and 5, above. This allocation and the resulting available safety margin for the Triangle Area are discussed further in section VII of this proposed rulemaking.

d. Monitoring Network

There are currently eight monitors measuring ozone in the Triangle Area. North Carolina has committed in the maintenance plan to continue operation of these monitors in compliance with 40 CFR part 58, and has addressed the requirement for monitoring.

e. Verification of Continued Attainment

North Carolina has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the Triangle Area. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

North Carolina will track the progress of the maintenance plan by performing future reviews of actual emissions for the Area using the latest emissions factors, models and methodologies. For these periodic inventories, North Carolina will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, North Carolina will re-project emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the June 7, 2007, submittal, North Carolina affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. The contingency plan included in the submittal provides tracking and triggering mechanisms to determine when contingency measures are needed and a process of developing and adopting appropriate control measures. The primary trigger of the contingency plan will be a violation of the 8-hour ozone NAAQS, or when the three-year average of the fourth-highest value is equal to or greater than 0.085 ppm at any of the Triangle Area monitors. The trigger date will be 60 days from the date that the State observes a fourth-highest value that, when averaged with the two previous ozone seasons' fourth highest values, would result in a three-year average equal to or greater than

0.085 ppm. The secondary trigger will apply where no actual violation of the 8-hour ozone standard has occurred, but where the State finds monitored ozone levels indicating that an ozone NAAQS violation may be imminent. An imminent violation exists where there is a pattern. A pattern will be deemed to exist when there are two consecutive ozone seasons in which the fourth-highest values are 0.085 ppm or greater at a single monitor within the Triangle Area. The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater at a monitor for which the previous season had a fourth-highest value of 0.085 ppm or greater. Similarly, the tertiary trigger is a first alert to a potential air quality problem in the future and will not be an actual violation of the 8-hour ozone standard. The trigger will be activated when a monitor in the Triangle Area has a fourth-highest value of 0.085 ppm or greater, starting the first year after the maintenance plan has been approved. The trigger date will be 60 days from the date that the State observes a fourth-highest value of 0.085 ppm or greater at any monitor.

In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Triangle Area, contingency measures would be adopted and implemented as expeditiously as possible, but no later than eighteen to twenty four months after the triggering event. Once the primary or secondary trigger is activated, the proposed schedule for these actions would be as follows:

- NCDENR will begin analyses, including trajectory analyses of high ozone days, and emissions inventory assessment to determine required emission control measures for attaining or maintaining the 8-hour ozone standard;
- By May 1st of the year following the ozone season in which the primary (a violation of the 8-hour ozone NAAQS occurs) or secondary trigger has been activated, NCDENR will complete sufficient analyses to begin adoption of necessary rules for ensuring attainment and maintenance of the 8-hour ozone NAAQS; and
- Rules would become State-effective by the following January 1st, unless legislative review is required.

North Carolina will consider one or more of the following contingency measures to re-attain the standard:

- NO_X RACT on stationary sources in the Triangle Area;
- Diesel inspection and maintenance program [2];
- Implementation of diesel retrofits programs, including incentives for performing retrofits; and
- Additional controls in upwind areas.

Once the tertiary trigger is activated, NCDENR will commence analyses including meteorological evaluation, trajectory analyses of high ozone days, and an emissions inventory assessment to understand why a fourth highest exceedance of the standard has occurred. NCDENR will then work with the local awareness program and develop an outreach plan to identify any additional voluntary measures that can be implemented. If the fourth highest exceedance occurs early in the season, NCDENR will work with entities identified in the outreach plan to determine if the measures can be implemented during the ozone season. Otherwise, NCDENR will work with the local air awareness coordinator to implement the plan for the following ozone season.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by North Carolina for the Triangle Area meets the requirements of section 175A of the CAA and is approvable.

VII. What Is EPA's Analysis of North Carolina's Proposed VOC Insignificance Determination and the Proposed Subarea NO_X MVEBs for the Triangle Area?

Today's actions address two related elements regarding on-road motor vehicle emissions and the requirement to establish MVEBs. First, EPA is proposing to find that the VOC emission contribution from motor vehicles to 8-hour ozone pollution in the Triangle Area is insignificant. The result of this finding, if finalized, is that North Carolina need not develop an MVEB for VOC for the Triangle Area. See below for further information on the insignificance determination. Second, EPA is proposing to approve the subarea NO_X MVEBs for the Triangle Area.

A. Proposed VOC Insignificance Determination

In certain instances, the Transportation Conformity Rule allows areas not to establish an MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant/precursor is an insignificant contributor to the air quality problem in an area. The general criteria for insignificance findings can be found in 40 CFR 93.109(k). Insignificance determinations are based on a number of factors, including (1) The percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for the providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004. Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII. B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review of EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant/precursor at issue. In the case of the Triangle Area, EPA intends to make its finding as part of EPA's final action on the redesignation request of North Carolina for the Triangle Area. Upon the effective date of EPA's adequacy finding or the publication date of the final rule for this SIP revision (i.e., which includes the VOC insignificance determination), federal regulations waive the regional emissions analysis requirements (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or

[2] At this time, there is not an approved method for determining emission reductions from a Diesel Inspection and Maintenance program. Therefore, there is no technical basis to award emission credits for a heavy duty diesel inspection and maintenance program in the SIP. However, we do not want to preclude future technical changes that may make awarding such emission credits possible. If it is necessary to implement contingency measures for this area, North Carolina, in coordination with EPA, will evaluate the feasibility of this program as a contingency measure at that time. If a technical basis for emission credits is not available, other contingency measures will need to be implemented.

precursors for which EPA has not made a finding of insignificance.

The maintenance plan for the Triangle Area, included as part of the SIP revision, contains MVEBs for NO_X and an insignificance determination for VOC contribution from motor vehicles to the 8-hour ozone pollution in the Triangle Area. As part of the preparation for its redesignation request, North Carolina consulted with the interagency consultation group for the Triangle Area regarding the insignificance determination for VOC. For the purposes of regional emissions analysis, the information provided by North Carolina supports EPA's proposal to determine VOC contribution to 8-hour ozone pollution from motor vehicles in the Triangle Area as insignificant. The information provided by North Carolina to EPA as part of the SIP revision addresses each of the factors listed in 40 CFR 93.109(k), and is summarized below.

The future on-road VOC emissions are projected to be less than 10 percent in the Triangle Area, in the context of the total SIP inventory. According to information provided by North Carolina, biogenic emissions account for approximately 90 percent of the VOC emissions in future years in the Triangle Area. Support for these percentages is found in Figure 4.1.6–3, located in Appendix C.3—Mobile Source Inventory Documentation on pages 4–36 of North Carolina's submittal (available in the Docket for this proposed rulemaking) which also indicates on-road VOC emissions declining by about 50 percent by 2017 and vehicle miles traveled (VMT) going up by about 25 to 30 percent by 2017. In addition, North Carolina conducted a sensitivity analysis (a photochemical model) that indicated that 8-hour ozone levels in the Triangle Area were not impacted by reductions in man-made VOC emissions (i.e., reductions from motor vehicles). Specifically, the photochemical model was run for a 39-day scenario with a modeled 30 percent reduction in man-made VOC emissions. According to the photochemical model, in the year 2009, even with anticipated increases in VMT, the mobile source inventory is still projected to be less than 6 percent of the total inventory for VOC emissions. In comparison, biogenic emissions are expected to account for at least 84 percent of the total inventory for VOC emissions. As discussed in North Carolina's submittal, the biogenic sector is the most abundant source of VOC in North Carolina and accounts for approximately 90 percent of the total VOC emissions statewide. As a result, the information provided by North Carolina indicates that VOC contribution to 8-hour ozone pollution from motor vehicle emissions is insignificant.

With regard to the factor relating to the absence of motor vehicle control measures in the SIP, EPA considered the existence of an inspection and maintenance (I/M) program in the North Carolina SIP, and its implementation in the individual counties comprising the Triangle Area. The I/M program was not added to the North Carolina SIP as a VOC control measure, but rather, a NO_X control measure. The I/M program is currently being implemented in all but one of the counties (Person County) in the Triangle Area. Implementation of the I/M program in the Triangle Area began from July 2002 through July 2004, and continues to be ongoing in the Area. In North Carolina's SIP submittal, the State explains that the I/M program was established to achieve additional reductions in NO_X emissions, and that while there are incidental VOC emission reductions (approximately 2 tons per day in 2005) as a result of implementing this program in the Triangle Area, the program was not implemented to reduce VOC emissions from motor vehicles. As a result, the existence of this program in the SIP for the purpose of NO_X reductions does not prohibit EPA from finding the VOC contribution to 8-hour ozone pollution from motor vehicles insignificant.

After evaluating the information provided by North Carolina and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(k), particularly the biogenic contribution to the overall VOC inventory, EPA is now proposing to approve North Carolina's determination that the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the Triangle Area is insignificant. If this finding is completed through the adequacy process (see Section VIII below) or approved through the final rulemaking on this SIP submission, the insignificance determination should be considered and specifically noted in the transportation conformity document that is prepared for this Area.

B. Proposed Subarea NO_X MVEBs

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (reasonable further progress and attainment demonstration, etc.) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, an MVEB is established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. See, 40 CFR 93.101. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB.

North Carolina, after interagency consultation with the transportation partners for the Triangle Area, has elected to develop county-level subarea MVEBs for NO_X. North Carolina is developing these MVEBs, as required, for the last year of its maintenance plan, 2017, and for an additional year, 2008. The MVEBs reflect the total on-road emissions for 2008 and 2017, plus an allocation from the available NO_X safety margin for each year. Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. These MVEBs and allocation from the safety margin were developed in consultation with the transportation partners and were added to account for uncertainties in population growth, changes in model VMT and new emission factor models. The subarea NO_X MVEBs for the Triangle Area are defined in Table 6 below.

TABLE 6.—TRIANGLE SUBAREA NO_X MVEBS *

[Kilograms per day]

County	2008	2017
Chatham	1,565	948
Durham	13,106	4,960
Franklin	2,048	1,139
Graham	4,649	1,714
Johnston	12,583	5,958
Orange	9,933	3,742
Person	1,359	791
Wake	36,615	16,352

* Includes an allocation from the available NO_X safety margins (see Table 7).

As mentioned above, North Carolina has chosen to allocate a portion of the available safety margin to the 2008 and 2017 subarea NO_X MVEBs. The following table identifies the amount of

the NO_X safety margin that was allotted to the 2008 and 2017 subarea NO_X MVEBs.

TABLE 7.—NO_X SAFETY MARGIN ALLOCATION

[Kilograms per day]

County	2008	2017
Chatham	204	190
Durham	1,191	827
Franklin	186	190
Graham	606	343
Johnston	1,144	993
Orange	903	624
Person	177	158
Wake	3,329	2,725
Total	7,741	6,049

The total allocation is 7,741 kg/day (8.53 tpd) in 2008 and 6,049 kg/day (6.67 tpd) in 2017 for NO_X. The remaining NO_X safety margin after allocation of some of the safety margin to the MVEBs for the Triangle Area is 19.20 tpd in 2008 and 79.39 tpd in 2017.

Through this rulemaking, EPA is proposing to approve the 2008 and 2017 subarea MVEBs for NO_X for the Triangle Area because EPA has determined that the Area maintains the 8-hour ozone standard with the emissions at the levels of the budgets. As mentioned above, these MVEBs are subarea MVEBs for each individual county in the Triangle Area. Once the new subarea MVEBs for the Triangle Area (the subject of this rulemaking) are approved or found adequate (whichever is done first), they must be used for future conformity determinations.

VIII. What Is an Adequacy Determination?

As discussed above, the MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB. Additionally, the transportation conformity rule (see 93.109(k)) allows for areas not to establish a MVEB for a particular pollutant or precursor if it can be demonstrated that motor vehicle emissions contributions do not significantly contribute to an area's pollution. North Carolina's submittal for this area establishes MVEBs for NO_X and provides an insignificance determination for VOC contribution.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with a maintenance plan for that NAAQS.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the CAA.

EPA's substantive criteria for determining ''adequacy'' of an MVEB, including EPA's determination that an MVEB need not be established because of an insignificance determination, are set out in 40 CFR 93.118(e)(4). The process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was finalized in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations. EPA must also use a similar process to determine the adequacy of an insignificance determination that is submitted by a state as a part of a control strategy SIP or maintenance plan. Additional information on the adequacy process for both MVEBs and insignificance determinations is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

IX. What Is the Status of EPA's Adequacy Determination for the Subarea NO_X MVEBs for the Years 2008 and 2017, and the VOC Insignificance Determination?

As discussed earlier, North Carolina's maintenance plan submission includes new county-level subarea NO_X MVEBs for the Triangle Area for the years 2008 and 2017. Additionally, the maintenance plan included a VOC insignificance determination for the entire Triangle Area, and therefore, no MVEB for VOC is included as part of the SIP revision. EPA reviewed both the NO_X MVEBs and the VOC insignificance determination through the adequacy process. The North Carolina SIP submission, including the Triangle subarea NO_X MVEBs and the VOC insignificance determination, was open for public comment on EPA's adequacy Web site on March 21, 2007, found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy of the 2008 and 2017 subarea NO_X MVEBs, and VOC insignificance determination closed on April 20, 2007. EPA did not receive any comments on the adequacy of the MVEBs or the VOC insignificance determination, nor did EPA receive any requests for the SIP submittal.

EPA intends to make its determination on the adequacy of the 2008 and 2017 subarea NO_X MVEBs, and the VOC insignificance determination for the Triangle Area for transportation conformity purposes in the final rulemaking on the redesignation of the Triangle Area. If EPA finds the 2008 and 2017 subarea NO_X MVEBs, and the VOC insignificance determination adequate or approves these MVEBs and the VOC insignificance determination in the final rulemaking action, the new MVEBs for NO_X must be used, and the VOC insignificance determination should be noted, for future transportation conformity determinations. If the new 2008 and 2017 subarea NO_X MVEBs are

found adequate, and both the NO_X MVEBs and the related VOC insignificance determination are approved in the final rulemaking, the NO_X MVEBs and the VOC insignificance determination will be effective on the date of publication of EPA's final rulemaking in the **Federal Register**. For required regional emissions analysis years that involve the year 2016 or before, the applicable budget for the purposes of conducting transportation conformity will be the new 2008 subarea NO_X MVEBs for the Triangle Area. For required regional emissions analysis years that involve 2017 or beyond, the applicable budgets will be the new 2017 subarea NO_X MVEBs. Both the 2008 and 2017 subarea NO_X MVEBs are defined in section VII of this proposed rulemaking. More detail on the VOC insignificance determination can be found in section VII of this proposed rulemaking as well.

X. Proposed Action on the Redesignation Request and Maintenance Plan SIP Revision Including Proposed Approval of the 2008 and 2017 Subarea NO_X MVEBs, and the Proposed VOC Insignificance Determination for the Triangle Area

EPA is proposing to make the determination that the Triangle Area has met the criteria for redesignation from nonattainment to attainment for the 8-hour ozone NAAQS. Further, EPA is proposing to approve North Carolina's June 7, 2006, SIP submittal including the redesignation request for the Triangle Area. EPA believes that the redesignation request and monitoring data demonstrate that the Triangle Area has attained, and will continue to maintain the 8-hour ozone standard.

EPA is also proposing to approve the maintenance plan for the Triangle Area included as part of the June 7, 2006, SIP revision. The maintenance plan includes subarea NO_X MVEBs for 2008 and 2017, and a VOC insignificance determination for motor vehicles' contribution to the ozone pollution in this Area, among other requirements. EPA is proposing to approve the 2008 and 2017 subarea NO_X MVEBs for the Triangle Area because the maintenance plan demonstrates that in light of expected emissions for all other source categories, the Triangle Area will continue to maintain the 8-hour ozone standard. EPA is also proposing to approve the insignificance determination for the VOC contribution from motor vehicle emissions to the 8-hour ozone pollution for the Triangle Area.

Further as part of today's action, EPA is describing the status of its adequacy determination for the 2008 and 2017 subarea NO_X MVEBs, and VOC insignificance determination, in accordance with 40 CFR 93.118(f)(1). Within 24 months from the effective date of EPA's adequacy finding for the MVEBs, or the publication date for the final rule for this action, the transportation partners will need to demonstrate conformity to the new subarea NO_X MVEBs pursuant to 40 CFR 93.104(e) as effectively amended by section 172(c)(2)(E) of the CAA as added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU), which was signed into law on August 10, 2005. Additionally, the transportation partners should note EPA's finding of adequacy and approval for the VOC insignificance determination for future conformity determinations.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(e) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allow a state to avoid adopting or implementing other requirements and 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 is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

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 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 CAA. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 25, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–19513 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2007–0546; FRL–8151–6]

Thiabendazole; Threshold of Regulation Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to establish by rule that there is no need for a tolerance or tolerance exemption under the Federal Food Drug and Cosmetic Act (FFDCA) for the use of the fungicide thiabendazole as a seed treatment on dry peas. This determination is based on EPA's finding that any residues that remain in food from this use will be both non-detectable and below the level of regulatory concern.

DATES: Comments must be received on or before December 3, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0546, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0546. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; fax number: (703) 305–0599; e-mail address: *stanton.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

• Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

• Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

• Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

• Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0546. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is proposing that the use of the fungicide thiabendazole, 2-(4-thiazolyl) benzimidazole, as a seed treatment on dry peas does not need an FFDCA tolerance or tolerance exemption based on EPA's finding that any residues that remain in food from this use will be both non-detectable and below the level of regulatory concern.

In the **Federal Register** of October 27, 1999 (64 FR 57881), available at *http://www.epa.gov/fedrgstr/EPA-PEST/1999/October/Day-27/p28047.htm*, EPA announced the availability of a policy document titled ''Threshold of Regulation (TOR) Policy – Deciding Whether a Pesticide with a Food Use Pattern Requires a Tolerance.'' This policy document describes:

(a) EPA's authority for determining whether a tolerance or tolerance exemption is, or is not, required for a pesticide use.

(b) Relevant criteria that EPA would consider in determining whether a tolerance is required for a pesticide use in, on, or near food that produces no detected residues in the food.

(c) Data, including toxicology and residue chemistry studies, that EPA would generally consider when deciding whether a tolerance is required.

(d) The procedures that would guide EPA in evaluating whether new or existing pesticide uses fall below the level of regulatory concern.

(e) The procedures that EPA would follow to establish a regulation in title 40 of the Code of Federal Regulations (CFR) for each use found to be below the level of regulatory concern.

You may obtain electronic copies of the TOR policy document from the Office of Pesticide Programs' Home Page at *http://www.epa.gov/pesticides/*. On the Office of Pesticide Programs' Home Page, select ''Science and Policy,'' then select ''Policy and Guidance''and look up the TOR entry under ''TRAC Science Policy Issues and Documents.''

Designation of a pesticide use as below the level of regulatory concern means EPA has determined that no tolerance or exemption is required under section 408. Accordingly, for the purposes of registration of the pesticide use under the Federal Insecticide, Fungicide, and Rodenticide Act (''FIFRA''), 7 U.S.C. 136 et seq., a tolerance or exemption from tolerance would not be deemed necessary under 40 CFR 152.112(g). Designation of a pesticide use as below the level of regulatory concern does not legalize any detectable residues of that pesticide on food.

This proposed decision applies only to the use of the fungicide thiabendazole as a seed treatment on dry peas when applications are made according to the following label directions:

> A single application of thiabendazole may be made as a seed treatment at the rate of 0.075 pounds of active ingredient per 100 pounds of seed (dry pea (including field pea), pigeon pea, chickpea or lentil). Applications will be made as a spray mist or slurry treatment maintained under constant agitation. Vines and hay grown from treated seed may not be fed to livestock.

EPA proposes that there is no need for a tolerance or tolerance exemption for this use under the FFDCA since (a) using a reliable and appropriately sensitive analytical method to measure residues in dry peas, no residues were detected in the commodity under the expected conditions of use; and (b) using reasonably protective criteria, the estimated potential risk of any theoretically possible residues in food is not of concern. The information EPA relied on in proposing this decision is summarized below.

1. *Toxicology considerations*—i. *Toxicological profile.* EPA has evaluated the available toxicity data for thiabendazole and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. EPA has concluded that there are sufficient data to characterize the hazard posed by any potential exposures to thiabendazole. Specific information on the toxicity of thiabendazole is available in the Reregistration Eligibility Decision (RED) document, issued by the Agency in October 2002, and available electronically on the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page, under ''Featured Sites'' select ''REDs & Pesticide Reregistration Status;'' then look up the RED for Thiabendazole and its salts in the alphabetical listing.

ii. *Toxicological endpoints.* For hazards that have a threshold below which there is no appreciable risk, the toxicological level of concern (LOC) is derived from the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the LOC to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic risks by comparing exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the LOC by all applicable UFs.

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk and estimates risk in terms of the probability of occurrence of additional adverse cases. Generally, cancer risks are considered non-threshold. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

The toxicological endpoints used in making the TOR determination for the proposed use of thiabendazole as a seed treatment on dry peas are discussed below and summarized in Table 1 of this unit.

a. *Acute dietary endpoint.* At the time of the thiabendazole RED, EPA had selected acute dietary endpoints for the

general population and females, 13 years and older, based on reduced fetal weights and decreased maternal body weights seen in the rat developmental toxicity study. EPA has reconsidered these endpoints and concluded that reduced fetal weights and decreased maternal body weights are not effects that are likely to occur after a single dose of a pesticide and are, therefore, not appropriate for use in assessing acute risks. EPA has reviewed the toxicology database to determine if there are other endpoints that would be appropriate for acute assessment, giving careful consideration to the reproductive and developmental effects noted in the database and in literature citations. Since those effects were only observed at very high doses, they were determined to be inappropriate for risk assessment at the exposures expected for thiabendazole. EPA has concluded that there is no appropriate endpoint in the toxicology database that is attributable to a single dose of thiabendazole and that an acute risk assessment is not required for this chemical.

b. *Chronic dietary endpoint*. The chronic dietary endpoint (NOAEL of 10 mg/kg/day) is based on decreased body weight gains and liver hypertrophy seen at the LOAEL of 30 mg/kg/day in the 2–year chronic feeding/carcinogenicity study in the rat.

c. *Cancer*. The Agency has classified thiabendazole as ''likely to be carcinogenic at doses high enough to cause a disturbance of the thyroid hormone balance. It is not likely to be carcinogenic at doses lower than those which could cause a disturbance of this hormonal balance.'' A mode of action was established in which these tumors were attributed to interference with thyroid-pituitary homeostasis. EPA is currently regulating chronic dietary risk using a cPAD that reflects a dose level below levels at which thyroid hormone balance is impacted; therefore, the chronic risk assessment is protective of potential carcinogenic effects. A separate risk assessment for cancer is not required.

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIABENDAZOLE USED IN THE TOR HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional FQPA, SF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	Not Applicable (N/A)	N/A	No effect attributable to a single dose identified in the database.
Acute dietary (General population including infants and children)	N/A	N/A	No effect attributable to a single dose identified in the database.
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day SF = 100 Chronic RfD = 0.1 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.1 mg/kg/day	2–Year Feeding/Chronic Carcinogenicity Study in the Rat. LOAEL = 30 mg/kg/day based on decreased body weight gains and liver hypertrophy.
Cancer (Oral, dermal, inhalation)	NA	NA	Classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.

2. *Safety Factor for Infants and Children*. Section 408 of FFDCA provides that EPA shall apply an additional (''10X'') tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional FQPA safety factor value based on the use of traditional uncertainty (UFs) and/or considerations specifically raised in the FQPA, as appropriate.

EPA has determined that reliable data show that it would be safe for infants and children to reduce the FQPA safety factor for thiabendazole to 1X. That decision is based on the following findings:

i. The toxicity database for thiabendazole is complete.

ii. There is no indication that thiabendazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that thiabendazole results in increased susceptibility in *in utero* rats, rabbits or mice in the prenatal developmental studies or in young rats in the 2–generation reproduction study. In the prenatal developmental toxicity studies in rats, rabbits, and mice and in the 2–generation reproduction study in rats, developmental effects in the fetuses or neonates occurred at or above doses that caused maternal or parental toxicity.

iv. There are no residual uncertainties identified in the exposure databases. The dietary exposure assessment of the TOR use, discussed below in Unit II.A.3., was performed assuming 100% crop treated and a conservative residue estimate. The assessment will not underestimate the exposure and risks posed by the use of thiabendazole as a seed treatment on dry peas.

3. *Residue data and analytical method considerations*. For a use to be below the level of regulatory concern it is important for it not to result in detectable residues under a reasonably sensitive analytical method and for any theoretical residues that are present to pose essentially a zero risk. Considering the range of sensitivities of tolerance analytical methods, EPA believes that a reasonably sensitive method should have a limit of quantitation (LOQ) in the range of 0.01 parts per million (ppm). However, the sensitivity of the method is not chosen in a vacuum and consideration should be given to how the sensitivity of the method affects any

estimation of risk. Accordingly, on a case-specific basis, EPA may accept a higher or lower LOQ if an appropriate rationale, including a consideration of risks estimated based on exposure as measured by that LOQ, supports such a decision.

Interregional Research Project No. 4 (IR–4), 500 College Road East, Suite 201 W, Princeton, NJ 08540, submitted field trial data for thiabendazole on dry pea. A total of five field trials were conducted in Zone 11 (2 trials in Idaho and 3 trials in Washington) during the 1996 growing season. Thiabendazole (30% flowable concentrate formulation) was formulated with water and seed dye and applied to dry pea seed at a seed treatment facility, at a nominal rate of 0.075 pounds of active ingredient per 100 pounds of seed. Treated seed was planted within 10 days of seed treatment, and samples of dry pea were collected from the field trial sites at maturity, 83–90 days after planting.

Samples of dry pea were analyzed for residues of thiabendazole *per se* using a High Pressure Liquid Chromatography/Fluorescence Detector (HPLC/FLD) method with a lower limit of the method validation (LLMV) of 0.05 ppm. The method (MRID# 45428201) is a modification of the method *Ion-Pairing Liquid Chromatographic Determination of Benzimidazole Fungicides in Foods*, Gilvydis and Walters, JAOAC, vol. 73, no. 5, 1990. The mobile phase hold times were increased to obtain adequate separations. Duplicate samples were analyzed for residues of thiabendazole at each of the five field trial locations. Residues of thiabendazole were less than the method limit of detection (LOD) of 0.02 ppm in all 10 field trial samples.

No data were provided on residues of benzimidazole, a regulated metabolite of thiabendazole in or on dry pea grown from treated seed. However, based on residue studies in three diverse crops (wheat, soybean and sugar beets) in which residues of benzimidazole were consistently lower than residues of the parent compound, thiabendazole, EPA does not expect detectable residues of benzamidazole in dried peas grown from thiabendazole treated seed.

The analytical method used to measure thiabendazole residues appeared in the JAOAC, The Journal of the Association of Official Analytical Chemists, a peer reviewed publication. Further, adequate method validation data were provided in both the journal article and in conjunction with the submitted residue data. EPA concludes that the method would be suitable for enforcement purposes. The analytical method's reported LLMV of 0.05 ppm is higher than the 0.01 ppm value that has been identified as a target LOQ by the policy document on identifying uses below the threshold of regulatory concern. Nevertheless, EPA has concluded that the analytical method used to generate the residue data is sufficiently sensitive to support the threshold of regulation determination based on the following supporting information.

i. The LLMV is an artifact of the concentrations chosen for the study validation, and the actual analytical limits of quantitation (LOQ) and limits of detection (LOD) may be significantly below that value. EPA carefully examined the method chromatograms. Based on peak heights relative to concentration, peak shape and signal to noise ratio, the method's LOD was determined to be no greater than 0.02 ppm.

ii. EPA also considered data on the nature of the residue in soybeans submitted by Gustafson, Inc. The study was entitled ''Total ^{14}C Thiabendazole Residues in Soybeans from Treated Seed Grown Under Field Conditions'' (1998, MRID 45200301). In this study, soybean seeds were treated with 38 ppm ^{14}C Thiabendazole (0.00382 lb. a.i./100 lbs. seed). The treated seeds were then planted in the field and samples were taken of mature dry bean (82 days after treatment). Samples were assayed by combustion and analysis of $^{14}CO_2$ by liquid scintillation spectrometry. The total radioactive residue (TRR) in soybean seed was <0.001 ppm (<1 ppb). EPA considers soybeans to be an appropriate surrogate for dry pea. Taking into account the higher application rate currently requested for dry peas, the study supports the conclusion reached in the field trial data that residues will not exceed the estimated LOD of 0.02 ppm in dry pea grown from treated seed at the currently requested use rate, and may be lower than 0.02 ppm.

iii. Statistical data on the thiabendazole analytical method submitted by IR–4 further support the conclusion that the actual LOD is likely below the conservatively estimated value of 0.02 pm and indicates that the statistical LOD is much closer to 0.01 ppm.

iv. Finally, EPA's risk assessment of the proposed use assumed theoretical residues in dry peas equal to one-half the estimated LOD, which is 0.01 ppm. The resulting risk estimates were essentially zero, indicating that the method is sensitive enough to demonstrate that any potential residues in food are not of concern. The risk assessment is discussed in detail in the next section.

Taking all of these factors into consideration, EPA concludes that the analytical method used to generate the residue data is sufficiently sensitive to support a conclusion that the use will not result in detectable residues in food using a reasonably sensitive method. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

4. *Dietary risk assessment*. For a use to be below the level of regulatory concern, any theoretical residues present from the use should pose essentially zero dietary risk. As a starting point for analysis of this question, EPA's policy document has recommended that essentially zero dietary risk is evidenced by a showing that incremental risk from exposure to potential residues in food resulting from use of a pesticide should generally be less than 1/1000 of the acceptable risk. For a pesticide such as thiabendazole that exerts ''threshold'' effects, this means that incremental acute or chronic potential exposure from the use should occupy less than 0.1% of the acute or chronic population-adjusted dose (aPAD or cPAD) for the pesticide. EPA assessed dietary exposure to thiabendazole from its use as a seed treatment on dry peas as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for thiabendazole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). EPA assumed residues of thiabendazole would be present in dry peas at one-half the LOD, equal to 0.01 ppm. Only dry peas were included in the dietary assessment, and 100% of dry peas were assumed to be treated with thiabendazole.

Using these assumptions, EPA has concluded that chronic dietary exposure to thiabendazole from residues theoretically present in dry peas will not exceed 0.01% of the cPAD for the U.S. population or any population subgroup, including infants and children. The estimated chronic risk for

the U.S. population and all subpopulations of concern is significantly below the level recommended in EPA's policy as showing essentially zero risk (0.1% of the cPAD).

iii. *Cancer*. Thiabendazole has been classified as ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' The Office of Pesticide Programs' Health Effects Division is currently regulating chronic dietary risk with a chronic cPAD that reflects a dose level below dose levels at which thyroid hormone balance is impacted and, consequently, is also being protective of potential carcinogenic effects. Therefore, a cancer dietary assessment is unnecessary. Based on the results of the chronic dietary assessment, the use of thiabendazole on dry peas is not expected to pose a cancer risk.

5. *Threshold of regulation determination*. Based on the information discussed above, EPA has concluded that:

i. Reliable residue data developed using an analytical method with appropriate sensitivity show that no thiabendazole residues resulting from the use of the pesticide as a seed treatment on dry peas are detected in dry peas grown from treated seed when they enter interstate commerce.

ii. There are sufficient data to characterize the hazard posed by any potential exposures to thiabendazole.

iii. Risk estimates show that any thiabendazole residues theoretically present in dry peas as a result of this use pose an ''essentially zero'' dietary risk.

Therefore, EPA proposes to designate the use of thiabendazole as a seed treatment on dry peas as below the threshold of regulatory concern and thus as not requiring a tolerance or a tolerance exemption under FFDCA. EPA proposes to identify the use as such under 40 CFR part 180.2010 (Threshold of regulation determinations).

B. What is the Agency's Authority for Taking this Action?

The Federal Food, Drug and Cosmetic Act (FFDCA) section 408(e)(1)(C) authorizes the Agency to establish general procedures and requirements to implement FFDCA section 408. FFDCA section 701(a) authorizes the Agency to establish rules implementing the various provisions of FFDCA, as follows: ''The authority to promulgate regulations for the efficient enforcement of this Act, except as otherwise provided in this section, is hereby vested in the Secretary.'' The term ''Secretary'' means ''Administrator'' with respect to those provisions of FFDCA for which the Administrator of EPA, rather than the Secretary of Health and Human Services, has responsibility. These provisions grant EPA the authority to identify by regulation pesticide uses that do not need tolerances or exemptions from tolerances under section 408 of FFDCA.

III. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993, as amended by Executive Order 13422, 72 FR 2763, January 18, 2007). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use* (66 FR 28355), May 22, 2001 or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks or Safety Risks* (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that this action will not have a significant adverse economic impact on a substantial number of small entities because this action does not have any adverse economic impacts.

This action directly regulates growers, food processors, food handlers and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (59 FR 22951, November 6, 2000) do not apply to this action. In addition, this action does not impose an enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 26, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.2010 is amended by adding text to read as follows:

§ 180.2010 Threshold of regulation determinations.

The following pesticide chemical uses do not need a tolerance or exemption from the requirement of a tolerance based on EPA's determination that the uses are below the threshold of regulation.

Pesticide Chemical	CAS Reg. No.	Use/Limits	Analytical Method
Thiabendazole	148–79–8	As a seed treatment for dry pea (including field pea), pigeon pea, chickpea or lentil, using a maximum application rate of 0.075 pounds of active ingredient per 100 pounds of seed. Vines or hay grown from treated seed may not be fed to livestock.	High Performance Liquid Chromatography/Florescence Detector method[1]; *Modification of Ion-Pairing Liquid Chromatographic Determination of Benzimidazole Fungicides in Foods*, Gilvydis and Walters, JAOAC, vol. 73, no. 5, 1990.

[1] Available from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

[FR Doc. E7–19542 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

RIN 0648–AU89

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; Amendment 2 to the Consolidated Highly Migratory Species Fishery Management Plan

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

ACTION: Proposed rule; extension of comment period.

SUMMARY: Due to public, Regional Fishery Management Council, and Atlantic States Marine Fisheries Commission requests, NMFS is extending the comment period to provide additional opportunity for public comment on the draft Amendment 2 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and its proposed rule. NMFS is extending the comment period until November 2, 2007. The original comment period was scheduled to conclude on October 10, 2007. The draft Amendment 2 to the Consolidated HMS FMP and its proposed rule describe a range of management measures that could impact fishermen and dealers for HMS fisheries.

DATES: The deadline for receiving written comments on the July 27, 2007 (72 FR 41392), proposed rule and the draft Amendment 2 to the Consolidated HMS FMP is extended from October 10, 2007, to 5 p.m. on November 2, 2007.

ADDRESSES: You may submit comments, identified by 0648–AU89, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov* or by email to *ShkA2@noaa.gov*. Please write in the subject line ''Comment on Amendment 2.''
- Fax: 301–713–1917, Attn: Michael Clark
- Mail: Attn: Michael Clark, 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope ''Comment on Amendment 2.''

INSTRUCTIONS: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the draft Amendment 2 to the Consolidated HMS FMP and other relevant documents are available on the HMS Management Division's website at *www.nmfs.noaa.gov/sfa/hms* or by contacting HMS at 301–713–2347.

FOR FURTHER INFORMATION CONTACT: For more information concerning the draft Amendment 2 to the Consolidated HMS FMP and its proposed rule, contact: Michael Clark at 301–713–2347 or fax 301–713–1917; or Jackie Wilson at 240–338–3936 or fax 404–806–9188.

SUPPLEMENTARY INFORMATION: The Atlantic HMS fisheries are managed under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Atlantic Tunas Convention Act (ATCA). The Consolidated HMS FMP, finalized in 2006, and amendments to that FMP are implemented by regulations at 50 CFR part 635.

On July 27, 2007 (72 FR 41392), NMFS published a proposed rule that requested comments on the draft Amendment 2 to the Consolidated HMS FMP, and scheduled 10 public hearings throughout August and September 2007 to receive comments from fishery participants and other members of the public regarding the proposed rule and draft Amendment 2 to the Consolidated HMS FMP. NMFS has since received many requests to extend the comment period in order to allow for more adequate comment submissions. In order to accommodate these requests and to provide additional opportunities for public comment by constituents, NMFS is extending the public comment period on the proposed rule and draft Amendment 2 to the Consolidated HMS FMP to 5 p.m., November 2, 2007.

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Dated: September 28, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–19544 Filed 10–2–07; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 72, No. 191
Wednesday, October 3, 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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request Form FNS–648, WIC Local Agency Directory Report

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's (FNS) intention to request an extension for a currently approved information collection, the WIC Local Agency Directory Report.

DATES: Comments on this notice must be received by December 3, 2007.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to 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.

Comments may be sent to: Patricia N. Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 520, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instructions should be directed to: Patricia N. Daniels, (703) 305–2749.

SUPPLEMENTARY INFORMATION:

Title: WIC Local Agency Directory.

OMB Number: 0584–0431.

Expiration Date: 04/30/2008.

Type of Request: Revision of a Currently Approved Collection Form.

Abstract: FNS administers the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. FNS maintains a WIC Local Agency Directory which lists the names and addresses of all WIC local agencies. WIC State and local agencies and FNS use the directory to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants. It is also used as a mailing list to provide local agencies with technical assistance manuals and other information. State agencies complete the WIC Local Agency Directory Report Form to inform FNS when a local agency is newly established, closed or changes its address. This data is needed to keep the directory current. Due to the increase in the number of WIC State Agencies reporting, this revision is an adjustment in the number of respondents from 88 to 90.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.17 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Directors or Administrators of WIC State agencies.

Estimated Number of Respondents: 90 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 15.3 hours.

Dated: September 21, 2007.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E7–19555 Filed 10–2–07; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black River Land Exchange; Apache National Forest; Apache and Greenlee Counties, AZ

AGENCY: Forest Service, USDA.

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

SUMMARY: The Forest Service, USDA will prepare an environmental impact statement (EIS) on a proposal to exchange 337.74 acres of federal lands north of the unincorporated community of Greer, Arizona, for 396.35 acres of non-federal lands along the West Fork of the Black River and the Blue River in east-central Arizona. The EIS will analyze the proposed change of the federal lands described as Tract A and Tract B for the non-federal lands described as Rancho Alegre, Thompson Ranch, and Blue River Ranch parcels. The federal and non-federal lands proposed for exchange are located in Apache and Greenlee Counties, Arizona. The affected Forest Service units are the Springerville and Alpine Ranger Districts of the Apache-Sitgreaves National Forests. The exchange would occur with First American Title Insurance Company, Trustee, under Trust 8541, on behalf of Precision Components, Inc., Herbert W. Owens. Summit Resources, LLC is acting as a third-party facilitator for the non-federal landowner. Implementation of the proposed exchange is scheduled for August 2008. The Apache-Sitgreaves National Forest Supervisor invites the public to submit comments on the proposal and suggestions on the scope of the proposed exchange. The Forest Supervisor also invites the public to participate in the environmental analysis and decision-making process for the proposed exchange of lands.

DATES: Comments concerning the scope of the analysis must be received by October 31, 2007. The draft EIS is scheduled for availability in February 2008, and the final EIS is expected to be available in June 2008.

ADDRESSES: Send written comments to Bruce Buttrey, Natural Resources Specialist, Springerville Ranger District, Apache-Sitgreaves National Forest, P.O. Box 760, Springerville, AZ 85938. Oral comments may be conveyed to Bruce Buttrey in person at the Springerville Ranger District, 165 S. Mountain Avenue, Springerville, AZ or by telephone at 928–333–4372. For further information, mail correspondence to Bruce Buttrey at the above address.

FOR FURTHER INFORMATION CONTACT: Bruce Buttrey, Natural Resource Specialist, at *bbuttrey@fs.fed.us* or (928) 333–4372.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The proposal to exchange lands in the Apache National Forest responds to the Forest Service's need for consolidation of federal land ownership patterns. The consolidation of federal ownership allows the Forest Service to enhance the management of the public's natural resources by acquiring lands that (1) protect habitat for several threatened, endangered, and sensitive species, (2) facilitate public access to federal lands, (3) improve wetlands, floodplains, and riparian areas, (4) decrease the complexity of maintaining property boundaries, and (5) improve the efficiency of resource management by focusing the Forest's funding and staff on consolidated ownerships. This action responds in part to an order dated March 1, 2007, by the United States District Court in Greer Coalition, Inc., and the *Center for Biological Diversity* v. *U.S. Forest Service* (D. AZ). The court remanded an October 14, 2005, decision authorizing the Black River Land Exchange to the Forest Service for proceedings consistent with its March 1, 2007 order. To comply with the court order the Forest Service will prepare an EIS addressing and evaluating the environmental impact should the federal land be developed using multiple shallow water wells.

Proposed Action

The Forest Supervisor proposes to exchange 337.74 acres of federal lands north of the unincorporated community of Greer, Arizona, for 396.35 acres of non-federal lands along with West Fork of the Black River and the Blue River in east-central Arizona. The federal lands proposed for exchange are located in Apache County; the non-federal lands proposed for exchange are located in Apache and Greenlee Counties, Arizona. the affected Forest Service units are the Springerville and Alpine Ranger Districts in the Apache-Sitgreaves National Forests. All acreages in this proposal have been verified. The United States of america would convey fee title to First American Title Insurance Company, Trustee, under Trust 8541 for the 70.57 acre Tract A and 267.17 acre Tract B parcels in Apache County, Arizona, in the Apache National Forest. First American Title Insurance Company, Trustee, under Trust 8541 would convey fee title to the United States of America for the 79.76 acre Rancho Alegre and 157.91 Thompson Ranch parcels in Apache County and the 158.68 acre Blue River Ranch parcel in Greelee County, Arizona, in the Apache National Forest.

The proposed exchange of lands does not require an amendment to the Apach-Sitgreaves National Forests Land and Resource Management Plan. Pursuant to the regulations for land exchanges (36 CFR 254.3(f)): ''Lands acquired by exchange that are located within areas having an administrative designation established through the land management planning process shall automatically become part of the area within which they are located, without further action by the Forest Service, and shall be managed in accordance with the laws, rules, and regulations, and land and resource management plan applicable to such area.''

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, were considered during the environmental analysis and will be discussed in the EIS. The no-action alternative represents no change from the current pattern of land ownership, and it serves as the baseline for the comparison among the action alternatives. In addition to the proposed action and the no-action alternatives, a deed restriction and a direct purchase alternative were considered.

Responsible Official

The Responsible Official is the Director of Lands and Minerals, Southwestern Region. He will review all issues, alternatives, and environmental consequences associated with the analysis; consider all public comments and response; and comply with all policies, regulations, and laws in making a decision regarding the proposed exchange of lands documented in the final EIS for the Black River Land Exchange. The Responsible Official will document his decision and rationale for the decision in a Record of Decision (ROD). His decision will be subject to public notice, review, comment, and appeal under the Forest Service Regulations for Notice, Comment, and Appeal Procedures for National Forest System projects and Activities at 36 CFR part 215.

Nature of Decision To Be Made

The Forest Service will determine if the lands to be exchanged are desirable, in the public interest and suitable for inclusion in the National Forest System. Land exchanges are discretionary, voluntary real estate transactions between the federal and non-federal parties. The exchange can only be completed after the authorized officer determines that the exchanges meets the requirements at 36 CFR 254.3(b): (1) The resource values and the public objectives served by non-federal lands and interests to be acquired are equal to or exceed the resource values and public objectives served by the federal lands to be disposed, and (2) the intended use of the disposed federal lands will not substantially conflict with established management objectives on adjacent federal lands, including Indian Trust Lands.

Lands will be exchanges on a value for value basis, based on current fair market value appraisals. The appraisal is prepared in accordance with the Uniform Appraisal Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisition. The appraisal prepared for the land exchange is reviewed by a qualified review appraiser to ensure that it is fair and complies with the appropriate standards. Under the Federal Land Policy and Management Act of 1976, all exchanges must be equal in value. Forest Service regulations at 36 CFR 254.3 require that exchanges must be of equal value or equalized pursuant to 36 CFR 254.12 by cash payment after making all reasonable efforts to equalize values by deleting lands. If lands proposed for exchange are not equal in value, either party may make them equal by cash payment not to exceed 25 percent of the federal land value. A March 2004, agency approval appraisal indicated by lands along with a federal cash payment were equal in value. A new appraisal will be prepared in 2008 to comply with the United States District Court March 1, 2007, court order.

Preliminary Issues

Previous litigation dealt with the potential effects to existing shallow water wells on adjacent private property from possible future drilling of additional new shallow water wells on the federal lands.

Scoping Process

The Forest Service encourages full participation in the proposed land exchange, beginning with the scoping process. Scoping will include notice in the Apache-Sitgreaves National Forests' Quarterly Schedule of Proposed Actions; distribution of letters to individuals, organizations, and agencies who have previously indicated interest in the Black River Land Exchange; communication with tribal interests; and publication of news releases in the White Mountain Independent and The Arizona Republic, the newspaper of record, for Regional Forester decisions for the Apache-Sitgreaves National Forests. Any news releases will also be distributed to other local newspapers that serve areas affected by this proposal. Public meetings are not currently scheduled. Any future public meetings that may be held will have a notice of time and location provided to newspapers that serve areas affected by this proposal. The scoping process will include identifying any new key issues and previously unknown potential environmental effects of the proposed action.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service is seeking comments concerning the scope of the analysis from individuals, organizations, tribes, state and local agencies, and other federal agencies that may be interested in or affected by the proposed land exchange. All comments received in response to this notice, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. The comment will be used in the preparation of the draft EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position contentions. Vermont Yankee Nuclear Power Corporation versus Natural Resources Defense Council, 435 US 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. City of Angoon versus Hodel, 803 F 2d 1016, 1022 (9th Cir, 1986) and Wisconsin Heritages, Incorporated versus Harris, 490 F Supp 1334, 1338 (ED Wis, 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period, so that comments are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

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

Dated: September 24, 2007.

Elaine J. Zieroth,

Forest Supervisor, Apache-Sitgreaves National Forests.

[FR Doc. 07–4861 Filed 10–2–07; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Supplemental Watershed Plan —Environmental Assessment for the Mary's Creek Watershed Floodwater Retarding Structure No. 7; Shelby County, TN

AGENCY: Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Supplemental Watershed Plan-Environmental Assessment for the Mary's Creek Watershed Floodwater Retarding Structure No. 7, Shelby County, Tennessee.

FOR FURTHER INFORMATION CONTACT: Kevin Brown, State Conservationist, Natural Resources Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone number (615) 277–2531.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Kevin Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

Mary's Creek Watershed No. 7

Notice of a Finding of No Significant Impact

The project purpose is rehabilitation of floodwater retarding structure no. 7 as authorized under Public Law 106–472, the Small Watershed Rehabilitation Amendments of 2000, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Kevin Brown.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: September 14, 2007.

Kevin Brown,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under NO. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

[FR Doc. E7–19530 Filed 10–2–07; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Docket T–4–2007]

Foreign–Trade Zone 38—Spartanburg County, SC, Application for Temporary/Interim Manufacturing Authority, ZF Lemforder Corporation (Automotive Suspension Systems), Duncan, SC

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by the South Carolina State Ports Authority, grantee of FTZ 38, requesting temporary/interim manufacturing (T/IM) authority within FTZ 38 at the ZF Lemforder Corporation (Lemforder) facility in Duncan, South Carolina. The application was filed on September 26, 2007.

The Lemforder facility (71 employees) is located at 191 Parkway West in Duncan (Site 3). Under T/IM procedures, Lemforder would assemble up to 105,000 units of automotive suspension systems (HTSUS 8708.80) annually for the U.S. market and export. Foreign components that would be used in the assembly activity (up to 92% of total purchases) include: stoppers/lids/caps (HTSUS 3923.50), reinforced tubes/pipes/hoses (4009.42), articles of rubber (4016.99), fasteners (steel and aluminum) (7318.15, .16, .22, .24; 7616.10), helical and leaf springs (7320.20), cables and wires (7326.90), fittings (8302.30), check valves (8481.30), brake system parts 8708.30), suspension systems and related parts (8708.80), dampeners (8708.99) , height sensors (9031.80), wheel hubs (8708.99), drive shafts (8708.99), universal joints(8708.99), and ball bearings (8482.10) (duty rates: free 9.0%).

FTZ procedures could exempt Lemforder from customs duty payments on the foreign components used in production for export. On domestic shipments transferred in–bond to U.S. automobile assembly plants with subzone status, no duties would be paid on the foreign components within the automotive suspension systems until the finished vehicles are subsequently entered for consumption, at which time the finished automobile duty rate (2.5%) could be applied to the foreign components. For the finished automotive suspension systems withdrawn directly by Lemforder for CBP entry, the finished automotive part rate (2.5%) could be applied to the foreign inputs noted above.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the following address: Office of the Executive Secretary, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230–0002. For further information, contact Pierre Duy at pierre__duy@ita.doc.gov, or (202) 482–1378. The closing period for receipt of comments is November 2, 2007.

A copy of the application will be available for public inspection at the Office of the Foreign–Trade Zones Board's Executive Secretary at address listed above.

Dated: September 26, 2007.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E7–19518 Filed 10–2–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Announcement of Performance Review Board Members

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Notice of Performance Review Board Membership.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the Bureau of Industry and Security's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Gay Shrum, Director of Administration, Bureau of Industry and Security, at (202) 482–1058, Room 6622, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service.

The Under Secretary for Industry and Security, Mario Mancuso, has named the following members of the Bureau of Industry and Security Performance Review Board:

1. Mark Foulon, Senior Advisor to the Under Secretary (new).
2. Matthew Borman, Deputy Under Secretary for Export Administration.
3. Dawn Leaf, Chief Information Officer.
4. Gay Shrum, Director of Administration.
5. John Phalen, Director, Office of Management and Organization, Department of Commerce (Outside Reviewer).

Dated: September 26, 2007.

Rita Clinton,

Acting Human Resources Officer.

[FR Doc. E7–19552 Filed 10–2–07; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Performance Review Board Members

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Performance Review Board Membership.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the International Trade Administration's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Mary Fleming, International Trade Administration, Office of Human Resources Management, at (202) 482–2274, Room 7417, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service.

The Acting Under Secretary for International Trade, Michelle O'Neill, has named the following members of the International Trade Administration Performance Review Board:

1. Patricia A. Sefcik, Senior Director for Manufacturing, Chairperson.
2. Barbara E. Tillman, Senior Director.
3. Seward L. Jones Jr., Deputy Assistant Secretary for Trade Agreements & Compliance.
4. Stacey B. Silva, Executive Director for Trade Promotion & Outreach (new).
5. Ronald A. Glaser, Human Resources Officer, Executive Secretary.
6. Jamie Estrada, Deputy Assistant Secretary for Manufacturing (At-Large, new).
7. Roxie Jones, Office of General Counsel, Department of Commerce (Outside Reviewer, new).

Dated: September 26, 2007.

Rita Clinton,

Acting Human Resources Officer.

[FR Doc. E7–19554 Filed 10–2–07; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD03

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement for Amendments to the Atlantic Large Whale Take Reduction Plan

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

ACTION: Notice of Availability of Record of Decision.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, NMFS announces availability of the Record of Decision (ROD) for amending the Atlantic Large Whale Take Reduction Plan (ALWTRP). NMFS approves Alternative 6 Final Preferred, which includes broad-based, coast-wide gear modifications and seasonal restrictions.

ADDRESSES: Copies of the ROD and Final Environmental Impact Statement (FEIS)/ Regulatory Impact Review for amending the ALWTRP can be obtained from the ALWTRP website listed under the Electronic Access portion of this document or by contacting staff listed under the **FOR FURTHER INFORMATION CONTACT** section of this document. For additional **ADDRESSES** and Web sites for document availability see **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9300 Ext. 6503, *diane.borggaard@noaa.gov*; Kristy Long, NMFS, Office of Protected Resources, 301–713–2322, *kristy.long@noaa.gov*; or Barb Zoodsma, NMFS, Southeast Region, 904–321–2806, *barb.zoodsma@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

The ROD and the FEIS are available electronically from the following Web site: *http://www.nero.noaa.gov/whaletrp/*.

Dated: September 27, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 07–4913 Filed 10–1–07; 11:33 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for 18 October 2007, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address, or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington DC September 27, 2007.

Frederick J. Lindstrom,

Assistant Secretary.

[FR Doc. 07–4879 Filed 10–2–07; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2007–OS–0111]

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995*, the Office of the Under Secretary of Defense for Acquisition, Technology, And Logistics, announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 3, 2007.

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

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

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

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection, or to obtain a copy of the proposal and associated collection instrument, please write to the U.S./Canada Joint Certification Office, Federal Center, DLIS–SB, Attn: Stephen G. Riley, 74 Washington Ave. N, Suite 7, Battle Creek, MI 49037–3084.

Title, Associated Form, and OMB Number: Militarily Critical Technical Data Agreement, DD Form 2345, OMB Control Number 0704–0207.

Needs and Uses: The information collection requirement is necessary as a basis for certifying enterprises or individuals to have access to DoD export-controlled militarily critical technical data subject to the provisions

of 32 CFR 250. Enterprises and individuals that need access to unclassified DoD-controlled militarily critical technical data must certify on DD Form 2345, Militarily Critical Technical Data Agreement, that data will be used only in ways that will inhibit unauthorized access and maintain the protection afforded by U.S. export control laws. The information collected is disclosed only to the extent consistent with prudent business practices, current regulations, and statutory requirements and is so indicated on the Privacy Act Statement of DD Form 2345.

Affected Public: Business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 2,000.

Number of Annual Respondents: 6,000.

Annual Responses to Respondent: 1.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Use of DD Form 2345 permits U.S. and Canada defense contractors to certify their eligibility to obtain certain unclassified technical data with military and space applications. Non-availability of this information prevents defense contractors from accessing certain restricted databases and obstructs conference attendance where restricted data will be discussed.

Dated: September 26, 2007.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 07–4878 Filed 10–2–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of Local Redevelopment Authorities (LRAs) recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the points of contact, addresses, and telephone numbers for the LRAs for those installations. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of an installation should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of each installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

EFFECTIVE DATE: October 3, 2007.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Pennsylvania

Installation Name: Samuel P. Serrenti Memorial USARC.

LRA Name: Scranton Redevelopment Authority.

Point of Contact: William J. Schoen, Executive Director, Scranton Redevelopment Authority.

Address: 538 Spruce Street, Suite 812, Scranton, PA 18503.

Phone: (570) 348–4216.

Texas

Installation Name: Naval Station Ingleside—Electro Magnetic Reduction Facility.

LRA Name: Ingleside Local Redevelopment Authority.

Point of Contact: Stella Herrmann, Chairman, Ingleside Local Redevelopment Authority.

Address: P.O. Box 891, Ingleside, TX 78362.

Phone: (361) 222–0789.

Dated: September 27, 2007.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4877 Filed 10–2–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0014]

Federal Acquisition Regulation; Information Collection; Submission for OMB Review; Statement and Acknowledgment (Standard Form 1413)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning statement and acknowledgment (Standard Form 1413). The clearance currently expires on January 31, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 3, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Contract Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 1413, Statement and Acknowledgment, is used by all executive agencies, including the Department of Defense, to obtain a statement from contractors that the proper clauses have been included in subcontracts. The form includes a signed contractor acknowledgment of the inclusion of those clauses in the subcontract.

B. Annual Reporting Burden

Respondents: 31,500.
Responses Per Respondent: 2.
Total Responses: 63,000.
Hours Per Response: .05.
Total Burden Hours: 3,150.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0014, Statement and Acknowledgment (Standard Form 1413), in all correspondence.

Dated: September 17, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4871 Filed 10–2–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0001]

Federal Acquisition Regulation; Information Collection; Standard Form 28, Affidavit of Individual Surety

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Standard Form 28, affidavit of individual surety. The clearance currently expires on February 29, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 3, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Patrick Conley, Contract Policy Division, GSA (202) 501–4770.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) is used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. To qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 is used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.43.
Total Responses: 715.
Hours Per Response: .4.
Total Burden Hours: 286.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0001, Standard Form 28, Affidavit of Individual Surety, in all correspondence.

Dated: September 17, 2007.

Al Matera,

Director,Office of Acquisition Policy.

[FR Doc. 07–4872 Filed 10–2–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0024]

Federal Acquisition Regulation; Information Collection; Buy American Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the Buy American Act certificate. The clearance currently expires on February 29, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 3, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR),

1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Contract Policy Division, GSA (202) 208–6925.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Buy American Act requires that only domestic end products be acquired for public use unless specifically authorized by statute or regulation, provided that the cost of the domestic products is reasonable.

The Buy American Act Certificate provides the contracting office with the information necessary to identify which products offered are domestic end products and which are of foreign origin. Components of unknown origin are considered to have been supplied from outside the United States.

B. Annual Reporting Burden

Respondents: 3,906.
Responses Per Respondent: 15.
Total Responses: 58,590.
Hours Per Response: .109.
Total Burden Hours: 6,361.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0024, Buy American Act Certificate, in all correspondence.

Dated: September 17, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4873 Filed 10–2–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0022]

Federal Acquisition Regulation; Information Collection; Duty-Free Entry

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning duty-free entry. The clearance currently expires on February 29, 2008.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 3, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VIR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Meredith Murphy, Contract Policy Division, GSA (202) 208–6925.

SUPPLEMENTARY INFORMATION:

A. Purpose

United States laws impose duties on foreign supplies imported into the customs territory of the United States. Certain exemptions from these duties are available to Government agencies. These exemptions are used whenever the anticipated savings outweigh the administrative costs associated with processing required documentation. When a Government contractor purchases foreign supplies, it must notify the contracting officer to determine whether the supplies should be duty-free. In addition, all shipping documents and containers must specify certain information to assure the duty-free entry of the supplies.

The contracting officer analyzes the information submitted by the contractor to determine whether or not supplies should enter the country duty-free. The information, the contracting officer's determination, and the U.S. Customs forms are placed in the contract file.

B. Annual Reporting Burden

Respondents: 1,330.
Responses Per Respondent: 10.
Total Responses: 13,300.
Hours Per Response: .5.
Total Burden Hours: 6,650.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0022, Duty-Free Entry, in all correspondence.

Dated: September 17, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4874 Filed 10–2–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Senior Executive Service Performance Review Board

AGENCY: Department of Defense Office of Inspector General.

ACTION: Notice.

SUMMARY: This notice announces the appointment of the members of the Senior Executive Service (SES) Performance Review Board (PRB) for the Department of Defense Office of Inspector General (DoD OIG), as required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of SES performance appraisals and makes recommendations regarding performance ratings and performance awards to the Inspector General.

EFFECTIVE DATE: October 4, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Phyllis Hughes, Director, Human Capital Advisory Services, Administration and Management, DoD OIG, 400 Army Navy Drive, Arlington, VA 22202, (703) 602–4516.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the DoD OIG, PRB:

Charles E. Coe, Jr., Assistant Inspector General for Information Technology Audits and Computer Crime Investigations, Department of Education.

Andrew Patchan, Assistant Inspector General for Auditing, General Services Administration.

Dennis S. Schindel, Acting Inspector General, Department of the Treasury.

Linda Snider, Assistant Inspector General for Resource Management, Department of Energy.
Norbert E. Vint, Deputy Inspector General, Office of Personnel Management.

Dated: September 27, 2007.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 07–4876 Filed 10–2–07; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the DOE/NSF Nuclear Science Advisory Committee

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, Section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the DOE/NSF Nuclear Science Advisory Committee has been renewed for a two-year period.

The Committee will provide advice to the Associate Director of the Office of Science for Nuclear Physics (DOE), and the Assistant Director, Directorate for Mathematical and Physical Sciences (NSF), on scientific priorities within the field of basic nuclear science research. The Secretary of Energy has determined that renewal of the Committee is essential to conduct business of the Department of Energy and the National Science Foundation and is in the public interest in connection with the performance duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on September 28, 2007.

Carol Matthews,

Acting Committee Management Officer.

[FR Doc. E7–19550 Filed 10–2–07; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, October 23, 2007, 8:30 a.m. to 6:30 p.m. and Wednesday, October 24, 2007, 8:30 a.m. to noon.

ADDRESSES: The Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland, 20878.

FOR FURTHER INFORMATION CONTACT: Albert L. Opdenaker, Office of Fusion Energy Sciences; U.S. Department of Energy; 1000 Independence Avenue, SW.; Washington, DC 20585–1290; Telephone: 301–903–4927.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The major purposes of the meeting are for the Fusion Energy Sciences Advisory Committee (FESAC) to complete its responses to the charges on (1) planning (Greenwald Panel), (2) the Fusion Simulation Project (Tang Panel), and (3) the scientific/programmatic review of the National Compact Stellarator Experiment (NCSE) (Hazeltine Panel). During the meeting, FESAC members will also hear a status report on the ITER Major Item of Equipment (MIE) Project, and discuss future approaches to strategic planning and possible future charges to FESAC.

Tentative Agenda

Tuesday, October 23, 2007

- Office Fusion Energy Sciences Perspective
- Report from the NCSX Science Review Panel/Discussion
- Report from the Panel on Strategic Planning/Discussion
- Report from the Panel on the Fusion Simulation Program/Discussion
- Public Comments

Wednesday, October 24, 2007

- Report on U.S. ITER MIE Project
- Recommendations to DOE on NCSX and Long Term Program Opportunities

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Albert L. Opdenaker at 301–903–8584 (fax) or *albert.opdenaker@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available on the U.S. Department of Energy's *Office of Fusion Energy Sciences* Web site (*http://www.science.doe.gov/ofes/*).

Issued at Washington, DC, on September 28, 2007.

Rachel M. Samuel,

Deputy Committee Management Officer.

[FR Doc. E7–19551 Filed 10–2–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8476–8]

Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of the designation of a new reference method for monitoring ambient air quality.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of carbon monoxide (CO) in the ambient air.

FOR FURTHER INFORMATION CONTACT: Elizabeth Hunike, Human Exposure and Atmospheric Sciences Division (MD–D205–03), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711. Phone: (919) 541–3737, e-mail: *Hunike.Elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA evaluates various methods for monitoring the concentrations of those ambient air pollutants for which EPA has established National Ambient Air Quality Standards (NAAQSs) as set forth in 40 CFR part 50. Monitoring methods that are determined to meet specific requirements for adequacy are designated by the EPA as either reference methods or equivalent methods (as applicable), thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the NAAQSs.

The EPA hereby announces the designation of a new reference method

for measuring concentrations of CO in the ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on December 18, 2006 (71 FR 61271).

The new reference method for CO is an automated method that utilizes the measurement principle based on non-dispersive infra-red adsorption photometry (combined with gas filter correlation) and the calibration procedure specified in Appendix C of 40 CFR part 50. The newly designated reference method is identified as follows:

RFCA–0907–167, ''DKK–TOA Corporation Model GFC–311E Ambient CO Analyzer,'' operated with full-scale fixed measurement ranges of 0–5, 0–10, 0–20 and 0–50 ppm at any environmental temperature in the range of 20 °C to 30 °C.

An application for a reference method determination for the candidate method was received by the EPA on May 16, 2007. The sampler is commercially available from the applicant, DKK–TOA Corporation, 29–10, 1-Chome, Takadanobaba, Shinjuku-ku, Tokyo 169–8648, Japan (*www.toadkk.co.jp*).

A test analyzer representative of this method has been tested in accordance with the applicable test procedures specified in 40 CFR part 53 (as amended on December 18, 2006). After reviewing the results of those tests and other information submitted by the applicant in the application, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant in the application will be kept on file, either at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 or in an approved archive storage facility, and will be available for inspection (with advance notice) to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any specifications and limitations (*e.g.*, configuration or operational settings) specified in the applicable designation method description (see the identifications of the method above).

Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume I,'' EPA/600/R–94/038a and ''Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II, Part 1,'' EPA–454/R–98–004 (available at *http://www.epa.gov/ttn/amtic/qabook.html*). Vendor modifications of a designated reference method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under Section 2.8 (Modifications of Methods by Users) of Appendix C to 40 CFR part 58.

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded or converted (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status. The manufacturer should be consulted to determine the feasibility of such upgrading or conversion.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are specified in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in 40 CFR parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with Part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a designation label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR Part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–E205–01), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this new equivalent method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR Part 58. Questions concerning the commercial availability or technical aspects of the method should be directed to the applicant.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E7–19515 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0965; FRL–8151–1]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: An Exposure Modeling Public Meeting (EMPM) will be held for one day on October 30, 2007. This notice announces the location and time for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on October 30, 2007 from 9:00 am to 3:00 pm.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at Environmental Protection Agency, Office of Pesticide Programs (OPP), One Potomac Yard (South Bldg.), 1st Floor South Conference Room, 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: R. David Jones, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6725; fax number: (703) 305–6309; e-mail address: *jones.rdavid@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0965 Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. Background

On a triannual interval, an Exposure Modeling Public Meeting will be held for presentation and discussion of current issues in modeling pesticide fate, transport, and exposure in support of risk assessment in a regulatory context. Meeting dates and abstract requests are announced through the ''empmlist'' forum on the LYRIS list server at: *https://lists.epa.gov/read/all_forums/*

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in the meeting, identified by docket ID number EPA–HQ–OPP–2007–0965, must be received on or before October 18, 2007.

IV. Tentative Agenda

9:00 am Welcome and Introductions

9:15 am Brief Updates:

New versions of GENEEC/FIRST (R. Parker)

New version of PE4/PRZM/EXAMS (G. Orrick)

Scenarios for BSS and CRLF (R. D. Jones)

Evaluation of EXPRESS (M. Barrett)

Presentations:

9:45 am Simulating Residential Watersheds Using PRZM and EXAMS –R. D. Jones - EPA (30 minutes)

10:15 am Estimating Pesticide Exposure for a Karst Watershed in Texas–M. Corbin - EPA (30 min)

10:45 am Break

11:00 am Environmental Exposure Modeling in Antimicrobials Division–J. Breithaupt - EPA (30 min)

11:30 am A Platform for Modeling Rice Using RiceWQ and EXAMS–M. William - Waterborne Environmental (60 min)

12:00 pm Lunch

1:00 pm Urban Use of Pesticides and Water Exposure– B. L. Bhaduri - Oak Ridge (60 min)

2:00 pm GIS Applications for Exposure Modeling - Drinking Water Watersheds, New PCAs, Turf– M Thawley - EPA (30 min)

2:30 pm Discussion and Wrap up

List of Subjects

Environmental protection, Modeling, Pesticides, Pest.

Dated: September 25, 2007.

Arthur-Jean Williams,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. E7–19521 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0986; FRL–8151–9]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, EPA gives notice of a public meeting of the Pesticide Program Dialogue Committee (PPDC) on October 17 and 18, 2007. A draft agenda has been developed that includes web-based labeling, spray drift and reports from the following PPDC Work Groups: PRIA Process Improvements; Registration Review Implementation; and AZM Transition Issues.

DATES: The PPDC meeting will be held on Wednesday, October 17, 2007, from 9 a.m. to 5 p.m., and Thursday, October 18, from 9 a.m. to noon.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON CONTACT**, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held in the Conference Center on the lobby level at the U.S. Environmental Protection Agency's location at 1 Potomac Yard South, 2777 Crystal Drive, Arlington, VA. This location is approximately a half mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; e-mail address:*fehrenbach.margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0986. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr*.

A draft agenda has been developed and is posted on EPA's web site at:*http://www.epa.gov/pesticides/ppdc/*.

II. Background

The Office of Pesticide Programs is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for EPA's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed November 5, 2005, for another 2–year period. Currently, EPA is in the process of renewing the PPDC Charter for another 2–year term until November 2009. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the PPDC: Pesticide industry and trade associations; environmental/public interest, consumer, and animal rights groups; farm worker organizations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How Can I Request to Participate in this Meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Foods, Pesticides and pests, Public health.

Dated: September 26, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–19523 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[[FRL–8476–7]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Science Advisory Board Panel for the Review of EPA's 2007 Report on the Environment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) Staff Office announces a public teleconference of the SAB Panel for the Review of EPA's 2007 Report on the Environment. The teleconference is being held to discuss the Panel's draft advisory report.

DATES: The teleconference will be held on October 24, 2007 from 1 p.m. to 4 p.m. (Eastern Time).

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding the public teleconference may contact. Dr. Thomas Armitage, Designated Federal Officer (DFO). Dr. Armitage may be contacted at the EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or via telephone/voice mail: (202) 343–9995; fax (202) 233–0643; or e-mail at: *armitage.thomas@epa.gov.* General information about the EPA SAB, as well as any updates concerning the teleconference announced in this notice, may be found in the SAB Web Site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the SAB Panel for the Review of EPA's 2007 Report on the Environment will hold a public teleconference to discuss a draft advisory report on EPA's Report on the Environment 2007: Science Report. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the 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: In 2003, EPA issued a draft Report on the Environment describing the status of and trends in the environment and human health. The draft 2003 Report on the Environment

was reviewed by the SAB (see *http://www.epa.gov/sab/pdf/sab_05_004.pdf*). EPA used advice received from the SAB and comments from stakeholders to develop an improved and updated draft Report on the Environment 2007. The Report on the Environment 2007 consists of: a Science Report (ROE 2007 Science Report) containing detailed scientific and technical information, a Highlights Document written for concerned citizens, and an electronic document facilitating access to material in the reports. The ROE 2007 Science Report asks key questions about the current status of, and trends in, the condition of the environment and human health. These questions are intended to be relevant to EPA's current regulatory and programmatic activities and mission, and they have been answered using a suite of environmental and human health indicators.

EPA's Office of Research and Development requested that the SAB review the ROE 2007 Science Report. In response to EPA's request, the SAB Staff office formed the Panel for the Review of EPA's 2007 Report on the Environment. Background information on the Panel formation process was provided in a **Federal Register** noticepublished on May 25, 2006 (71 FR 30138). The Panel has previously held a teleconference and a face-to-face meeting (72 FR 29498). Information about the SAB Panel for the Review of EPA's 2007 Report on the Environment is available on the SAB Web site at: *http://www.epa.gov/sab.*

Availability of Meeting Materials: The draft Report on the Environment 2007: Science Report reviewed by the SAB Panel is available on the following EPA Office of Research and Development Web Site: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=140917.* The agenda and other material for the upcoming public teleconference will be posted on the SAB Web Site at: *http://www.epa.gov/sab/* in advance of the teleconference.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB Panel to consider during the advisory process. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes per speaker, with no more than a total of 30 minutes for all speakers. Interested parties should contact Dr. Armitage, DFO, in writing (preferably via e-mail) at the contact information noted above, no later than October 17, 2007 to be placed on a list of public speakers for the teleconference. *Written Statements:* Written statements should be received in the SAB Staff Office by October 17, 2007 so that the information may be made available to the SAB Panel members for their consideration. 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. Armitage at the phone number or e-mail address noted above, preferably at least ten days prior to the meeting to give EPA as much time as possible to process your request.

Dated: September 26, 2007.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E7–19511 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0947; FRL–8149–6]

Notice of Filing of a Pesticide Petition for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before November 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–0947 and the pesticide petition number (PP), by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0947. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Submitting CBI.* Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing notice of the filing of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petition described in this notice contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available on-line at *http://www.regulations.gov*.

Amendment to Existing Tolerance Exemption

PP 7F7237. AgriVir, LLC, 7700 Leesburg Pike, Suite 208, Falls Church, VA 22043, proposes to amend the current tolerance exemption(s) in 40 CFR 180.1218 for residues of the microbial pesticide Indian meal moth granulosis virus when used in or on all food commodities to read as follows:

''An exemption from the requirement of a tolerance is established for residues of the microbial pesticide Indian Meal Moth Granulosis Virus (Indian meal moth Granulosis virus infected Indian meal moth larval parts homogenized with heat treated wheat bran and brewer's yeast by-products) when used in or on all food commodities.''

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 24, 2007.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E7–19334 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007–0328; FRL–8149–8]

Guidance on Recommended Environmental Hazard Statements for Outdoor Residential Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency seeks public comment on a draft Pesticide Registration (PR) Notice entitled ''Environmental Hazard Statements for Outdoor Residential Pesticides''. The proposed guidance is directed toward current or prospective registrants of outdoor residential use pesticides on recommended environmental hazard language. This guidance recommends new environmental hazard statements that are designed to replace language created for agricultural products with statements that are easier for consumers to understand. The new environmental hazard statements are divided by product type (e.g., liquid ready-to-use, broadcast granular), and recommends specific language for each product type to minimize risks to the human health and the environment, with emphasis on reducing risks to water. Revisions to product labels using these new statements may be made by notification.

DATES: Comments must be received on or before November 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–EPA–HQ–OPP–2007–0328 by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2007–0328. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line 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 regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Jim Roelofs, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–2964; fax number: (703) 308–1850; e-mail: *roelofs.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register, regulate, or label pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI*. Do not submit this information to EPA through 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:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Specific questions for comment*. i. The proposed statements are intended to give clear, practical instructions for the ordinary consumer, and to state a reason for following the instructions. Are there terms in the statements that are ambiguous or subject to interpretation, which could potentially confuse an untrained user?

ii. Three of the four categories (liquid concentrate, dust, and liquid ready-to-use) should not be applied in winds that would cause the product to drift to unintended areas. Since a home user can not be presumed to have any means of knowing actual wind speed at the time of application, what directions regarding wind would be most helpful?

a. The proposed environmental hazard statement to minimize the potential for drift reads: ''[Do not] apply when wind is strong enough to carry spray away from treatment area.'' Is that a clear, practical instruction?

b. The alternative statement to minimize drift incorporates the *Beaufort scale* (*http://www.ncdc.noaa.gov/oa/climate/conversion/beaufortland.html*). The Beaufort scale a system for

estimating wind strengths without the use of instruments. For wind speeds that could affect application of residential products, the visual effects according to the Beaufort scale for a moderate breeze of 13 to18 miles per hour would be that small branches on trees are moving. Is this a practical indicator of when not to use a product? Is the phrase ''Do not apply when wind is strong enough to move small branches on trees, as wind will carry spray away from treatment area'' preferable to ''Do not apply when wind is strong enough to carry spray away from treatment area''?

II. What Action is the Agency Taking?

EPA is recommending that registrants of outdoor residential use pesticides revise Environmental Hazard Statements on product labels. This action is voluntary and may be done through notification. As this is voluntary, no Agency action will be taken.

List of Subjects

Environmental protection, Administrative practice and procedure, Environmental Hazard Statements, Pesticides and pest Residential.

Dated: September 25, 2007.

Debra Edwards,

Director, Office of Pesticide Programs.

[FR Doc. E7–19448 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–SFUND–2007; Docket # EPA–HW–OECA–2007–0635; FRL–8476–6]

Notice of Availability of the ''Results of the Superfund Alternative Approach Evaluation'' Report

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces the availability of the ''Results of the Superfund Alternative Approach Evaluation'' report for public review. Interested stakeholders may submit comments on this report which will be considered as we continue to implement this approach and as part of any future policy modifications. The Superfund Alternative Approach is an alternative to listing a contaminated site on the Superfund National Priorities List (NPL) before starting cleanup.

DATES: The report was signed on September 20, 2007. Comments must be received by December 3, 2007.

ADDRESSES: Interested stakeholders may submit comments, identified by Docket ID No. EPA–HW–OECA–2007–0635, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: browne.nancy@epa.gov.*
- *Fax:* 202–501–0086 Attn: Nancy Browne.
- *Mail:* Nancy Browne, Environmental Protection Agency, Mailcode 2272A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

The report will be available on EPA's Web site at *http://www.epa.gov/compliance/resources/publications/cleanup/superfund/saa-eval-results.pdf.*

Instructions: Direct your comments to Docket ID No. EPA–HW–OECA–2007–0635. 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 comments 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 via e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Nancy Browne, Office of Site Remediation Enforcement (2272A), EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: 202–564–4219, fax number: 202–501–0461; e-mail address: *browne.nancy@epa.gov*; or Joan Fisk Neptune, Office of Superfund Remediation and Technology Innovation (5204P), EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number: 703–603–8791; e-mail address: *fisk.joan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

EPA undertook an internal evaluation of its implementation of the ''Revised Response Selection and Settlement Approach for Superfund Alternative Sites'' guidance (the ''Revised SAS Guidance''). The Revised SAS Guidance was issued June 17, 2004, and is available on EPA's Web site at *http://www.epa.gov/compliance/resources/policies/cleanup/superfund/rev-sas-04.pdf* (PDF 130 kb).

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

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

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

- Identify the subject 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 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 and personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Dated: September 27, 2007.

Susan E. Bromm,

Director, Office of Site Remediation Enforcement.

James E. Woolford,

Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. E7–19512 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2007–0984; FRL–8151–7]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 3, 2007 to September 7, 2007, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before November 2, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2007–0984, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2007–0984. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. 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 number EPA–HQ–OPPT–2007–0984. 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 regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' systems, 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 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 docket's index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov web site to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC PublicReading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone numberof the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through 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 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:

i. Identify the document by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. 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.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at the estimate.

vi. Provide specific examples to illustrate your concerns, and suggested alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 3, 2007 to September 7, 2007, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 08/03/07 TO 09/07/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–07–0602	08/03/07	10/31/07	CBI	(S) Chemical intermediate	(G) 1-alkene, 10,10-diethoxy-
P–07–0603	08/03/07	10/31/07	CBI	(G) A component of adhesives	(G) Reaction product of 2-propenoic acid, 2-methyl-, monoester and a proprietary isocyanate
P–07–0604	08/03/07	10/31/07	CIBA Specialty Chemicals Corporation	(S) Ultra violet curing agent in surface modifier (for plastics)	(G) Poly(oxy-1,2-alkyl),.alpha.-hydro-.omega.-hydroxy-,.alpha.-oxoarylacetate
P–07–0607	08/07/07	11/04/07	Hybrid Plastics, Inc.	(S) Flame retardant for thermoplastic resins	(S) 1,2-ethanediamine, *N*1-[3-[3,5,7,9,11,13,15-heptakis 2methylpropyl),pentacyclo [9.5.1.13,9,15,15.17,13]octasiloxan-1-yl]propyl]-
P–07–0608	08/07/07	11/04/07	CBI	(G) Component of industrial use coating	(G) Aliphatic polyurethane acrylate
P–07–0609	08/08/07	11/05/07	CBI	(G) Additive for lubricants	(G) Sulfurized fatty acid derivative
P–07–0610	08/08/07	11/05/07	CBI	(G) Sealant	(G) Bisurea compound
P–07–0611	08/08/07	11/05/07	CBI	(G) Sealant	(G) Bisurea compound
P–07–0612	08/08/07	11/05/07	CBI	(G) Sealant	(G) Bisurea compound
P–07–0613	08/08/07	11/05/07	CBI	(G) Sealant	(G) Bisurea compound
P–07–0614	08/09/07	11/06/07	CBI	(G) Surface treatment for pigments	(G) 2-arylazo-*N*-aryl-3-oxo-alkylamide
P–07–0615	08/09/07	11/06/07	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid
P–07–0616	08/09/07	11/06/07	CBI	(G) Component of foam	(G) Fatty acid polymer with aliphatic diol and aromatic diacid

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 08/03/07 TO 09/07/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–07–0617	08/10/07	11/07/07	3M Company	(G) Heat transfer fluid	(G) Hydrofluoroether
P–07–0618	08/10/07	11/07/07	3M Company	(G) Chemical intermediate	(G) Alkyl acid fluoride
P–07–0619	08/10/07	11/07/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P–07–0620	08/10/07	11/07/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P–07–0621	08/10/07	11/07/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P–07–0622	08/10/07	11/07/07	CBI	(G) Lubricant additive	(G) Alkanoldioic acid, dialkyl ester
P–07–0623	08/13/07	11/10/07	CBI	(G) Filler dispersant	(G) Polyalkoxylate phosphite ester
P–07–0624	08/14/07	11/11/07	CBI	(S) Anti-stain in construction	(G) Amino functional silsesquioxanes
P–07–0625	08/14/07	11/11/07	CBI	(G) Additive for inks and cleaners	(G) Cyclic amine polymer with epoxides, alkylcarboxy derivs.
P–07–0626	08/14/07	11/11/07	CBI	(G) Toner additive	(G) Methyl trialkyl ammonium chloride, reaction products with silicic acid, lithium, magnesium and sodium salt
P–07–0627	08/14/07	11/11/07	CBI	(S) Acrylic polymer used in the manufacture of adhesive tapes	(G) Acrylic polymer
P–07–0628	08/14/07	11/11/07	CBI	(G) Non-dispersive use	(G) Blocked aromatic isocyanate
P–07–0629	08/14/07	11/11/07	Croda Inc.	(G) Polymer additive	(G) Polyethylene glycol dierucate
P–07–0630	08/15/07	11/12/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–07–0631	08/15/07	11/12/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–07–0632	08/15/07	11/12/07	CBI	(G) Additive, open, non-dispersive use	(G) Polyester polyether urethane block copolymer
P–07–0633	08/15/07	11/12/07	Angus Chemical Company, a subsidiary of the Dow Chemical Company	(S) Intermediate chemical	(G) Nitroalcohol derivative
P–07–0634	08/15/07	11/12/07	Angus chemical Company, a subsidiary of the Dow Chemical Company	(S) Metal working fluid additive	(G) Alkanolamine derivative
P–07–0635	08/16/07	11/13/07	CBI	(G) Coating component	(G) Styrene, polymer with methacrylate ester, alkene, and substituted trialkoxysilane
P–07–0636	08/17/07	11/14/07	CBI	(G) Chemical intermediate / catalyst	(G) Aluminum mixed metal and diol complex
P–07–0637	08/17/07	11/14/07	CBI	(G) Chemical intermediate / catalyst	(G) Aluminum mixed metal and mixed diol complex
P–07–0638	08/16/07	11/13/07	Chemtek, Inc.	(S) Concrete cleaner component	(G) Alkylphosphonic acid mixture, lithium salt
P–07–0639	08/20/07	11/17/07	CBI	(S) Gas hydration inhibitor	(G) Ether carboxylic acid amide
P–07–0640	08/20/07	11/17/07	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
P–07–0641	08/21/07	11/18/07	Spectra Colors Corp.	(G) Dye for washable ink systems	(G) Ethoxylated triphenylmethane
P–07–0642	08/17/07	11/14/07	CBI	(G) Cleaning and polishing chemical for semiconductor manufacturing	(G) Polystyrene derivative
P–07–0643	08/22/07	11/19/07	DIC International (USA), LLC.	(G) Acrylic resin for coatings	(G) Hydroxyalkyl methacrylate, polymer with branched benzene, alkyl alkenoate and alkyl fumarate
P–07–0644	08/16/07	11/13/07	Chemtek, Inc.	(S) Concrete cleaner component	(G) Alcohol, ethoxylated, phosphated, lithium salt
P–07–0645	08/22/07	11/19/07	DIC International (USA), LLC.	(G) Acrylic resin for coatings	(G) Hydroxyalkyl methacrylate, polymer with branched benzene, alkyl (c=1-6) methacrylate, alkyl acrylate and alkenoic acid
P–07–0646	08/23/07	11/20/07	Firmenich Inc.	(G) Chemical intermediate	(S) Dodecane, 1,1,3-triethoxy-
P–07–0647	08/23/07	11/20/07	Firmenich Inc	(G) Chemical intermediate	(S) Decane, 1,1-diethoxy-
P–07–0648	08/22/07	11/19/07	Incorez Corporation	(S) Amine hardener used in the formulation of epoxy based paints and coatings	(G) Polyamnine hardner
P–07–0649	08/22/07	11/19/07	CBI	(G) Coating (surface treatment)	(G) Urethane resin
P–07–0650	08/24/07	11/21/07	CBI	(G) Paper product additive	(G) Glyoxalated acrylamide, dadmac, 2-hydroxyethylacrylate ternary copolymer with amine-amide adduct
P–07–0651	08/24/07	11/21/07	CBI	(G) Crosslinker for polyacrylamides; additive for resins	(G) Amine-amide adduct
P–07–0652	08/24/07	11/21/07	Bio-based Technologies, LLC	(G) Plastics	(S) Soybean oil, reaction products with diethanolamine and ethaneperoxoic acid

I. 74 PREMANUFACTURE NOTICES RECEIVED FROM: 08/03/07 TO 09/07/07—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–07–0653	08/24/07	11/21/07	CBI	(S) Flame retardant for plastics (eg. polyurethane)	(G) Ethoxylated methylphosphonic acid
P–07–0654	08/07/07	11/04/07	Cara Plastics Inc	(S) Composite resins crosslinker	(G) Maleinated Acrylated epoxided Soy oil
P–07–0655	08/22/07	11/19/07	CBI	(S) Binder for in-mold coatings	(G) Waterborne polyurethane
P–07–0656	08/28/07	11/25/07	CBI	(G) Dyestuff	(G) Substituted triazine derivative
P–07–0657	08/28/07	11/25/07	CBI	(G) Dyestuff	(G) Substituted benzimidazol sulfonic acid
P–07–0658	08/29/07	11/26/07	R. T. Vanderbilt Company, Inc.	(S) Anti-wear and anti-oxidant agent for lubricants	(S) Amine bis(C_{11-14} branched and linear alkyl), tungstates
P–07–0659	08/29/07	11/26/07	CBI	(G) Dyestuff	(G) Substituted triazine derivative
P–07–0660	08/29/07	11/26/07	CBI	(G) Dyestuff	(G) Substituted anthraquinone derivative
P–07–0661	08/29/07	11/26/07	CBI	(G) Dyestuff	(G) Substituted phthalocyanine
P–07–0662	08/29/07	11/26/07	Cytec Industries Inc.	(S) Flow-leveling additive for industrial coatings	(G) Substituted alkenyl-terminated siloxanes and silicones polymers with substituted acrylates, peroxide initiated
P–07–0664	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0665	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0666	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0667	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0668	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0669	09/04/07	12/02/07	CBI	(G) Textile additive and foam additive	(G) Poly(ethylene oxide)
P–07–0670	09/04/07	12/02/07	CBI	(S) Chemical intermediate	(G) Butanoic acid, (1*R*)-1-ethenylalkyl ester
P–07–0671	09/04/07	12/02/07	CBI	(G) Lamination adhesive	(G) Polyurethane adhesive
P–07–0672	09/05/07	12/03/07	CBI	(G) Metal working fluid	(G) Polyethylene glycol ether acid
P–07–0673	09/05/07	12/03/07	Mane, USA	(G) Perfumery ingredient	(S) 2(3*H*)-furanone,5-(6-heptenyl)dihydro-
P–07–0674	09/07/07	12/05/07	CBI	(G) Protective coating	(G) Oxirane, substituted siliylmethyl-, hydrolysis products with alkanol zirconium(4+) salt and silica, acetates
P–07–0675	09/06/07	12/04/07	CBI	(G) Destructive use (antioxidant)	(G) Phenolic amine
P–07–0676	09/06/07	12/04/07	CBI	(G) Destructive use (antioxidant)	(G) Phenolic amine
P–07–0677	09/07/07	12/05/07	ltw Devcon Futura Coatings	(S) Chemical intermediate	(G) Aspartic acid, *N*-alkyl,*N*-(isocyanatoalkyl)-,alkyl ester
P–07–0678	09/06/07	12/04/07	CIBA Specialty Chemicals Corporation	(G) Paper additive	(G) substituted Benzenemethanaminium chloride/acrylamide/acrylic acid/substituted ethanaminium chloride polymer

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 4 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 8/03/07 TO 09/07/07

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–07–0020	08/07/07	09/20/07	CBI	(G) Component of industrial use coating	(G) Aliphatic polyurethane acrylate
T–07–0021	08/17/07	09/30/07	Forbo Adhesives, LLC	(G) Hot melt polyurethane adhesive	(G) Isocyanate functional polyester polyether urethane polymer
T–07–0022	08/10/07	09/23/07	Shell lubricants	(S) Synthesis high melt paraffinwax designed for numerous industrial application	(S) Mixture of hydrocarbons (C_{20}–C_{110}) containing straight and branched chain alkanes produced by synthesis from natural gas (fisher-tropsch)
T–07–0023	08/30/07	10/13/07	Cytec Industries Inc.	(S) Flow-leveling additive for industrial coatings	(G) Substituted alkenyl-terminated siloxanes and silicones polymers with substituted acrylates, peroxide initiated

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 49 NOTICES OF COMMENCEMENT FROM: 8/03/07 TO 09/07/07

Case No.	Received Date	Commencement Notice End Date	Chemical
P–05–0321	09/06/07	08/15/07	(G) Mono-methyl maleate/acrylic acid/hydroxypropyl methacrylate copolymer
P–06–0069	08/29/07	08/17/07	(G) Dialkyl carbocyclo-, reaction products with alkadiene, by-products from, distant residues
P–06–0166	08/06/07	07/22/07	(S) 3h-1,2,4-triazol-3-one, 1,2-dihydro-
P–06–0229	08/27/07	08/06/07	(G) Unsaturated aliphatic urethane acrylate
P–06–0334	08/09/07	07/17/07	(G) Modified polyurethane
P–06–0343	08/29/07	08/17/07	(G) Dialkyl carbocyclo-, reaction products with alkadiene, cyclized, dehydrogenated, isomerized, by-products from, distant residues
P–06–0438	08/07/07	07/21/07	(G) Fatty acids, C_{18}-unsaturated, dimers, hydrogenated, polymers with polypropylene glycol diamine, amino acid and polyoxyalkylenepolyamine
P–06–0576	08/06/07	07/12/07	(G) Fluoroalkylacrylate copolymer
P–06–0608	08/29/07	08/06/07	(G) Alkyl acrylate, polymer with alkyl acrylates, styrene and hydroxyalkyl acrylates, peroxide-initiated
P–06–0677	09/05/07	08/01/07	(G) Ethylene interpolymer
P–06–0690	08/15/07	07/26/07	(G) Diphenylmethane isocyanate polyester elastomer
P–06–0692	08/13/07	07/16/07	(G) Derivatized hydroxylated triglycerides
P–06–0752	08/03/07	07/27/07	(G) Modified imidazole
P–06–0815	09/04/07	08/24/07	(S) 1,2-ethanediamine, *N*-[3-(trimethoxysilyl)propyl]-, hydrolysis products with wollastonite (CA(SI03))
P–06–0816	08/16/07	07/18/07	(G) Modified reaction products of alkyl alcohol, halogenated alkane, substituted epoxide, and amino compound
P–06–0829	08/06/07	08/02/07	(S) Fatty acids, canola-oil, me esters
P–07–0009	08/27/07	08/07/07	(G) Aqueous polyurethane dispersion
P–07–0058	08/22/07	08/13/07	(S) 3-hexene, 1-(2-butenyloxy)-, (3*Z*)-
P–07–0087	09/04/07	08/28/07	(G) Partially fluorinated condensation polymer
P–07–0097	08/09/07	06/08/07	(S) 2-propenoic acid, 2-methyl-, butyl ester, polymer with ethenylbenzene and 2-sulfoethyl 2-methyl-2-propenoate, ammonium salt
P–07–0220	08/13/07	07/05/07	(G) Aliphatic polyester- polyether polyurethane resin
P–07–0228	08/31/07	08/20/07	(G) Polyether modified polydimethylsiloxane
P–07–0253	09/07/07	08/14/07	(G) Polyether-modified siloxane
P–07–0258	08/22/07	08/03/07	(G) Acrylic acid polymer with vinylphosphonic acid and ethylene glycol acrylate
P–07–0261	08/08/07	07/05/07	(G) Urethane acrylate resin
P–07–0268	08/09/07	06/08/07	(G) Substituted benzoxazolium salt
P–07–0283	08/22/07	08/14/07	(S) Thiophene, 2,5-dibromo-3-hexyl-
P–07–0286	08/23/07	07/30/07	(G) Phenol, 4,4′-(1-methylethylidene)bis[disubstituted-, polymer with disubstituted phenol
P–07–0287	08/17/07	08/01/07	(G) Phenol, 4,4′-(1-methylethylidene)bis[disubstituted-, polymer with disubstituted phenol, substituted propenoate
P–07–0301	08/16/07	07/30/07	(G) Thioketone
P–07–0329	09/07/07	08/16/07	(G) Derivative of 2,4-dihydroxy benzophenone
P–07–0332	08/29/07	08/10/07	(G) Alkyloxy carboxylic acid
P–07–0335	08/03/07	07/27/07	(G) Epoxy resin
P–07–0337	08/16/07	08/01/07	(G) Polyester polyurethane
P–07–0349	08/30/07	08/23/07	(G) Fluorinated alkylammonium salt
P–07–0367	08/08/07	07/20/07	(G) Fluorinated zinc dialkyldithiophosphate
P–07–0369	08/21/07	07/30/07	(S) Definition: Extractives and thier physically modified derivatives. *Populus Nigra*
P–07–0369	08/21/07	07/30/07	(S) Oils, poplar, *Populus Nigra*
P–07–0370	08/06/07	07/23/07	(G) Glycol phosphite
P–07–0379	08/08/07	08/01/07	(S) Ethanol, 2,2′,2″-nitrilotris-, polymer with .alpha.-hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl) and 1,1′-methylenebis[4-isocyanatocyclohexane], 2-hydroxyethyl acrylate-blocked
P–07–0393	08/06/07	07/28/07	(G) Isocyanate functional polyester urethane polymer
P–07–0401	08/17/07	08/01/07	(S) 2-propenoic acid, 2-methyl, 2-hydroxyethyl ester, homopolymer
P–07–0412	08/23/07	08/04/07	(G) 2-propenoic acid, 2- methyl-, polymer with 2-ethylhexyl 2-propenoate, methyl 2-methyl-2-propanoate, substituted-1-propanesulfonic acid and 2-methyl-2-propenamide
P–07–0416	08/07/07	08/06/07	(G) Aziridine homopolymer derivative
P–07–0429	08/08/07	08/06/07	(G) Substituted propenoic acid polymer with substituted bisethanol and substituted cyclohexane
P–07–0437	09/04/07	08/26/07	(G) Siloxanes and silicones, di-alkyl, chlorine-terminated, polymers with 2-ethylhexyl acrylate-polyoxyalkylene glycol reaction products, polyoxyalkylene glycol mono-alkyl ether-terminated
P–07–0441	09/04/07	08/27/07	(G) Glycerides, alkyl
P–07–0443	09/05/07	08/30/07	(G) Methacrylate copolymer with phosphinicobis methacrylate and 2-(phosphonooxy) ethyl 2-methyl-2-propenoate, sodium salt, peroxydisulfuric acid ([ho)s(o)2]2o2) diammonium salt-initiated

III. 49 NOTICES OF COMMENCEMENT FROM: 8/03/07 TO 09/07/07—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–07–0469	09/06/07	08/30/07	(G) Magnesium hydroxide surface treated

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: September 24, 2007.

Chandler M. Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E7–19543 Filed 10–2–07; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515, effective on the corresponding date shown below:

License Number: 016976NF.
Name: Ajinomoto Logistics Corp. dba AB Logistics Co., Ltd.
Address: 3460 Torrance Blvd., #310.
Date Revoked: September 17, 2007.
Reason: Surrendered license voluntarily.

License Number: 018741F.
Name: Bruzzone Shipping Miami, LLC.
Address: 11421 NW 39th Street, Miami, FL 33178.
Date Revoked: September 23, 2007.
Reason: Failed to maintain a valid bond.

License Number: 019709NF.
Name: Customs & Logistics International Corp.
Address: 3054 NW 72nd Ave., Miami, FL 33122.
Date Revoked: September 22, 2007.
Reason: Failed to maintain valid bonds.

License Number: 018809N.
Name: El Al Moving Corp. dba Global Express.
Address: 200 Knuth Road, Ste. 214, Boynton Beach, FL 33436.
Date Revoked: September 13, 2007.
Reason: Surrendered license voluntarily.

License Number: 019884N.
Name: Embarque La Isla, Inc.
Address: 440 East 182nd Street, Bronx, NY 10457.
Date Revoked: September 23, 2007.
Reason: Failed to maintain a valid bond.

License Number: 004156F.
Name: Gulf Eagle USA, Inc.
Address: 7476 New Ridge Road, Hanover, MD 21076.
Date Revoked: September 16, 2007.
Reason: Failed to maintain a valid bond.

License Number: 016347N.
Name: Hana Worldwide Shipping Co., Inc.
Address: 533 Division Street, Elizabeth, NJ 07201.
Date Revoked: September 16, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003229F.
Name: Levion Services, Inc.
Address: 3333 N. San Gabriel Blvd., #G, Rosemead, CA 91770.
Date Revoked: September 21, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018750N.
Name: MSL Global Logistics Inc.
Address: 160–19 Rockaway Blvd., Jamaica, NY 11434.
Date Revoked: September 3, 2007.
Reason: Failed to maintain a valid bond.

License Number: 003650F.
Name: Oceanic Freights, Inc.
Address: 5804 Sedgefield Drive, Austin, TX 78746.
Date Revoked: September 5, 2007.
Reason: Surrendered license voluntarily.

License Number: 015776NF.
Name: Olympic Freight, Inc.
Address: 5803 Skylane Blvd., Ste. A–1, Windsor, CA 95492.
Date Revoked: September 6, 2007.
Reason: Failed to maintain valid bonds.

License Number: 017825N.
Name: Pacific-Net Logistics, Inc.
Address: 1255 Corporate Center Drive., Ste. PH–400, Monterey Park, CA 91754.
Date Revoked: July 8, 2007.
Reason: Failed to maintain a valid bond.

License Number: 018534N.
Name: Pacific-Net Logistics ATL, Inc.
Address: 6020 Dawson Blvd., Ste. F, Norcross, GA 30093.
Date Revoked: August 12, 2007.
Reason: Failed to maintain a valid bond.

License Number: 017709NF.
Name: Star Airfreight Co., Ltd.
Address: 149–35 177th Street, 21F, Jamaica, NY 11434.
Date Revoked: September 4, 2007.
Reason: Surrendered license voluntarily.

License Number: 017786NF.
Name: Star Airfreight Co., Ltd.
Address: 8901 S. La Cienega Blvd., Ste. 108, Inglewood, CA 90301.
Date Revoked: September 4, 2007.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–19561 Filed 10–2–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. Chapter 409) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
020119F	Express Forwarding, Inc., 12738 N. Florida Avenue, Tampa, FL 33612	April 19, 2007.

Sandra L. Kusumoto,

Director, Bureau of Certification and Licensing.

[FR Doc. E7–19560 Filed 10–2–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Master Freight America Corp., 2025 NW 102 Ave., Unit 111, Miami, FL 33172, Oswaldo S. De Mesquita, Sole Proprietor.

Ocean Network Express, Inc., 14701 Industry Circle, La Mirada, CA 90638, Officer: Chang Kun Kim, President (Qualifying Individual).

Shockwave Cargo LLC, 1 Slater Drive, Elizabeth, NJ 07206, Officers: Lori Nevins, Treasurer (Qualifying Individual), Keith Mitchel, President.

Widelane Global Logistic Ltd., 149–09 183rd Street, Suite 208, Jamaica, NY 11413, Officers: William Poung, Sen. Vice President (Qualifying Individual), Ning Bin Zhao, President.

Fox Cargo Net, 1207 Olson Drive, Fullerton, CA 92833, Kenneth Jay Im, Sole Proprietor.

Gama Logistics USA, LLC, 11037 NW 122 Street, Suite 3, Medley, FL 33178, Officer: Fuad Alberto Navarro Chmat, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

D Line International Freight Forwarders, Inc., 2200 Broening Highway, Suite 277, Baltimore, MD 21224, Officers: Deniza Khodas, Vice President (Qualifying Individual), Leonid Dukhan, President.

EPS Logistics, LLC, 8258 NW., 14th Street, Doral, FL 33126–1502, Officers: Linda Amador, V.P. of Logistics (Qualifying Individual), Rafael Menicucci, Member.

Fastrans Logistics, Inc., 4618 World Parkway Circle, St. Louis, MO 63134, Officers: Deborah L. Kopeny, Vice President (Qualifying Individual), Patricia A. Redszus, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Pacific Atlantic Lines GA Inc., 29 Royal Drive, Suite B, Forest Park, GA 30297, Officer: Amadu Kassim Jah, Owner (Qualifying Individual).

Dated: September 28, 2007.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E7–19563 Filed 10–2–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Performance Review Board

AGENCY: Federal Maritime Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the names of the members of the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

SUPPLEMENTARY INFORMATION: Sec. 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Bryant L. VanBrakle,

Secretary.

The members of the Performance Review Board are:

1. A. Paul Anderson, Commissioner.
2. Joseph E. Brennan, Commissioner.
3. Harold J. Creel, Jr., Commissioner.
4. Rebecca F. Dye, Commissioner.
5. Clay G. Guthridge, Administrative Law Judge.
6. Florence A. Carr, Director, Bureau of Trade Analysis.
7. Vern W. Hill, Director, Bureau of Enforcement.
8. Peter J. King, Director of Administration.
9. Sandra L. Kusumoto, Director, Bureau of Certification and Licensing.
10. Amy W. Larson, General Counsel.
11. Austin L. Schmitt, Director of Operations.
12. Bryant L. VanBrakle, Secretary.

[FR Doc. E7–19564 Filed 10–2–07; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E7–19094) published on page 54914 of the issue for Thursday, September 27, 2007.

Under the Federal Reserve Bank of Kansas City heading, the entry for Joseph M. Sullivan, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Joseph M. Sullivan, as co–trustee, and individually; to retain voting shares of Grant County Bank Employee Stock Ownership Plan, and thereby indirectly retain voting shares of Resource One, Inc., and Grant County Bank, all of Ulysses, Kansas.

Comments on this application must be received by October 12, 2007.

Board of Governors of the Federal Reserve System, September 28, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–19508 Filed 10–2–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be

available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 29, 2007.

A. Federal Reserve Bank of Chicago (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Capitol Bancorp, Ltd., and Capitol Development Bancorp Limited VII, both of Lansing, Michigan; to acquire 51 percent of the voting shares of Citizens Business Bank (in organization), Goodyear, Arizona.

In connection with this application, Capitol Development Bancorp Limited VII, Lansing, Michigan, has applied to become a bank holding company by acquiring 51 percent of the voting shares of Citizens Business Bank (in organization), Goodyear, Arizona.

B. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Home BancShares, Inc., Conway, Arkansas; to acquire 100 percent of the voting shares of Centennial Bancshares, Inc., Little Rock, Arkansas, and thereby indirectly acquire voting shares of Centennial Bank, Kingsland, Arkansas.

Board of Governors of the Federal Reserve System, September 28, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–19509 Filed 10–2–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), October 15, 2007.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the September 17, 2007 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
   a. Monthly Participant Activity Report.
   b. Legislative Report.
3. Quarterly Reports.
   a. Investment Policy Review.
   b. Vendor Financial Reports.
4. Board Policy Manual.
5. Mid-Year Financial Audit.

Parts Closed to the Public

6. Security.

FOR FURTHER INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: October 1, 2007.

Thomas K. Emswiler,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 07–4933 Filed 10–1–07; 11:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—09/04/2007			
20071659	Volt Information Sciences, Inc	Warburg Pincus Private Equity VIII, L.P	LSSi Corp.
20071918	D.E. Shaw Composite International Fund.	Investment Technology Group, Inc	Investment Technology Group, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/05/2007			
20071963	SKW Stahl-Metallurgie Holding AG	Platinum Equity Capital Partners, L.P	Eysler Holding Corporation.
20072008	Castlerigg Global Select Fund Limited	Pioneer Natural Resources Company	Pioneer Natural Resources Company.
20072037	MetLife, Inc	SafeGuard Health Enterprises, Inc	SafeGuard Health Enterprises, Inc.
20072045	Rosboro, LLC	Sierra Pacific Holding Company	Sierra Pacific Holding Company.
20072047	Koninklijke KPN N.V	iBasis, Inc	iBasis, Inc.
20072049	Li & Fung Limited	Haim Dabah	P.A. Group LLC; Regatta (U.S.A.) LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—09/06/2007			
20071960	Allen-Vanguard Corporation	Med-Eng Systems Inc	Med-Eng Subsystems Inc.
20072056	Meriwest Credit Union	Golden Bay Federal Credit Union	Golden Bay Federal Credit Union.
TRANSACTIONS GRANTED EARLY TERMINATION—09/07/2007			
20071269	NOVA Chemicals Corporation	NEWCO LLC	NEWCO LLC.

Trans No.	Acquiring	Acquired	Entities
20072057	Hypo Real Estate Holding AG	Depfa Bank plc	Depfa Bank plc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/10/2007			
20071277	James Ratcliffe	NEWCO LLC	NEWCO LLC.
20071981	Hewlett-Packard Company	Neoware, Inc	Neoware, Inc.
20072044	The Talisker Partnership	Oak Hill Capital Partners, L.P	American Skiing Company Resort Properties, Inc.; ASC Utah, Inc.
20072058	Infinity World Development Corp	City Center Holdings LLC	City Center Holdings LLC.
20072066	HealthSpring, Inc	Benjamin Leon, Jr. and Silvia Leon	Leon Medical Centers Health Plans, Inc.
20072068	Jefferies Capital Partners IV L.P	NovaStar Financial, Inc	NovaStar Financial, Inc.
20072069	Massachusetts Mutual Life Insurance Company.	NovaStar Financial, Inc	NovaStar Financial, Inc.
20072071	Harbinger Capital Partners Special Situations Offshore Fund.	Bally Total Fitness Holding Corporation	Bally Total Fitness Holding Corporation.
20072073	Ecolab Inc	Microtek Medical Holdings, Inc	Microtek Medical Holdings, Inc.
20072081	Anheuser-Busch Companies, Inc	Eagle Brands, Inc	Eagle Brands, Inc.
20072084	ConocoPhillips	American Electric Power Company, Inc	CSW Sweeny GP II, Inc.; Sweeny Cogeneration Limited Partnership.
20072085	ConocoPhillips	General Electric Company	CSW Sweeny GP II, Inc.; Sweeny Cogeneration Limited Partnership.
20072086	John B. Simpson, PhD, M.D	ev3 Inc	ev3 Inc.
20072090	Buckeye Partners, L.P	Lodi Holdings, L.L.C	Lodi Gas Storage, L.L.C.
20072092	Tricap Partners II L.P	Partners Limited	Longview Fibre Paper & Packaging, Inc.
20072094	Monkwood Luxco SARL	MidOcean Partners II, LP	Palace Entertainment Holdings, Inc.
20072108	Medtronic, Inc	Kyphon, Inc	Kyphon, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/11/2007			
20072107	Knight Holdco LLC	David Stone	Marine Barge Company, LLC; Marine Terminals Bulk Storage, LLC; Marine Terminals, Inc.; Marine Terminals of Alabama, Inc.; Marine Terminals of Arkansas, Inc.; Marine Terminals of North Carolina, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/12/2007			
20072013	Symyx Technologies, Inc	Reed Elsevier PLC	MDL Information Systems, Inc.
20072014	Symyx Technologies, Inc	Reed Elsevier NV	MDL Information Systems, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/13/2007			
20072052	Royal Bank of Canada	Visa Inc	Visa Inc.
20072067	ENMCOR Group, Inc	First Reserve Fund X, L.P	FR X Ohmstede Acquisitions Co.
20072082	NCL Investment Ltd	Star Cruises Limited	NCL Corporation Ltd.
20072083	AIF VI NCL AIV, L.P	Star Cruises Limited	NCL Corporation Ltd.
20072089	Darden Restaurants, Inc	RARE Hospitality International, Inc	RARE Hospitality International, Inc.
20072095	Dewey Ballantine LLP	LeBouf, Lamb, Greene & MacRae LLP	LeBouf, Lamb, Greene & MacRae LLP.
20072096	LeBouf, Lamb, Greene & MacRae LLP	Dewey Ballantine LLP	Dewey Ballantine LLP.
20072099	Primus Capital Fund V Limited Partnership.	Healthcare Management Systems, Inc. ESOT.	Healthcare Management Systems, Inc.
20072102	Marsh & McLennan Companies, Inc	Frontenac VIII Limited Partnership	TrialGraphix Holdings, Inc.
20072112	Audax Private Equity Fund II, L.P	Summit Ventures VI–A, L.P	Help/Systems Holdings, Inc.
20072119	Koninklijke KPN N.V	Getronics N.V	Getronics N.V.
TRANSACTIONS GRANTED EARLY TERMINATION—09/14/2007			
20070532	Kyphon Inc	Disc-O-Tech Medical Technologies Ltd	Discotech Orthopedic Technologies Inc.
20072110	Compass Group PLC	Ira S. Levy	Propoco, Inc.
20072113	MGI PHARMA, INC	AkaRx, Inc	AkaRx, Inc.
20072115	Richard L. Duchossois	Churchill Downs Incorporated	Churchill Downs Incorporated.
20072116	Maxim Integrated Products Inc	Vitesse Semiconductor Corporation	Vitesse Semiconductor Corporation.
20072120	Firstsource Solutions Limited	RoundTable Healthcare Partners, L.P	MedAssist Holding, Inc.
20072127	MPC Corporation	Gateway, Inc	Gateway Companies, Inc.
20072135	Cognos Incorporated	Applix, Inc	Applix, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/17/2007			
20072050	TPF II, L.P	ArcLight Energy Partners Fund II, L.P	Lincoln Generating Facility, LLC; Lincoln Peaking Power, LLC.; Power Energy Partners LLC.

Trans No.	Acquiring	Acquired	Entities
20072051	TPF II, L.P	DTE Energy Company	Lincoln Generating Facility, LLC; Lincoln Peaking Power, LLC; Power Energy Partners, LLC.
20072070	American Electric Power Company, Inc	Dominion Resources, Inc	Dresden Energy, LLC.
20072142	Siemens Aktiengesellschaft	Dade Behring Holdings, Inc	Dade Behring Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—09/18/2007			
20072061	3M Company	Lewis S. Cohen	New Horizon Technologies Inc.; Venture Tape Corp.; Venture Tape Europe Corp.
20072087	Berkshire Hathaway Inc	Burlington Northern Santa Fe Corporation.	Burlington Northern Santa Fe Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—09/19/2007			
20072039	Transocean Inc	GlobalSanteFe Corporation	GlobalSanteFe Corporation.
20072075	Legg Mason Investment Trust, Inc	Exide Technologies	Exide Technologies.
TRANSACTIONS GRANTED EARLY TERMINATION—09/20/2007			
20071973	HAPC, Inc	I-Flow Corporation	InfuSystem, Inc.
20072103	American Dental Partners, Inc	Sentinel Capital Partners III, L.P	Metropolitan Dental Holdings, Inc.
20072143	Positive Investments Pty Ltd	Village Roadshow Entertainment Group (BVI) Limited.	Village Roadshow Entertainment Group (BVI) Limited.
TRANSACTIONS GRANTED EARLY TERMINATION—09/21/2007			
20072144	Clarity Partners, LP	Village Roadshow Entertainment Group (BVI) Limited.	Village Roadshow Entertainment Group (BVI) Limited.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20590, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 07–4889 Filed 10–2–07; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health Submission for OMB Review; Comment Request; Second National Survey To Evaluate the National Institutes of Health (NIH) Small Business Innovation Research (SBIR) Program

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director (OD), Office of Extramural Research (OER) Office of Extramural Programs (OEP), National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 15, 2007, pages 7442–7443 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: The Second National Survey to Evaluate the Outcomes of the NIH SBIR Program. Type of Information Collection Request: Reinstatement with changes.

Need and Use of the Information Collection: The NIH, Office of the Director, (OD), Office of Extramural Research (OER), Office of Extramural Programs (OEP) will seek OMB approval to reinstate with changes a prior approved collection to conduct a second survey to evaluate the outcomes of the NIH Small Business Innovation Research (SBIR) Program. The SBIR Program, established by Congress in 1982 (Pub. L. 97–219), and reauthorized through September 30, 2008 (Pub. L. 106–554; 15 U.S.C. § 638), provides research support to small businesses for innovative technology. OMB approved the information collection associated with the initial National Survey to Evaluate the NIH SBIR Program on March 15, 2002 (OMB Control No. 0925–0499), expiration April 30, 2003. Through the first National Survey to Evaluate the NIH SBIR Program, NIH was able to obtain data demonstrating significant SBIR programmatic results. For example, seventy-three percent of the 768 awardee respondents reported commercializing new or improved products, processes, usages, and/or services in health-related fields. Other evidence of commercialization from the survey were that SBIR projects developed 48 drugs and medical devices receiving FDA approval; 281 awardees received additional funding from non-SBIR sources; and 436 awardees engaged in ongoing or completed marketing activities.

NIH will seek OMB approval to reinstate this information collection with changes with the primary objective to assess the extent to which the SBIR program goals continue to be met, particularly those dealing with the commercialization of research products, processes or services and the uncovering of new knowledge that will lead to better health for everyone. With outcome data, NIH will be able to more accurately assess the results of its large financial investment in funding innovative research conducted by small business concerns. Findings will help NIH to (1) understand if innovative

projects supported through the NIH SBIR Program are being commercialized and if so, to classify the types of products, processes or services that are derived through SBIR funding; (2) determine if other measures of success defined within the NIH mission are being achieved; and (3) enhance NIH's administration of the SBIR Program and the support that it provides to small business concerns. Overall, the NIH will use the evaluation results to assess the outcomes from NIH-supported SBIR awards. The evaluation results will provide OD with the information necessary to make quality improvements to the SBIR program and enhance program performance in generating significant outcomes. The Government Performance and Results Act of 1993 (GPRA) mandates that Federal programs improve their effectiveness and public accountability by focusing on results. The OMB developed the Program Assessment Rating Tool (PART) to monitor compliance with the GPRA and to rate federal programs for their effectiveness and ability to show results. It is anticipated that results from a second survey will assist NIH in demonstrating that it is meeting its GPRA goals for the NIH SBIR Program. Using an Internet survey OD will collect information Phase II SBIR awardees from fiscal years (FY) 2002 through 2006. The online survey will be implemented using Secure Socket Layer (SSL) encryption technology and password access. OD will use email messages to advise awardees that they have been selected to participate in the survey.

Frequency of Response: One time.

Affected Public: Small business concerns supported by NIH through the SBIR Program.

Type of Respondents: For-profit small business concerns that received an NIH SBIR Phase II award from (FY 2002–2006). The annual reporting burden is as follows:

Estimated Number of Respondents: 704; *Estimated Number of Responses per Respondent:* 1; *Averaged Burden Hours per Response:* .5; and *Estimated Total Annual Burden Hours Requested:* 352. The annualized cost to the public is estimated at $26,400. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report. The anticipated maximum number of respondents is smaller than that in the initial survey thus decreasing the annual hour burden and the annualized cost to the respondents.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
For-profit small business concerns that have received an NIH SBIR Phase II award from (FY 2002–2006)	704	1	0.5	352

Requests for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Jo Anne Goodnight, NIH SBIR/STTR Program Coordinator, Rockledge I Bldg., Room 3538, 6705 Rockledge Drive, Bethesda, MD 20892–7910, or call non-toll-free number 301–435–2688 or e-mail your request, including your address, to: *jg128w@nih.gov* .

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 25, 2007.

Jo Anne Goodnight,

Coordinator, Small Business Innovation Research/Small Business Technology Transfer Program; Office of Extramural Programs, Office of Extramural Research, Office of the Director, National Institutes of Health.

[FR Doc. E7–19465 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 30-Day Notice]

Agency Information Collection Request; 30-Day Public Comment Request

Agency: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Title of the Collection—(New)—OMB No. 0990–NEW—Report of Medical Examination and History.

Abstract: Health professionals applying to the Commissioned Corps of the U.S. Public Health Service (Corps) must be medically qualified prior to appointment. Applicants must have a healthcare provider/physician complete form PHS–7059, Report of Medical Examination, documenting the health status of the applicant. The Corps Medical Evaluations Officer will review the information to ascertain if the applicant is medically qualified presently and in the near future. This is a one-time survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PHS–7059	4,000	1	15/60	1000
PHS–7060	4,000	1	15/60	1000
PHS–7053	800	1	6/60	80
PHS–7054	1320	1	6/60	132
PHS–7055	2800	1	7/60	327
PHS–7056	1600	1	7/60	187
PHS–7057	600	1	5/60	50
PHS–7061	2000	1	10/60	334
Total	17,120			3,110

Dated: September 18, 2007.

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–19533 Filed 10–2–07; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Host Susceptibility Program (HSP); Genetic Variation and the Basis for Individual Susceptibility to Environmental Toxicant Associated Disease: Request for Information

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Request for information.

SUMMARY: The NTP is developing the Host Susceptibility Program (HSP), a new research program, to identify and functionally validate genes associated with environmental exposure. This program will make available NTP expertise and resources to investigate the genetic basis for population-level differences in susceptibility to environmental toxicants and/or disease based upon gene and environment interactions. This research will be designed to ultimately lead to a better understanding of why some individuals are more susceptible than others to exposure to an environmental toxicant resulting in disease and morbidity. Asthma, cardiovascular disease, cancer, diabetes, and obesity are examples of diseases associated with multiple interacting genes that are influenced by exposure to environmental agents. Through this Request for Information, extramural and intramural scientists are invited and encouraged to provide information and comment relevant to this proposed programmatic research approach in order to help guide further development and refinement of the goals of the NTP HSP. Information on this initiative can be submitted electronically through the HSP Request for Information Web site at: (*http://ntp.niehs.nih.gov/go/32130*) or by contacting Dr. John E. French (see **FOR FURTHER INFORMATION CONTACT** below).

DATES: The deadline for response is October 31, 2007.

ADDRESSES: Responses can be submitted electronically at the HSP Request for Information Web site: *http://ntp.niehs.nih.gov/go/32130.*

FOR FURTHER INFORMATION CONTACT: Other correspondence should be directed to Dr. John E. French, Host Susceptibility Program, NIEHS, P.O. Box 12233, MD EC–17, Research Triangle Park, NC 27709, (fax) 919–541–0947, (email) *hsp@niehs.nih.gov.* Courier address: Dr. John E. French, Host Susceptibility Program, 111 T.W. Alexander Drive, Building 101, Room F167, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

The NTP was established as a cooperative effort to (1) coordinate toxicology testing programs within the federal government, (2) strengthen the science base in toxicology, (3) develop improved testing methods, and (4) provide information about potentially toxic chemicals to health, regulatory, and research agencies, scientific and medical communities, and the public. To meet these goals, NTP designs and conducts large-scale laboratory animal research and testing programs and analyzes and reports their findings to assess potential hazards to human health from exposure to environmental chemicals.

Recently, the NTP led and funded a haplotype mapping project with Perlegen Sciences to resequence 15 isogenic strains of mice selected for their potential genetic diversity. Along with the public sequence of isogenic C57BL/6J, analysis of 16 sequenced strains has revealed, conservatively, more than 8 million single nucleotide polymorphisms in this initial analysis of laboratory and wild-derived isogenic mouse strains (Frazer *et al.*, 2007). Identification and analysis of mouse haplotypes will provide a valuable tool for haplotype-phenotype association studies in genetically diverse strains that can be used to predict human genetic variants of functional significance (*http://mouse.perlegen.com/mouse/index.html*). Toward that goal, the NTP is developing a multidisciplinary research program on genetic susceptibility to environmental exposures. This effort will partner extramural and/or intramural researchers with NTP scientists by creating research partnerships using NTP R&D contract resources. This research program is not a funding opportunity or a grant program.

The intent of HSP is to provide researchers access to NTP R&D contract resources and NTP expertise in public health toxicology. Participation by extramural and/or intramural scientists will be based on competitive peer

review of proposed research projects. NTP scientists will work with extramural and/or intramural investigators to define and refine the most effective and cost-efficient experimental protocols for accomplishing the experimental aims and for linking environmental exposure with toxicity leading to disease. Development of approved projects will proceed sequentially from hypothesis through specific aims, based upon a consensus derived experimental plan. Continued support of research projects will depend upon satisfactory completion of each phase of the research plan.

Via this partnership, extramural and/or intramural investigators will have access to NTP contract resources to investigate the relationship between exposure to environmental toxicants and development of quantitative measures of toxicity and disease, using genetically diverse experimental animal models. Using research partnerships, HSP scientists aim to develop the tools and means necessary to accomplish the multidisciplinary tasks that are often rate-limiting to individual research groups that may be interested in investigating environmental toxicant exposure and genetic susceptibility to disease and determining allelic variants of causally related genes and their potentially dysregulated signaling pathways. Once a project has been peer reviewed and approved, NTP staff will interact directly with the Principal Investigator(s) (PIs) of the approved projects to refine the research using NTP contracted resources. NTP R&D contractors will perform approved tasks under the direction of NTP staff. Those tasks necessary to accomplish the experimental aims of any particular study are expected to vary from project to project. In some cases, NTP may only support one or two key missing steps necessary to complement the research; in other cases, it may be necessary to supply the entire scope of experimental tasks needed to complete the specific aims. Examples of tasks that can be supported by NTP contracts and staff include, but are not necessarily limited to:

- Facilitating animal model selection (multiple-isogenic strains, heterogeneous, outbred stocks, etc.).
- Providing strain-specific data on absorption, distribution, metabolism, and excretion of metabolic products of environmental toxicants.
- Defining or optimizing of exposure route, dose and dose schedule of environmental toxicants using range-finding studies to determine quantitative measures of acute toxicity *in vivo* in an appropriate animal model.
- Quantitatively identifying variants of toxicity (phenotyping) in multiple isogenic strains, genetically engineered strains, and/or genetically defined outbred stocks.
- Developing appropriate experimental design protocols for toxicity, biomarkers, expression arrays, clinical and histopathology, and statistical analysis.
- Acquiring test agent(s) in quantities sufficient for non-GLP acute and prechronic toxicity investigations, development of analytical methods for determination of quantity and purity of test substances, production and stability (storage) of dosage forms.
- Developing, optimizing, and conducting study and route specific toxicology and toxicity assays for correlation between toxicity and histopathologic determinants.

Output from such collaborative research activities, which may include providing biological samples and/or data (genotyping, quantitative measures of toxicity, expression phenotypes, etc.), is to be made fully available to the originating principal investigator (or his/her replacement, in case of withdrawal) for continued support of the research project developed within the partnership. Data and samples are to be transferred to extramural or intramural collaborators under terms of a negotiated NIH Materials Transfer Agreement.

Information Requested

The NTP is soliciting information from the extramural and intramural research communities on the strategies, resources, and tools necessary to enable this cooperative research program on genetic variation and individual susceptibility to environmental toxicant exposure and associated polygenic diseases to progress. Please respond online at the HSP Request for Information Web page (*http://ntp.niehs.nih.gov/go/32130*) to any or all of the following questions by October 31, 2007.

1. In general, what are the utility and limitations of using model organisms (e.g., multiple strains of isogenic mice, heterogeneous mouse stocks, etc.) to investigate and establish the genetic determinants of biological response?
2. Are there particular environmental toxicants associated with human disease where this research approach is immediately applicable and useful to the identification of causally related genes and their allelic variants?
3. Similarly, are there particular physiologic or pathogenic pathways and/or disease endpoints for which the proposed research approach is likely to be especially insightful in advancing our understanding of gene-environment interactions?
4. What computational, statistical, and bioinformatic methodologies might be particularly useful for determining toxicity phenotypes and identifying associated genes, pathways, and networks?
5. What high-data content technologies, platforms, and statistical approaches might be particularly valuable and critical to elucidating the genetic basis for toxicity and disease based upon the experience and knowledge gained over the past decade?
6. Are there high-throughput assays and screens using cell-based systems that might be employed to examine the role of genetic variation in human exposure?
7. Are *in vitro* and *in vivo* assays and genetic models for functional validation of genes useful in permitting orthologous human genes and their allelic variants to be identified and tested in large-scale human populations with defined environmental exposures?
8. Is the competitive research partnership approach described for the HSP using NTP R&D expertise in toxicology and contract resources viable and of general interest to researchers interested in these questions? Why or why not?
9. Are there specific concerns over intellectual property or research collaboration issues in a research partnership that should be addressed and negotiated?

All responses to individual questions within this Request for Information are optional. The information collected will be analyzed and considered for use in the further development of the NTP HSP. The summarized data (without identifiers) may appear in internal reports. Although the NIH will provide safeguards to prevent the release of identifying information, there is no guarantee of confidentiality. This Request for Information is for planning purposes and should not be construed as a solicitation for applications or as an obligation on the part of the Government. The Government will not pay for the preparation of any information submitted or for the Government's use of that information. Acknowledgement of receipt of responses will not be made, nor will respondents be notified of the Government's assessment of the information received. No basis for claims against the Government shall arise as a result of response to this Request for Information, or in the

Government's use of such information as part of our evaluation process.

Reference

Frazer, K.A., E. Eskin, H.M. Kang, M.A. Bogue, D.A. Hinds, E.J. Beilharz, R.V. Gupta, J. Montgomery, M.M. Morenzoni, G.B. Nilsen, C.L. Pethiyagoda, L.L. Stuve, F.M. Johnson, M.J. Daly, C.M. Wade, and D.R. Cox. A sequence-based variation map of 8.27 million SNPs in inbred mouse strains. Nature 2007 July 29 Epub.

Dated: September 24, 2007.

Samuel H. Wilson,

Acting Director, National Institute of Environmental Health Sciences and National Toxicology Program.

[FR Doc. E7–19462 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Rocky Flats Plant, Golden, Colorado, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 6, 2007, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for neutron exposures while working at the Rocky Flats Plant in Golden, Colorado, for a number of work days aggregating at least 250 work days from January 1, 1959, through December 31, 1966, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on September 5, 2007, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on September 5, 2007, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV.*

Dated: September 26, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19528 Filed 10–2–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Mound Plant, Miamisburg, OH, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Mound Plant, Miamisburg, Ohio, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Mound Plant.

Location: Miamisburg, Ohio.

Job Titles and/or Job Duties: All workers.

Period of Employment: February 1, 1949 through the present.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: September 27, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19522 Filed 10–2–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice concerning the final effect of the HHS decision to designate a class of employees at the Rocky Flats Plant, Golden, Colorado, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On August 6, 2007, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

Employees of the Department of Energy (DOE), its predecessor agencies, or DOE contractors or subcontractors who were monitored or should have been monitored for neutron exposures while working at the Rocky Flats Plant in Golden, Colorado, for a number of work days aggregating at least 250 work days from April 1, 1952 through December 31, 1958, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on September 5, 2007, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on September 5, 2007, members of this class of employees, defined as reported in this notice, became members of the Special Exposure Cohort.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: September 26, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19531 Filed 10–2–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute for Occupational Safety and Health; Decision To Evaluate a Petition To Designate a Class of Employees at the Y–12 Facility, Oak Ridge, TN, To Be Included in the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) gives notice as required by 42 CFR 83.12(e) of a decision to evaluate a petition to designate a class of employees at the Y–12 facility, Oak Ridge, Tennessee, to be included in the Special Exposure Cohort under the Energy Employees Occupational Illness Compensation Program Act of 2000. The initial proposed definition for the class being evaluated, subject to revision as warranted by the evaluation, is as follows:

Facility: Y–12.

Location: Oak Ridge, Tennessee.

Job Titles and/or Job Duties: All workers.

Period of Employment: March 1, 1943 through December 31, 1947.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Director, Office of Compensation Analysis and Support, National Institute for Occupational Safety and Health (NIOSH), 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 513–533–6800 (this is not a toll-free number). Information requests can also be submitted by e-mail to *OCAS@CDC.GOV*.

Dated: September 27, 2007.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. E7–19525 Filed 10–2–07; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions and Delegation of Authority

Notice is hereby given that I have redelegated to the Regional Program Managers, Office of Child Support Enforcement, the following authority vested in me by the Assistant Secretary for Children and Families in the memorandum dated February 16, 2007.

(a) Authority Delegated.

1. The authority to serve as the Approving Official to sign audit determination letters only where resolution does not involve a cost disallowance.

(b) Limitations.

1. This redelegation shall be exercised under financial and administrative requirements applicable to all Administration for Children and Familites authorities.

2. This authority may not be redelegated.

(c) Effective Date.

This redelegation is effective upon the date of signature.

(d) Effect on Existing Delegations.

None.

I hereby affirm and ratify any actions taken by any Regional Program Manager which, in effect, involved the exercise of this authority prior to the effective date of this redelegation.

Dated: August 14, 2007.

Margot Bean,

Deputy Director/Commissioner, Office of Child Support Enforcement.

[FR Doc. 07–4885 Filed 10–2–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0018]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form Food and Drug Administration 3356; Eligibility Determination for Donors; and Current Good Tissue Practice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Human Cells, Tissues, and Cellular and Tissue-Based Products: Establishment Registration and Listing; Form FDA 3356; Eligibility Determination for Donors; and Current Good Tissue Practice'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 27, 2007 (72 FR 21027), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0543. The approval expires on August 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19454 Filed 10–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0475]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Human Tissue Intended for Transplantation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Human Tissue Intended for Transplantation'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of the Chief Information Officer (HFA–250), Food

and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 25, 2007 (72 FR 20555), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0302. The approval expires on August 31, 2010. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: September 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19457 Filed 10–2–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Nominations for Membership on the Board of Directors of the Reagan-Udall Foundation From Consumer Advocacy Groups, Professional Scientific and Medical Societies, and Industry Trade Organizations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the opportunity for patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations to nominate candidates to serve on the Board of Directors (the Board) of a new non-profit foundation, the Reagan-Udall Foundation for the Food and Drug Administration (the Foundation). The Foundation will be dedicated to modernizing medical, veterinary, food, food ingredient, and cosmetic product development, accelerating innovation, and enhancing product safety.

DATES: Submit written or electronic nominations on or before October 15, 2007.

ADDRESSES: Submit written nominations either by fax to Lisa Rovin or Nancy Stanisic at 301–443–9718 or by e-mail to *Reagan-Udall-Board@FDA.HHS.GOV*.

FOR FURTHER INFORMATION CONTACT:

Lisa Rovin, Office of Policy and Planning (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1443; or

Nancy Stanisic, Office of Critical Path Programs (HF–18), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1660.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2007, the President signed into law the Food and Drug Administration Amendments Act of 2007 (FDAAA). The law reauthorizes the Prescription Drug User Fee Act, the Medical Device User Fee Act, the Best Pharmaceuticals for Children Act, and the Pediatric Research Equity Act of 2007, and enacts the Pediatric Medical Device Safety and Improvement Act of 2007 as well as additional requirements and authorities for FDA. Title VI of FDAAA creates the Foundation. The purpose of the Foundation is to ''advance the mission of the Food and Drug Administration to modernize medical, veterinary, food, food ingredient, and cosmetic product development, accelerate innovation, and enhance product safety.''

The duties of the Foundation include the identification of unmet needs in the development, manufacture, and evaluation (including postmarket evaluation) of the safety and effectiveness of FDA-regulated products, and the establishment of scientific and other projects and programs to meet those needs.

II. Criteria for Board Membership

The statute mandates a 14-member Board of Directors, composed of the following:

- Four representatives of the general pharmaceutical, device, food, cosmetic, and biotechnology industries;
- Three representatives of academic research organizations;
- Two representatives of patient or consumer advocacy organizations;
- One representative of health care providers; and
- Four at-large representatives with expertise or experience relevant to the purpose of the Foundation.

The Board must include individuals with expertise in areas including the sciences of developing, manufacturing, and evaluating the safety and effectiveness of devices, including diagnostics, biological products, and drugs, and the safety of food, food ingredients, and cosmetics.

The Foundation's Board will be responsible for governing the organization and ensuring that it succeeds in its mission. To that end, the Board members will oversee the mission and operations of the Foundation, including: Approving programs and monitoring their effectiveness, coordinating Foundation activities with federal research programs, awarding grants, and ensuring financial solvency and raising resources.

The initial Board is to be appointed no later than 30 days after enactment, September 27, 2007, by the ex officio board members designated in the statute: The Commissioner of Food and Drugs, the Director of the National Institutes of Health, the Director of the Centers for Disease Control and Prevention, and the Director of the Agency for Healthcare Research and Quality. Nine Board members are to be appointed from a list of candidates provided by the National Academy of Sciences. Five Board members are to be appointed from lists of candidates provided by ''patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations.''

III. Process and Criteria for Nominations

To facilitate nomination of candidates from patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations, FDA is publishing this notice and accepting nominations by fax or e-mail submission (see **ADDRESSES**). We welcome nominations from any such organization, and are not limiting the number of nominations each organization may submit. We will accept joint nominations from multiple organizations.

Each nomination should include the following information:

(1) Name, affiliation, and contact information for each nominating organization, and a statement indicating to which of the following categories the nominating organization belongs: Patient and consumer advocacy groups, professional scientific and medical societies, and industry trade organizations.

(2) Name, title, affiliation (if any), resume or curriculum vitae, and contact information for each nominee. In addition, please include no more than one paragraph describing the individual's qualifications in relation to the mission of the Foundation and the statutory criteria for Board membership, described in section II of this document. A nominee may qualify in more than one of the statutory categories for Board membership; please list all categories for which each nominee qualifies.

IV. Electronic Access

Persons with access to the Internet may obtain the FDAAA statute at: *http://www.fda.gov/oc/initiatives/advance/fdaaa.html*.

Dated: September 27, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 07–4882 Filed 9–28–07; 1:26 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2007N–0343]

Electronic Nonclinical Study Data Submission; Notice of Pilot Project

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Center for Drug Evaluation and Research (CDER) is seeking sponsors interested in participating in a pilot project to test, in a regulatory setting, the electronic submission of nonclinical study data using the Standard for Exchange of Nonclinical Data (SEND). The purpose of this pilot is to test the ability of a new electronic data format to support nonclinical review activity. The pilot also will involve a collaboration of FDA, available pilot participants, and the SEND Consortium to update and create a new draft SEND implementation guide. FDA anticipates that a successful pilot will enable CDER to routinely accept nonclinical study data electronically in SEND format, instead of paper or portable document format (PDF), in investigational new drug applications (INDs), new drug applications (NDAs), and biologics licensing applications (BLAs).

DATES: Submit written or electronic requests to participate in the pilot project by January 2, 2008. General comments on the pilot project are welcome at any time.

ADDRESSES: Submit written requests to participate and comments regarding this pilot project to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Bobbie Witczak, Food and Drug Administration, 5600 Fishers Lane HFD–070, Rockville, MD 20857, 301–827–3938.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing an opportunity to participate in a 3-year pilot project in a regulatory setting being conducted by CDER involving the ongoing testing of SEND, a nonclinical data model developed by the Clinical Data Interchange Standards Consortium (CDISC) . The ultimate goal of the pilot is to replace the existing paper/PDF-based listings of nonclinical study data.

CDISC is an open, multidisciplinary, nonprofit organization that has established worldwide industry standards to support the electronic acquisition, exchange, submission, and archiving of clinical trial data and metadata for medical and biopharmaceutical product development (*http://www.cdisc.org*). CDISC is currently facilitating the extension of the same standard for nonclinical data, termed SEND, through the efforts of the SEND Consortium. Where possible, the standards developed for clinical datasets and metadata, as described in the overall Study Data Tabulation Model (SDTM), are being used to develop a standardized dataset format for nonclinical studies.

Under current regulations, applicants must provide tabulated nonclinical data from animal toxicity studies as part of NDA (21 CFR 314.50) and IND (21 CFR 312.23) applications. In a guidance for industry titled ''Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Application and Related Submissions Using the eCTD Specifications,'' FDA makes recommendations about how to submit documents in electronic format to INDs, BLAs, and NDAs using the electronic common technical document (eCTD) specifications. CDER currently receives nonclinical study data either on paper or as electronic PDF files. These formats do not support the agency's ability to easily receive, validate, display, or evaluate the data using modern, computer-based review and analysis tools. As part of FDA's effort to modernize its information technology systems and improve efficiency, the agency is planning to transition from the traditional paper/PDF formats to a true electronic data format for submission of nonclinical data for regulatory review.

Recently, CDER has adopted a standard for clinical study data based on the CDISC SDTM standard. In addition, CDER entered into a CRADA (cooperative research and development agreement) with PharmQuest Corporation, Inc., for the development of data validation, viewing, and analysis tools to evaluate standardized nonclinical datasets based on SEND. The FDA believes the use of standardized SEND datasets, together with new and better analysis tools, will increase the efficiency of agency review and evaluation of nonclinical data.

CDER recently completed a related pilot project (phase 1) that asked for volunteers from industry to submit sample nonclinical datasets in the SEND format outside of a regulatory setting (68 FR 3885; January 27, 2003). The phase 1 pilot also evaluated data validation and analysis tools specifically designed to validate datasets according to the current SEND standard and to enable a reviewer to efficiently display and evaluate data from animal toxicity studies submitted in the SEND format. The phase 1 pilot resulted in development of a SEND Implementation Guide (Version 2.3; November 2005), which is available on the CDISC Web site (*http://www.cdisc.org/models/send/v2.3/SENDV2.3Implementation Guide.pdf*). The SEND Implementation Guide describes the process for formatting nonclinical data from single- and repeat-dose animal toxicity and carcinogenicity studies for submission purposes. The pilot also resulted in the development of specialized software tools for validating, displaying, and analyzing SEND-formatted nonclinical data.

As a continuation of this testing process, this new pilot (phase 2) will enable FDA to evaluate animal toxicity data submitted in SEND format in a regulatory setting by comparing SEND-formatted data provided electronically as SAS transport file (XPT version 5) datasets with data provided in PDF.

In addition, in the intervening time period between the publication of the SEND implementation guide version 2.3 (November 2005) and now, some changes have been made to the SDTM for clinical data, making it desirable to update the SEND implementation guide to ensure harmonized implementation of the CDISC study data standard across both clinical and nonclinical data. There is also a plan to expand the SEND implementation guide to include a pharmacokinetics domain, more detailed implementation examples, and, eventually, other nonclinical study types. As a result, FDA will not conduct the pilot using the existing SEND implementation guide version 2.3. Instead, phase 2 will include an initial collaboration among FDA, available pilot participants, and the SEND Consortium to update and create a new draft SEND implementation guide before FDA receives any datasets for regulatory review. The current status of

both the pilot project and the draft SEND implementation guide can be found on the FDA SEND Web page at *http://www.fda.gov/oc/datacouncil/send.html*. Before creating and submitting nonclinical datasets, pilot participants should ensure that they use the most recent draft version of the SEND implementation guide.

II. Pilot Project Description

This pilot project is part of an ongoing effort to improve the efficiency of the review of nonclinical data within CDER. Eventually, as experience from the ongoing pilot is gained with various types of nonclinical studies, CDER expects to recommend new technical specifications as part of a continuing process for the submission of nonclinical study data provided electronically and eliminate the need to provide paper/PDF-based data listing.

A. Approach

CDER is seeking a limited number of sponsors (i.e., approximately five to eight) to participate in the phase 2 pilot. The duration of the pilot is expected to be approximately 3 years, but it may be extended as needed. Participants should be familiar with SEND (e.g., from involvement in the phase 1 pilot) and be willing to provide the same nonclinical study data in both PDF and SEND formats to an existing IND. The PDF must comply with all applicable regulations, including those in part 11 (21 CFR part 11)[1]. To achieve the goals of the pilot, FDA intends to exercise additional enforcement discretion with regard to part 11 requirements as applied to data submitted in SEND format under this pilot. That is, we do not intend to take enforcement action against data submitted in SEND format, under this pilot, to enforce compliance with those portions of part 11 that remain in effect. The SAS transport files (version 5) should be based on the SEND format. Having the same data available in both PDF and SEND formats provides the best opportunity to compare the two and evaluate the accuracy and reliability of the SEND format. Although the PDF version will continue to be the version used for archival purposes during the pilot, both data formats (i.e., PDF and SEND) will be used by FDA for regulatory review purposes. Before receiving any SEND data, FDA and pilot participants will work with the SEND Consortium to update the SEND implementation guide, which will then be used during the pilot.

For the purposes of this phase 2 pilot, full study reports of the following types of animal toxicity studies will be requested for submission to an existing IND in the appropriate CDER review division: (1) Repeat-dose toxicity studies of 14 days duration to 12 months duration in any species, (2) lifetime carcinogenicity studies in rats or mice, or (3) 6-month carcinogenicity studies in transgenic mice. Studies should include toxicokinetic data, if available. For submission of carcinogenicity studies, the appropriate CDER and International Conference on Harmonization (ICH) guidances should be consulted. The submission should contain both the ''Tumor Dataset for Statistical Analysis'' (i.e., tumor.xpt, as described in Appendix 1 of the Study Data Specifications document; version 1.3; dated 2006–11–27) as well as the SEND-formatted datasets for the entire study. Depending on the ongoing efforts of the SEND Consortium to expand the SEND implementation guide, additional nonclinical study types may be piloted in the future. If so, FDA will post on the FDA SEND Web page an updated list of study types the agency will accept in this and any future pilots. We anticipate that a successful phase 2 pilot, which includes implementation of any needed changes to the SEND implementation guide and/or the data validation, viewing, and analysis tools, will allow CDER to routinely accept specific types of nonclinical study data provided electronically as SAS transport file (XPT version 5) datasets based on the SEND format. In the case of carcinogenicity studies, a successful phase 2 pilot will enable submission of the entire carcinogenicity study data in the electronic SEND format, thus eliminating the need for a separate submission of the electronic tumor dataset (i.e., tumor.xpt).

B. How to Participate

Requests to participate in the pilot project should be submitted to the Division of Dockets Management (see **ADDRESSES**). Requests are to be identified with the docket number found in brackets in the heading of this document. As mentioned above, it is recommended that interested participants be familiar with SEND and/or have been involved in the previous phase 1 pilot.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this pilot project. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 26, 2007.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E7–19468 Filed 10–2–07; 8:45 am]

BILLING CODE 4160–01–S

[1] See, ''Guidance for Industry; Part 11, Electronic Records; Electronic Signatures—Scope and Application,'' August, 2003; *http://www.fda.gov/Cder/guidance/5667fnl.htm*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Draft Policy Document for Comment

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: This is a Notice of Availability and request for comments on a draft Agency Guidance (''Policy Information Notice'' (PIN)) to clarify program and application requirements of the Federally Qualified Health Center Look-Alike program and make them consistent with those requirements under section 330 of the Public Health Service Act. The PIN, ''Federally Qualified Health Center (FQHC) Look-Alike Guidelines and Application'' (''FQHC Look-Alike PIN'') is available on the Internet at *http://bphc.hrsa.gov/draftsforcomment/lookalike/*.

DATES: Comments must be received by close of business November 7, 2007.

ADDRESSES: Please send your comments to the following e-mail address: *DPDgeneral@hrsa.gov.*

SUMMARY: HRSA believes that community input is valuable to the development of policies and policy documents related to the implementation of BPHC programs, including the FQHC Look-Alike Program. Therefore, we are requesting comments on the PIN referenced above. After review and consideration of all comments received, the PIN may be amended to incorporate certain recommendations from the public. Once the PIN is finalized, it will be made available on HRSA's Web site, along with the Agency's ''Response to Public Comments.'' That document will summarize the major comments received and describe the Agency's response, including any corresponding

changes made to the PIN. Where comments do not result in a revision to the PIN, explanations will be provided.

Background: HRSA has received numerous requests for clarification regarding the program guidelines, requirements, and application process for the FQHC Look-Alike program. The purpose of the FQHC Look-Alike PIN is to respond to these requests for clarification and to make the application process more consistent with section 330 grant programs.

The Omnibus Budget Reconciliation Acts of 1989, 1990, and 1993 amended section 1905 of the Social Security Act to create a new category of facility under Medicaid and Medicare known as Federally Qualified Health Centers (FQHCs). The Social Security Act § 1905(l)(2)(B) definition of an FQHC included an entity which, based on the recommendation of HRSA, is determined to meet the requirements of the section 330 grant program but does not receive the grant. This category of health centers has been labeled FQHC Look-Alikes.

To ensure that there are appropriate numbers of health centers to serve the millions of uninsured and underinsured populations throughout the country, FQHC Look-Alike status was made available to those entities that do not receive funding under section 330 but operate and provide services similar to grant-funded programs. As such, FQHC Look-Alikes are expected to demonstrate a commitment to serve all populations residing in their respective medically underserved communities regardless of their ability to pay and to satisfy all of the administrative, management, governance and service-related requirements that apply to section 330 funded health centers. Benefits of obtaining FQHC Look-Alike status include eligibility for enhanced Medicaid and Medicare reimbursement, participation in the 340(b) Federal Drug Pricing Program, and automatic Health Professional Shortage Area designation.

HRSA is responsible for managing the FQHC Look-Alike program and submitting recommendations to the Centers for Medicare and Medicaid Services (CMS) for designation as FQHCs; however, CMS has the final authority to designate applicants as FQHCs. The organizations are recertified annually to assure they are in compliance with these regulations.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact Cicely Nelson at (301) 594–4496.

Dated: September 24, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–19507 Filed 10–2–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: October 26, 2007.

Time: 8:30 a.m. to adjournment.

Agenda: Key topics for this meeting will focus on public engagement in the biomedical and behavioral research process. Further information will be available on the COPR Web site in mid-October at *www.copr.nih.gov.*

Place: National Institutes of Health, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Kelli L. Carrington, Executive Secretary/Public Liaison Officer, Office of Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, 301–594–4575, *carringk@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.copr.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4864 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials Advisory Committee.

Date: November 14, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: Update on the progress of the implementation of the Clinical Trials Working Group.

Place: National Institutes of Health, Building 31, 31 Center Drive, Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., Suite 507, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

Cancer Control, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4862 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; The Role of Human Milk-Morrow—SEP.

Date: October 19, 2007.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 25, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4863 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; MATHIAS–P01.

Date: October 25–26, 2007.

Time: 6 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Sex Differences in Health and Longevity.

Date: October 31–November 1, 2007.

Time: 5 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, Washington, DC 20015.

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C–212, 7201 Wisconsin Avenue, Bethesda, MD 20892, *haddenw@mail.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Bousfield Review Meeting.

Date: November 6, 2007.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway, 7802 Wisconsin Avenue, 2C–212, Bethesda, MD 20895, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Health, Aging, and the Life-Course.

Date: November 7, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Bethesda, MD 20770, (Telephone Conference Call).

Contact Person: Wilbur C. Hadden, PhD, Health Science Administrator, National Institute on Aging, Gateway Building, Room 2C–212, 7201 Wisconsin Avenue, Bethesda, MD 20892, *haddenw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4865 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee, Allergy, Immunology and Transplantation Research Committee (AITRC).

Date: October 25, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Katrin Eichelberg, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–0808, *keichelberg@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856,

Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4867 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Synthesis of Therapeutic Agents for Treatment of Infectious Diseases.

Date: October 23, 2007.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, 3256, Bethesda, MD 20817. (Telephone Conference Call)

Contact Person: Lleana M. Ponce-Gonzalez, MD, MPH., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–3679, *ipgonzalez@niaid.nih.gov.*

Name of Committee: National Institute of allergy and Infectious Diseases Special Emphasis Panel Clinical Trials in Organ Transplantation in Children (CTOT–C).

Date: October 30–31, 2007.

Time: 8:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, Double Tree Name Changed, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sujata Vijh, PhD., Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892, 301–594–0985, *vihjs@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4868 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: November 15–16, 2007.

Time: November 15, 2007, 8 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892.

Time: November 16, 2007, 8 a.m. to 1 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, Bethesda, MD 20892.

Contact Person: Marvin C. Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222, Bethesda, MD 20892, (301) 496–4129.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's licence, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4869 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Therapy and Inborn Errors.

Date: October 22, 2007.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1741, *pannierr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR 06–293–Quick Trial on Imaging and Image-guided Intervention.

Date: October 22, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20891 (Virtual Meeting).
Contact Person: Guo Feng Xu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–435–1032, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, EPIC Member Conflict Special Emphasis Panel 1.
Date: October 23, 2007.
Time: 1 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892, (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Radio Therapy.
Date: October 24, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ELS Conflict Committee.
Date: October 24, 2007.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ken D. Nakamura, PhD, Scientific Review Administrator, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Electromagnetics Small Business.
Date: October 24, 2007.
Time: 3:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Antonio Sastre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, International and Cooperative Projects—1 Study Section.
Date: October 25, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.
Contact Person: Manana Sukhareva, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–435–1116, *sukharem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Review of Software Improvement Applications.
Date: October 25–26, 2007.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: George W. Chacko, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Busines: Medical Imaging.
Date: October 25–26, 2007.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Leonid V. Tsap, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7854, Bethesda, MD 20892, 301–435–2507, *tsapl@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Adult Psychopathology and Disorders of Aging Study Section.
Date: October 25–26, 2007.
Time: 8 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, F07 Immunology Fellowships and Area.
Date: October 25, 2007.
Time: 8 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.
Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, 301–435–1277, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflicts of Biological Chemistry and Macromolecular Biophysics.
Date: October 25–26, 2007.
Time: 8 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Health of the Population SBIR.
Date: October 25–26, 2007.
Time: 8:30 a.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: Admiral Fell Inn, Historic Fell's Point, 888 South Broadway, Baltimore, MD 21231.
Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes, Genomics, and Genetics Postdoctoral Fellowships.
Date: October 25, 2007.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 2007.
Contact Person: Mary P. McCormick, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, MSC 7890, Bethesda, MD 20892, 301/435–1047, *mccormim@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neurobiological Small Business Applications.
Date: October 25, 2007.
Time: 10 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Michael A. Lang, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Imaging Cognition.

Date: October 25, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Alcohol Dependence, Addictions, Substance Use Disorders and Interventions.
Date: October 25, 2007.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Gabriel B. Fosu, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Immunology.
Date: October 26, 2007.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: State Plaza Hotel, 2117 E Street, NW., Washington, DC 20037.
Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, BMIT/MEDI Member Conflict Meeting.
Date: October 26, 2007.
Time: 10 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Weihua Luo, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Insulin Release and Action.
Date: October 26, 2007.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6172, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Collaborative applications in Adult Psychopathology and Disorders of Aging.
Date: October 26, 2007.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.
Contact Person: Alfonso R. Latoni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0913, *latonia@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 26, 2007.

Jennifer Spaeth,
Director, Office of Federal Advisory Committee Policy.

[FR Doc. 07–4866 Filed 10–2–07; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2007–0068]

Information Technology Security Essential Body of Knowledge

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Notice of availability.

SUMMARY: This notice informs the public and interested stakeholders that the Department of Homeland Security (DHS) is making available for public review and comment ''Information Technology (IT) Security Essential Body of Knowledge (EBK): A Competency and Functional Framework for IT Security Workforce Development.'' This framework is intended to assist the public, private, and academic sectors with strategic IT security workforce development initiatives including professional development, training and education. The EBK is not an additional set of DHS guidelines, and it is not intended to represent a standard, directive, or policy by DHS. Instead, it further clarifies key IT security terms and concepts for well-defined competencies, identifies notional security roles, defines four primary functional perspectives, and establishes an IT Security Role, Competency, and Functional Matrix.

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

ADDRESSES: To review the draft IT Security EBK, you may access the document and request comment forms through one of the following methods:

- IT Security EBK Web site: *http://www.us-cert.gov/ITSecurityEBK*
- Send an e-mail request to *ITSecurityEBK@dhs.gov.*

Submit completed comment forms via e-mail to *ITSecurityEBK@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Oldfield, Director for Education, Training and Workforce Development, National Cyber Security Division, Department of Homeland Security, E-Mail: *ITSecurityEBK@dhs.gov.*

SUPPLEMENTARY INFORMATION: The IT security workforce must be prepared to meet the challenges that exist today and in the future. IT security is a strategic aspect of an organization's business or mission and as a strategic priority, it has the potential of enhancing productivity and improving the way an organization functions. As the IT security profession matures, it requires qualified professionals with the competencies to support increasingly sophisticated demands. In response to this challenge, the DHS-NCSD worked with higher education, government and private sector experts to develop an umbrella framework that establishes a national baseline representing the essential knowledge and skills that IT security practitioners must have to perform.

The DHS National Cyber Security Division (NCSD) developed the IT Security EBK as a competency-based framework that links competencies and functional perspectives to IT security roles fulfilled by personnel in the public and private sectors. Potential benefits of the IT Security EBK for both professional development and workforce management initiatives include:

- Articulating the functions that professionals within the IT security workforce perform, in a context-neutral format and language;
- Promoting uniform competency guidelines to increase the overall efficiency of IT security role-based training; and
- Providing a content guideline that can be leveraged to facilitate cost-effective professional development of the IT workforce, including future training and education, academic curricula, or affiliated human resource activities.

The IT Security EBK builds directly upon the work of established bodies of knowledge; it is not an additional set of guidelines, and it is not intended to represent a standard, directive or policy by DHS. Instead, it further clarifies key

IT security terms and concepts for well-defined competencies, identifies notional security roles, defines four primary functional perspectives, and establishes an IT Security Role, Competency and Functional Matrix to help advance the IT security training and certification landscape as we strive to ensure that we have the most qualified and appropriately trained IT security workforce possible.

Dated: September 26, 2007.

Greg Garcia,

Assistant Secretary for Cybersecurity and Communications.

[FR Doc. E7–19566 Filed 10–2–07; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

Agency Information Collection Activities: Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; the Student and Exchange Visitor Information System (SEVIS), OMB Control No. 1653–0038.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on July 12, 2007, Vol. 72 No. 133 38095, allowing for a 60-day comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days until October 31, 2007.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS); Lee Shirkey, Acting Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 353.2266. These comments and suggestions concerning the continued collection of information should address one or more of the following four points:

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

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

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

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

Overview of This Information Collection

(1) *Type of information collection:* Extension of currently approved information collection.

(2) *Title of the form/collection:* Petition for Approval of School for Attendance by Nonimmigrant Student and Certificate of Eligibility for Nonimmigrant Student Status.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms I–17 and I–20/Student and Exchange Visitor Program (SEVP).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary. Approximately 30,000 designated school officials (DSOs) representing some 8,300 academic and vocational institutions. Section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, Div. C (Sept. 30, 1996; see attachment 1) requires the creation of a program to collect current information, on an ongoing basis, from schools and exchange visitor programs relating to nonimmigrant F, M or J foreign students and exchange visitors during the course of their stay in the United States (U.S.), using electronic reporting technology to the fullest extent practicable. It further requires Federal approval and authorization of schools and exchange visitor programs participating in such enrollment. The information collection about nonimmigrants mandated by IIRIRA includes the identity and current address in the United States of the alien, the nonimmigrant classification of the alien, the date on which a visa under the classification was issued or extended or the date on which a change to such classification was approved by the Department of Homeland Security (DHS), the current academic status of the alien, including whether the alien is maintaining status as a full-time student, or whether an exchange visitor is satisfying the terms and conditions of his or her program, and any disciplinary action taken by the institution or exchange visitor program sponsor against the alien as a result of a conviction of a crime. The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law 107–56 (October 26, 2001), subsequently amended IIRIRA and added the requirement that information be collected on the date of entry and port-of-entry. On October 30, 2001, the President issued Homeland Security Directive No. 2 (Directive 2) requiring DHS to conduct periodic, ongoing review of all institutions certified to accept nonimmigrant students. On May 14, 2002 the Enhanced Border Security and Visa Entry Reform Act of 2002 (Border Security Act), Public Law 107–173, 116 Stat. 543 (May 14, 2002), was enacted. It required DHS to recertify all schools approved for attendance by F or M nonimmigrant students within two years of the passage of the Border Security Act. Further, it mandates that DHS conduct an additional recertification of these schools every two years following. Data collection requirements for SEVP certification, oversight and recertification of schools authorized to enroll F or M nonimmigrant students are not specified in the aforementioned legislation, but are enumerated in 8 CFR 214.3 and 214.4. The Student and Exchange Visitor Program (SEVP), a component of U.S. Immigration and Customs Enforcement (ICE), is the program mandated by these laws to carry out these responsibilities.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond annually:

Respondents	30,000.
Time for student management reporting.	6.8 hours.
Time for management of SEVP certification.	2.3 hours
Average time per respondent.	9.1 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 273,000.

Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions;

or inquiries for additional information should be directed to: Lee Shirkey, Acting Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 425 I Street, NW., Room 1122, Washington, DC 20536; (202) 616–2266.

Dated: September 27, 2007.

Lee Shirkey,

Acting Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E7–19455 Filed 10–2–07; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Tetlin National Wildlife Refuge, Tok, AK

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of the Draft Revised Comprehensive Conservation Plan and Environmental Assessment for Tetlin National Wildlife Refuge; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service, we), announce that the Draft Revised Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) for Tetlin National Wildlife Refuge is available for public comment. The Draft CCP was prepared pursuant to the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), the National Wildlife Refuge System Administration Act of 1966 (Refuge Administration Act) as amended by the National Wildlife Refuge System Improvement Act of 1997 (Refuge Improvement Act), and the National Environmental Policy Act of 1969 (NEPA). Three alternatives for management of Tetlin Refuge over the next 15 years, including continuing current management, are considered in the Draft Conservation Plan.

DATES: Comments on the Draft Conservation Plan must be received on or before January 18, 2008.

ADDRESSES: To provide written comments or to request a paper copy or a compact disk of the Draft CCP, contact Mikel Haase, Planning Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, Alaska 99503; telephone: (907) 786–3402; fax: (907) 786–3965; e-mail: *fw7_tetlin_planning@fws.gov*. You may also view or download a copy of the Draft CCP at the following Web site: *http://alaska.fws.gov/nwr/planning/tetpol.htm.* Copies of the Draft CCP may be viewed at the Tetlin Refuge Office in Tok, Alaska; local area libraries, and the U.S. Fish and Wildlife Service Regional Office in Anchorage, Alaska.

FOR FURTHER INFORMATION, CONTACT: Mikel Haase at the above address or phone number.

SUPPLEMENTARY INFORMATION: The ANILCA (16 U.S.C. 410hh *et seq.*, 43 U.S.C. 1602 *et seq.*) requires development of a CCP for all national wildlife refuges in Alaska. The Draft CCP for Tetlin Refuge was developed consistent with section 304(g) of ANILCA and the Refuge Administration Act as amended by the Refuge Improvement Act (16 U.S.C. 668dd *et seq.*). The purpose of developing CCPs is to provide refuge managers with a 15-year management strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish, wildlife, and habitat management and conservation; legal mandates; and Service policies. Plans define long-term goals and objectives toward which refuge management activities are directed and identify which uses may be compatible with the purposes of the refuge. They identify wildlife-dependent recreation opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation. Comprehensive conservation plans are updated in accordance with planning direction in section 304(g) of ANILCA and with NEPA (42 U.S.C. 4321 *et seq.*).

Background: In 1980, ANILCA designated Tetlin National Wildlife Refuge. Refuge boundaries encompass approximately 935,000 acres of which approximately 693,000 acres (74 percent) are under Service jurisdiction. Section 302(8)(B) of ANILCA states that the purposes for which Tetlin Refuge was established include: to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence use by local residents; to ensure water quality and necessary water quantity within the refuge; and to provide opportunities for interpretation and environmental education.

The original Tetlin CCP was completed in 1987 following direction in Section 304(g) of ANILCA. Management categories (wilderness, wild rivers, minimal, moderate, and intensive) are used to describe management levels throughout the refuges in Alaska. A management category is a set of refuge management directions applied to an area, in light of its resources and existing and potential uses, to facilitate management and the accomplishment of refuge purposes and goals. Three management categories (minimal, moderate, and intensive) apply to Tetlin Refuge. The 1997 Refuge Improvement Act includes additional direction for conservation planning throughout the National Wildlife Refuge System. This direction has been incorporated into national planning policy for the National Wildlife Refuge System, including refuges in Alaska. This draft revision of the Tetlin conservation plan meets the requirements of both ANILCA and the Refuge Improvement Act.

Issues raised during scoping and addressed in this Draft CCP are: (1) The visitor services role of Tetlin Refuge in the upper Tanana Valley; (2) refuge role in providing opportunities for access to, and associated facilities for, existing and expanding wildlife-dependent uses of the refuge; (3) management of fire on Tetlin Refuge to provide adequate protection of refuge resources and private property within and adjacent to the refuge; (4) use of prescribed fire as a method of habitat management; and (5) use of fishery management actions to maintain native fish breeding stocks and enhance recreational fishing.

This Draft CCP describes and evaluates three alternatives for managing Tetlin Refuge for the next 15 years. These alternatives follow the same general management direction but provide different levels of development and different ways of addressing the issues.

Alternative A (Current Management): Management of Tetlin Refuge would continue to follow the 1987 CCP and record of decision as modified by subsequent program-specific plans (e.g., fisheries, public use, and fire management plans). Private and commercial uses of the refuge would continue at current levels. Refuge management would continue to reflect existing laws, executive orders, regulations, and policies governing Service administration and operation of the National Wildlife Refuge System. The refuge would continue to coordinate with partners to maintain the refuge's role as a key participant and provider of environmental education, interpretation, and recreation in the upper Tanana Valley. The refuge would maintain or increase existing opportunities for compatible public use of the refuge. Facilities, such as interpretive and hiking trails, boat

launches, highway pullouts, and campgrounds, would be upgraded or new facilities would be constructed to promote day use and interpretive opportunities along the Alaska Highway as described in the Refuge's Public Use Management Plan. Other public use opportunities on the refuge, including canoeing, hiking, environmental education and interpretation, and public use of administrative cabins, would be promoted. The refuge would continue to protect resources and property and to meet habitat management objectives by treating a fixed number of acres annually through a variety of fire management techniques including prescribed burning, suppression, thinning, and wildland fire use to maintain and enhance habitat for particular wildlife species. The refuge would work with the Alaska Department of Fish and Game to reintroduce native fish populations to selected waters throughout the refuge; to manage populations to maintain breeding stock; and to develop additional put-and-take fisheries within the refuge along the Alaska Highway. Refuge lands would continue to be managed under Minimal (approximately 577,500 acres), Moderate (approximately 121,500 acres), and Intensive (1,640 acres) management categories; approximately 40 acres at the Seaton Roadhouse site would be reclassified from Minimal Management to Moderate Management to allow facilities development and increased wildlife-dependent public use.

Alternative B (Preferred Alternative): Management of Tetlin Refuge would generally continue to follow the 1987 CCP and record of decision as modified by subsequent program-specific plans. Refuge management would continue to reflect existing laws, executive orders, regulations, and policies governing Service administration and operation of the National Wildlife Refuge System. Along with the actions described under Alternative A, the refuge would work with the local community to seek formal recognition of Tok as a ''Gateway Community'' and to increase opportunities for environmental education, interpretation, and recreation off-refuge and in support of or in conjunction with refuge programs. Opportunities for current and new public use would be promoted (e.g., canoe routes established). Existing public use facilities would be upgraded and new facilities (e.g., hiking trails, restrooms at highway pullouts) would be constructed. The refuge would continue to protect resources and property using a variety of fire management techniques including prescribed burning, suppression, thinning, and wildland fire use. The refuge would emphasize the use of natural fire with prescribed burns based only on specific project objectives (e.g. fuels reduction, habitat protection, or fire effects research) and suppression to reduce potential for large-scale wildfires and to maintain long-term ecological health of refuge lands. Natural fire would be used as the primary tool to maintain and enhance habitat. All native fisheries would be managed to maintain self-sustaining, healthy populations to contribute to natural diversity in the region; any reintroductions would be based on historic distribution of fish. Refuge lands would continue to be managed in the same management categories as under Alternative A.

Alternative C: Management of Tetlin Refuge would generally continue to follow the 1987 CCP and record of decision as modified by subsequent program-specific plans. Refuge management would continue to reflect existing laws, executive orders, regulations, and policies governing Service administration and operation of the National Wildlife Refuge System. Along with the actions described under Alternatives A and B, the refuge would pursue the following additional management actions under Alternative C. In addition to establishing Tok as a ''Gateway Community,'' this alternative would establish Tetlin Refuge as the leader in interpretation of the region by expanding the refuge interpretive program and establishing partnerships to expand educational and interpretive programs throughout the area. Alternative C would include construction of additional interpretive kiosks, wildlife viewing platforms, and photography blinds at selected pullouts along the Alaska Highway, construction of an additional 15 to 20 miles of hiking trails, and construction or marking of additional routes for a variety of other year-round compatible uses. Additional public use cabins would be constructed to provide more options for access to refuge backcountry on a year-round basis. A fee system would be established at some campgrounds to support additional amenities (e.g., potable water, electricity, sewage dump stations, more campsites, and hard-surface roads for year-round access). The refuge would establish parking areas and improve access to undeveloped boat launches, trails, and other points of access to the refuge, and would identify camping locations and mark and maintain portages on the canoe trails. Fire suppression would be the primary tool to protect resources and property throughout the refuge, though small-scale prescribed burns would be used to meet specific fuel reduction objectives near resources or properties at risk. Fire would not be used to maintain or enhance wildlife habitat. Fisheries management would be the same as in Alternative B. Refuge lands would continue to be managed in the same management categories as under Alternative A.

Public Availability of Comments

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

Dated: September 27, 2007.

Thomas O. Melius,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. E7–19493 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

AGENCY: Bureau of Indian Education

ACTION: Notice of proposed renewal of information collection.

SUMMARY: The Bureau of Indian Education (BIE) is planning to renew the No Child Left Behind Regulation, 25 CFR part 36 and 47, OMB Control Number 1076–0164 as required by the Paperwork Reduction Act. The renewal will ensure we meet the residential requirements of the No Child Left Behind Act.

DATES: Written comments must be submitted on or before November 2, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–6566 or you may send an e-mail to *OIRA_DOCKET@omb.eop.gov.* Please send copies of comments to the Bureau of Indian Education (BIE), 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin (202) 208–6123.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 107–110, the No Child Left Behind (NCLB) Act of January 8, 2001, requires all schools, including Bureau of Indian Education (BIE) funded boarding/residential schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. In addition, the BIE is required by NCLB to implement national standards for home-living situations in all BIE funded residential schools. The BIE is required to assess each residential school and submit a plan to the Congress, tribes, and schools which will bring all BIE funded residential schools up to the national standards. Information from all BIE funded residential schools must be collected in order to assess each school's progress in meeting the national standards. Finally, the BIE is required to monitor programs, gather data, and complete reports for the U.S. Department of Education. To achieve these results, residential schools must prepare reports, develop curriculum, prepare financial planning documents, and establish standards to measure student progress. The BIE uses the Annual Report to the Department of Education and three other information collections for the BIE to collect data, measuring each school's performance. When there is a lack of progress, the residential schools must show that they have developed school improvement, corrective action, or restructuring plans to address the problems of all students. Additional information collection requirements have been developed to implement the No Child Left Behind Act.

II. Request for Comments

A 60-day notice requesting comments was published on May 7, 2007 (Vol. 72, FR 25773). There were no comments received regarding that notice. You are invited to comment on the following items to the Desk Officer at OMB at the citation in **ADDRESSES** section.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and become a matter of public record.

OMB has up to 60 days to make a decision, but may decide after 30 days; therefore your comments will receive maximum consideration if received during the 30-day period.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

OMB Control Number: 1076–0164.

Type of Review: Renewal.

Title: No Child Left Behind Regulations, 25 CFR part 36 and 47.

Brief Description of Collection: This collection is mandatory according to statutory regulations, and the benefit to the respondents is continued supplementary Title programs funds.

Respondents: Bureau-funded schools with residential programs, tribal governing bodies, and school boards are the respondents, and submission is mandatory.

Number of Respondents: There are 66 schools with residential programs, of which 28 are Bureau-operated and 38 are tribally operated. Thus, the collection of information must be cleared for 38 of the 66 residential schools.

Estimated Time per Response: The range of time can vary from .02 hour to an average of 20 hours per 1 item.

Frequency of Response: Annually and sometimes daily.

Total Annual Burden to Respondents: It is estimated that 20,793 (number of responses) × 20 (hourly burden per response) = 415,860 total annual hours of burden.

Dated: September 25, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–19451 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection Under the Paperwork Reduction Act; Reinstatement [The No Child Left Behind Act]

AGENCY: Bureau of Indian Education, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Education (BIE), in accordance with the Paperwork Reduction Act, is seeking reinstatement of the No Child Left Behind Act Regulation, 25 CFR parts 30, 37, 39, 42, 44 and 47, OMB Control Number 1076–0163. During the renewal process the information collection expired.

DATES: Written comments must be submitted on or before November 2, 2007.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–6566 or you may send an e-mail to *OIRA_DOCKET@omb.eop.gov.* Please send copies of comments to the Bureau of Indian Education (BIE), 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin (202) 208–6123.

SUPPLEMENTARY INFORMATION:

I. Abstract

Public Law 107–110, the No Child Left Behind (NCLB) Act of January 8, 2001, requires all schools, including Bureau of Indian Education funded schools, to ensure that all children have a fair, equal, and significant opportunity to obtain a high-quality education and reach, at a minimum, proficiency on challenging academic achievement standards and assessments. The BIE is required to monitor programs, gather data, and complete reports for the U.S. Department of Education. To achieve these results, schools must prepare required reports such as the Annual Report, the School Report Card, Section 1114 Plans, financial budgets, school improvement plans, compliance action plans as a result of monitoring, Title II, Part A reports on highly qualified staff, Title IV, Part A, Safe and Drug Free Schools and Communities reports; competitive sub-grant reports, Indian School Equalization Programs (ISEP) reports, the Native American Student Information System (NASIS) reports, and transportation reports are all

examples of documentation to be completed.

II. Request for Comments

A 60-day notice requesting comments was published on May 7, 2007 (Vol. 72, FR 25774). There were no comments received regarding that notice. You are invited to comment on the following items to the Desk Officer at OMB at the citation in **ADDRESSES** section.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and become a matter of public record.

OMB has up to 60-days to make a decision, but may decide after 30-days; therefore your comments will receive maximum consideration if received during the 30-day period.

We will not request nor sponsor a collection of information, and you need not respond to such a request, if there is no valid Office of Management and Budget Control Number.

III. Data

Title: No Child Left Behind Regulations, 25 CFR parts 30, 37, 39, 42, 44, and 47.

OMB Control Number: 1076–0163.

Type of review: Reinstatement.

Brief Description of Collection: This collection is mandatory according to statutory regulations, and the benefit to the respondents is continued supplementary Title programs funding.

Respondents: Bureau-funded schools, tribal governing bodies, and school boards are the respondents, and submission is mandatory.

Number of Respondents: 184 Bureau-funded schools.

Estimated Time per Response: The range of time can vary from 1 hour to an average of 48 hours for one item.

Frequency of Response: Annually and sometimes quarterly.

Total Annual Hourly Burden to Respondents: 1332 (number of responses) × 9.02 (average hourly burden per response) = 12018 total annual hours of burden.

Dated: September 25, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

[FR Doc. E7–19453 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–XN–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Picuris Liquor Code

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Pueblo of Picuris Liquor Code. The Act regulates and controls the possession, sale, and consumption of liquor within the Pueblo of Picuris Indian Reservation. The Reservation is located on trust land and this Act allows for the possession and sale of alcoholic beverages within the exterior boundaries of the Pueblo of Picuris Indian Reservation. This Act will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Act is effective as of October 3, 2007.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Services Officer, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104; Telephone (505) 563–3530; Fax (505) 563–3060; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7627; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Pueblo of Picuris Tribal Council adopted this Liquor Code by Resolution No. 07–13 on May 1, 2007. The purpose of this Code is to govern the sale, possession and distribution of alcohol within the Pueblo of Picuris Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Liquor Code of the Pueblo of Picuris was duly adopted by the Tribal Council on May 1, 2007.

Dated: September 25, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

The Pueblo of Picuris Liquor Code reads as follows:

Pueblo of Picuris Liquor Code

Subchapter One: General Provisions

Section 101: Findings

The Tribal Council finds as follows:

A. The introduction, possession and sale of alcoholic beverages into Picuris Pueblo Indian Lands has long been regarded as a matter of special concern to the Pueblo, that bears directly on the health, welfare and security of the Pueblo and its members; and

B. Under federal law and New Mexico state law, and as a matter of inherent Tribal sovereignty, the question of to what extent and under what circumstances alcoholic beverages may be introduced into and sold or consumed within Picuris Pueblo Indian Lands is to be decided by the governing body of the Tribe; and

C. It is desirable that the Tribal Council legislate comprehensively on the subject of the sale and possession of alcoholic beverages within Picuris Pueblo Indian Lands, both to establish a consistent and reasonable Tribal policy on this important subject, as well as to facilitate economic development projects within Picuris Pueblo Indian Lands that may involve outlets for the sale and consumption of alcoholic beverages; and

D. It is the policy of the Tribal Council that the introduction, sale and consumption of alcoholic beverages within Picuris Pueblo Indian Lands be carefully regulated so as to protect the public health, safety and welfare, and that licensees be made fully accountable for violations of conditions of their licenses and the consequences thereof.

Section 102: Definitions

As used in this chapter, the following words shall have the following meanings:

A. ''Pueblo'' or ''Tribe'' means the Pueblo of Picuris.

B. ''Tribal Council'' or ''Council'' means the Tribal Council of the Pueblo of Picuris.

C. ''Governor'' means the Governor of the Pueblo of Picuris.

D. ''Person'' means any natural person, partnership, corporation, joint venture, association, or other legal entity.

E. ''Sale'' or ''sell'' means any exchange, barter, or other transfer of goods from one person to another for commercial purposes, whether with or without consideration.

F. ''Liquor'' or ''Alcoholic Beverage'' means any of the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented, spirituous, vinous or malt liquors or combinations thereof, mixed liquor, any part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

G. ''Licensee'' means a person who has been issued a license to sell alcoholic beverages on the licensed premises under the provisions of this Liquor Code.

H. ''Licensed Premises'' means the location within Picuris Pueblo Indian Lands at which a licensee is permitted to sell and allow the consumption of alcoholic beverages, and may, if requested by the applicant and approved by the Tribal Council, include any related or associated areas or facilities under the control of the licensee, or within which the licensee is otherwise authorized to conduct business (but subject to any conditions or limitations as to sales within such area that may be imposed by the Governor in issuance of the license).

I. ''Picuris Pueblo Indian Lands'' means all lands within the exterior boundaries of the Picuris Pueblo Grant, and all other lands owned by the Pueblo subject to federal law restrictions on alienation or held by the United States for the use and benefit of the Pueblo.

J. ''Special Event'' means a bona fide special occasion such as a fair, fiesta, show, tournament, contest, meeting, picnic or similar event held on Picuris Pueblo Indian Lands that is sponsored by an established business or non-governmental organization, lasting no more than three days. A special event may be open to the public or to a designated group, and it may be a one-time event or periodic, provided, however, that such events held more than four times a year by the same business or organization shall not be deemed special events for purposes of this Liquor Code.

K. ''Server'' means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, and including persons who manage, direct or control the sale or service of such beverages.

L. ''Liquor Code'' means the Picuris Pueblo Liquor Code, this chapter.

Section 103: Sovereign Immunity Preserved

Nothing in the Liquor Code shall be construed as a waiver or limitation of the sovereign immunity of the Pueblo.

Section 104: Initial Compliance

No person shall be disqualified from being issued a license under the provisions of this Liquor Code, or shall be found to have violated any provision of this Liquor Code, solely because such person, having been duly authorized to engage in the sale of alcoholic beverages within Picuris Pueblo Indian Lands under the law as it existed prior to enactment of this Liquor Code, continues to engage in such business without a license issued under the provisions of this Liquor Code after the effective date hereof, so long as such person complies with the provisions of this Section. Within 90 days after the effective date of this Liquor Code (or within 30 days after receiving written notice from the Pueblo of the enactment of the Liquor Code, whichever is later) any person who is licensed to sell alcoholic beverages within Picuris Pueblo Indian Lands under the law as it existed prior to the enactment of this Liquor Code shall submit an application for a license under the provisions of this Liquor Code. Upon the issuance of a license under the provisions of this Liquor Code to such person, or upon the rejection of an application for such license by such person, no license issued by the State of New Mexico or issued under the provisions of any prior law of the Pueblo that is held by such person, or that purports to authorize the possession, sale or consumption of alcoholic beverages on premises covered by a license issued (or a license application rejected) under the provisions of this Liquor Code, shall have any further validity or effect within Picuris Pueblo Indian Lands.

Section 105: Severability

In the event any provision of this Liquor Code is held invalid or unenforceable by any court of competent jurisdiction, the remainder of the Code shall continue in full force and effect, notwithstanding the invalidity or unenforceability of such provision, to the fullest extent practicable.

Section 106: Issuance of Regulations

The Tribal Council shall have the authority to issue such regulations, consistent with the provisions of this Liquor Code, as may be helpful to the effective administration of the Liquor Code.

Subchapter Two: Sale, Possession and Consumption of Alcoholic Beverages

Section 121: Prohibition

The sale, introduction for sale, purchase, or other commercial dealing in alcoholic beverages, except as is specifically authorized by the Liquor Code, is prohibited within Picuris Pueblo Indian Lands.

Section 122: Possession for Personal Use

Possession of alcoholic beverages for personal use shall be lawful within Picuris Pueblo Indian Lands only if such alcoholic beverages were lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off Picuris Pueblo Indian Lands, and are possessed by a person or persons 21 years of age or older. Such possession is otherwise prohibited.

Section 123: Transportation Through Reservation Not Affected

Nothing herein shall pertain to the otherwise lawful transportation of alcoholic beverages through Picuris Pueblo Indian Lands by persons remaining upon public highways (or other paved public facilities for motor vehicles) and where such beverages are not delivered, sold or offered for sale to anyone within Picuris Pueblo Indian Lands.

Section 124: Requirement of Pueblo License

No person shall sell any alcoholic beverage within Picuris Pueblo Indian Lands, or offer any such beverage for sale, unless such person holds a license issued by the Pueblo under the provisions of this chapter that is in effect, or unless such person holds a license authorizing such sales issued by the State of New Mexico that is in effect, and such person has not received notice of the enactment of this Liquor Code under the provisions of Section 104 of this chapter.

Section 125: All Sales for Personal Use

No person licensed to sell alcoholic beverages within Picuris Pueblo Indian Lands shall sell any such beverage for resale, but all such sales shall be for the personal use of the purchaser. Nothing herein shall prohibit a wholesale dealer in alcoholic beverages that is duly licensed by the State of New Mexico from selling and delivering such beverages to properly licensed retailers within Picuris Pueblo Indian Lands, so long as such sales and deliveries are otherwise in conformity with the laws

of the State of New Mexico and this Liquor Code.

Section 126: Package Sales and Sales of Liquor by the Drink Permitted

Sales of alcoholic beverages on Picuris Pueblo Indian Lands may be in package form or for consumption on the premises, or both, so long as the seller is properly licensed by the Pueblo to make sales of that type. No seller of alcoholic beverages shall permit any person to consume, on premises where liquor by the drink is authorized to be sold, any alcoholic beverages purchased elsewhere by the consumer.

Section 127: No Sales to Minors

No alcoholic beverages may be sold within Picuris Pueblo Indian Lands to any person under the age of 21 years.

Section 128: Hours and Days of Sale

A. Alcoholic beverages may be sold, offered for sale, delivered or consumed on licensed premises within Picuris Pueblo Indian Lands, other than at gaming establishments, only during the following days and hours:

i. On Mondays through Fridays between the hours of 10 a.m. and 12 midnight;

ii. On Saturdays, from 12:01 a.m. until 2 a.m., and from 10 a.m. until 12 midnight;

iii. On Sundays, from 12:01 a.m. until 2 a.m., and from 2 p.m. until midnight; provided, however, that between midnight and 10 a.m. such sales shall only be for consumption on the premises, regardless of what type of license is held by the establishment.

B. At any gaming establishment licensed as such by Picuris Pueblo Gaming Commission, that is also a licensed premises within the meaning of this Liquor Code, alcoholic beverages may be sold, offered for sale, delivered or consumed on Mondays through Saturdays from 10 a.m. until 2 a.m. of the following morning (provided, however, that after midnight such sales shall only be for consumption on the premises, regardless of what type of license is held by the gaming establishment), and on Sundays from 12 noon until midnight (except that the Tribal Council may authorize such sales for consumption on the premises from 12:01 a.m. until 2 a.m. on a Monday following a Sunday that is a recognized holiday).

Section 129: Sales on Election Day

No sales of alcoholic beverages shall be permitted to any person within Picuris Pueblo Indian Lands on any Tribal election day, from closing time the night before until one (1) hour after the polls are closed.

Section 130: Other Prohibitions on Sales

The Tribal Council may, by duly enacted resolution, establish other days on which or times at which sales or consumption of alcoholic beverages are not permitted within Picuris Pueblo Indian Lands, or specified portions thereof. The Council shall give notice of any such enactment promptly to all licensees within Picuris Pueblo Indian Lands. In addition, the Governor of the Pueblo may, in the event of a bona fide emergency, and by written order, prohibit the sale of any alcoholic beverages within Picuris Pueblo Indian Lands, or any specified portions thereof, for a period of time not to exceed 48 hours. The Governor shall give prompt notice of such emergency order to all licensees within Picuris Pueblo Indian Lands. No such emergency order may extend beyond 48 hours, unless during that time the Tribal Council meets and determines by resolution that the emergency requires a further extension of such order.

Section 131: Location of Sales

No person licensed to sell alcoholic beverages within Picuris Pueblo Indian Lands shall make such sales except at the licensed premises specifically designated in such license. No person holding only a premises license shall permit alcoholic beverages purchased from such licensee for consumption on the premises to be consumed off of the licensed premises.

Section 132: Sales To Be Made by Adults

No person shall take any order, make any delivery, or accept payment for any sale of alcoholic beverages within Picuris Pueblo Indian Lands, or otherwise have any direct involvement in any such sale, who is less than 21 years of age.

Section 133: All Sales Cash

No licensee shall make any sale of any alcoholic beverages within Picuris Pueblo Indian Lands without receiving payment therefor by cash, check or credit card at or about the time the sale is made; provided, that nothing herein shall preclude a licensee from receiving a delivery of alcoholic beverages from a duly authorized wholesaler where arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude a licensee from allowing a customer to purchase more than one alcoholic beverage in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the licensed premises; and provided further that nothing herein shall prevent a licensee from distributing alcoholic beverages to customers without charge, so long as such distribution is not otherwise in violation of any provision of this Liquor Code.

Section 134: Nuisances Prohibited

No licensee shall knowingly conduct its business in such a location, or in such a manner, or at such times of day or night, as to amount to a nuisance, in that such activity is injurious to public health, safety or morals, or interferes with the exercise and enjoyment of public rights, including the right to use public property.

Subchapter Three: Licensing and Regulation

Section 151: Requirement of License

Any person proposing to sell, offer for sale, store or possess, for commercial purposes, any alcoholic beverages, or to maintain commercial premises for the consumption of alcoholic beverages, within Picuris Pueblo Indian Lands, who is not licensed to engage in such business under the laws of the State of New Mexico and has not received notice of the enactment of this Liquor Code under the provisions of Section 104 of this chapter, must be duly licensed under the provisions of this Liquor Code.

Section 152: Classes of Licenses

The following types or classes of licenses for the sale or distribution of alcoholic beverages within Picuris Pueblo Indian Lands shall be permitted:

A. Package license, which shall authorize the licensee to store, possess, sell and offer for sale alcoholic beverages in sealed containers, for consumption only off of the licensed premises.

B. Premises license, which shall authorize the licensee to store, possess and sell alcoholic beverages in open containers, for consumption on the licensed premises only, and to permit such consumption on the licensed premises only.

C. Special event license, which shall authorize the licensee to possess, distribute, sell and offer for sale alcoholic beverages for consumption only on the licensed premises, and to permit such consumption on the licensed premises only, but only for a bona fide special event, and only during the period or periods specified in such license, which period or periods shall be limited to the periods during which

the special event is occurring and from beginning to end shall not exceed 72 hours.

Section 154: Qualifications for License

A. No person shall be entitled to be issued a license under the provisions of this Liquor Code who has previously been the subject of any proceeding resulting in the revocation of any license for the sale of alcoholic beverages issued by the Pueblo or by any state or other jurisdiction, or who has been convicted of any felony in any jurisdiction involving theft, dishonesty, corruption, embezzlement or violation of laws regulating the sale, possession and use of alcoholic beverages, or who (if a natural person) has not at the time the application for license is submitted attained the age of 25 years, or who is otherwise determined by the Pueblo to be unfit to be licensed to sell alcoholic beverages, or (if a natural person) whose spouse is a person not qualified to hold a license under the provisions of this section.

B. No partnership, corporation or other legal entity shall be entitled to be issued a license under the provisions of this Liquor Code if any individual occupying any management or supervisory position within such entity, or who sits on the management committee or board of directors or trustees thereof, or who holds or controls a financial interest of ten percent or more in such entity, is a person who would not be entitled to be issued a license under the provisions of this section.

C. No person shall be entitled to be issued a package or premises license hereunder unless such person owns, or has an approved lease or other valid interest in, land within Picuris Pueblo Indian Lands, is lawfully entitled to engage in a business on such land with which such license would be compatible, and can demonstrate that such person is otherwise capable of complying with all of the requirements imposed on licensees by this Liquor Code.

D. An applicant for a package or premises license hereunder, including, if the applicant is not a natural person, each principal in the applicant entity who will have any direct involvement in the proposed business, must have successfully completed within the three years preceding the date of the application an alcohol server education program and examination that is approved by the director of the New Mexico Alcohol and Gaming Division.

E. Notwithstanding anything in this section to the contrary, the Pueblo and its wholly owned commercial entities shall be entitled to be issued licenses hereunder upon application therefor to the Tribal Council, provided that all other provisions of this Liquor Code are complied with.

Section 155: Package and Premises License Application; Procedure; Fees

A. Every person seeking a package or premises license under the provisions of this Liquor Code (other than the Pueblo or any of its wholly owned commercial entities) shall submit to the Tribal Council a written application, under oath, in the form prescribed by and containing the information required by this section.

B. If the applicant is a natural person, the application shall contain, at a minimum, all of the following information:

i. The full legal name of the applicant, plus any other names under which the applicant has been known or done business during the previous 20 years, and the applicant's date and place of birth, as shown by a certified copy of the applicant's birth certificate.

ii. The applicant's current legal residence address and business address, if any, and every residence address that the applicant has maintained during the previous ten years, with the dates during which each such address was current.

iii. The trade name, business address and description of every business in which the applicant has engaged or had any interest (other than stock ownership or partnership interest amounting to less than five percent of total capital) during the previous ten years, and the dates during which the applicant engaged in or held an interest in any such business.

iv. A listing of every other jurisdiction in which the applicant has ever applied for a license to sell or distribute alcoholic beverages, the date on which each such application was filed, the name of the regulatory agency with which the application was filed, the action taken on each such application, and if any such license was issued, the dates during which it remained in effect, and as to each such license a statement whether any action was ever taken by the regulatory body to suspend or revoke such license, with full dates and details of any such incident.

v. A listing of every crime with which the applicant has ever been charged, other than routine traffic offenses (but including any charge of driving while intoxicated or the like), giving as to each the date on which the charge was made, the location, the jurisdiction, the court in which the matter was heard, and the outcome or ultimate disposition thereof.

vi. The name and address of every person or entity holding any security interest in any of the assets of the business to be conducted by the applicant, or in any of the proceeds of such business.

vii. A detailed plat of the applicant's business premises within Picuris Pueblo Indian Lands including the floor plans of any structure and the details of any exterior areas intended to be part of the licensed premises, together with evidence of the applicant's right to conduct business on such premises.

viii. A detailed description of the business conducted or intended to be conducted on the licensed premises, and including (but not limited to) hours of operation and number of employees.

ix. The type(s) of license(s) requested.

C. If the applicant is a corporation, the corporation, each officer of the corporation and every person holding 10% or more of the outstanding stock in the corporation shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall also submit the following:

i. A certified copy of its articles of incorporation and bylaws.

ii. The names and addresses of all officers and directors and those stockholders owning 5% or more of the voting stock of the corporation, and the amount of stock held by each such stockholder.

iii. The name of the resident agent of the corporation who would be authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted on the licensed premises.

iv. Such additional information regarding the corporation as the Tribal Council may require to assure a full disclosure of the corporation's structure and financial responsibility.

D. If the applicant is a partnership, the partnership, the managing partner and every partner having an interest amounting to 10% or more of the total equity interest in the partnership shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall submit the following:

i. A certified copy of the Partnership Agreement.

ii. The names and addresses of all general partners and of all limited partners contributing 10% or more of the total value of contributions made to the limited partnership or who are entitled to 10% or more of any distributions of the limited partnership.

iii. The name and address of the partner, or other agent of the partnership, authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted in the licensed premises.

iv. Such additional information regarding the partnership as the Tribal Council may require to assure a full disclosure of the partnership's structure and financial responsibility.

E. Every applicant who is a natural person, and every person required by paragraphs C or D of this section to comply with the provisions of paragraph B, shall also submit with the application a complete set of fingerprints, taken under the supervision of and certified to by an officer of an authorized law enforcement agency located within the State of New Mexico.

F. The applicant shall also submit proof that applicant, if a natural person, and every person who will be directly involved in the sale or service of alcoholic beverages as part of the applicant's business, has successfully completed, within the three years next preceding the date of the application, an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division.

G. Every applicant for either a package license or a premises license shall submit with the completed license application a non-refundable license processing fee, in the amount set forth below:

Package license, $5,000.00

Premises license, $1,000.00

In addition, each such applicant shall pay a fee to cover the cost of a background investigation, in an amount to be set by the Tribal Council from time to time, but which shall not exceed the sum of $1,000.00.

H. Upon receiving a completed license application together with the required fees, the Tribal Council shall cause a background investigation to be performed of the applicant, to determine whether the applicant is qualified to be licensed under the provisions of this Liquor Code. Upon the written recommendation of the Tribal Council (if requested by the applicant), the Tribal Council may, in its discretion, approve the issuance of a preliminary license to the applicant effective for a period of no more than 90 days, but which shall be renewable for one additional period of 90 days in the event the background investigation cannot be completed within the first 90-day period; provided, however, that in no event shall the issuance of a preliminary license, or the renewal of such license for an additional 90-day period, entitle the applicant to favorable consideration with respect to the application for a package or premises license.

I. The Pueblo or any of its wholly owned commercial entities may apply for a package or premises license by submitting an application to the Tribal Council identifying the applicant, describing in detail the purpose of the license, including a detailed description of the proposed licensed premises, and including the appropriate fee as set forth in Paragraph (G) of this section.

Section 156: Action on Application

A. Upon making a determination that an applicant for a package or premises license satisfies the requirements of this chapter, the Governor shall prepare a written recommendation for the issuance of such license, setting forth sufficient information about the applicant, the proposed business, and any other matters deemed relevant by the Governor, to enable the Tribal Council to evaluate the merits of the license, together with any and all supporting data deemed suitable by the Governor. The recommendation shall include a detailed description of the proposed leased premises, and any limitations or conditions the Governor recommends be included in the license. The Governor shall place the matter on the agenda for the Tribal Council's next regular meeting, and shall give written notice thereof to the Tribal Council and the applicant, and to the public. The Governor shall provide a complete copy of the Governor's recommendation, with all supporting documentation, to each member of the Tribal Council, by no later than ten days before the meeting at which the matter is to be heard.

B. The Tribal Council shall take up the application at its next regular meeting. The Governor shall explain the application and the basis for his or her recommendation, and the applicant shall be permitted to speak in favor of the application. Any interested member of the public may also be heard on the matter. The Tribal Council shall vote either to approve or deny the application, and if it votes to approve the license, it shall specify whether the Governor's recommendations as to the description of the licensed premises and any limitations or conditions on the license are accepted, rejected, or modified, and may add any additional limitations or conditions it deems appropriate.

C. If the Tribal Council concludes that the applicant is not qualified for a license under the provisions of Section 154 of this chapter, or that the application is otherwise not allowable under the provisions of this chapter, he or she shall give written notice to the applicant that the license is rejected, by certified mail, return receipt requested.

D. In the event the Tribal Council approves the issuance of a license, the Governor shall issue the license forthwith, incorporating therein any limitations or conditions thereon approved by the Tribal Council.

Section 157: Term; Renewal; Fee

A. Each package or premises license issued hereunder shall have a term of one (1) year from the date of issuance, provided that such license shall be renewable for additional periods of one year each by any licensee who has complied fully with the terms and provisions of the license and of this Liquor Code during the term of the license, and who remains fully qualified to be licensed under the provisions of Section 154 of this Chapter. A licensee who is eligible for renewal of his or her license shall submit to the Tribal Council an application for renewal on a form specified by the Tribal Council, together with proof that the licensee and each person employed by the licensee as a server has successfully completed, within the past five years, an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division, and a license renewal fee in the amount of $500.00, no less than thirty (30) days prior to the expiration date of the license.

B. The failure to submit a timely renewal application, with the required fee, may subject the licensee to a late charge of $500.00. If the renewal application is not submitted prior to expiration of the license, the Tribal Council may treat the license as having expired, and may require the licensee to file a new application in compliance with Section 155 of this chapter.

C. The Tribal Council may, in its discretion, conduct an update on the applicant's background investigation prior to acting on any renewal application, and the Tribal Council shall update such investigation prior to issuing a third renewal of a license since the last such investigation was performed, or if the Tribal Council has acquired information indicating that the applicant is not qualified for a license under the provisions of Section 154 of this chapter. Whenever any such investigation is performed, the Tribal Council shall require the applicant to pay an additional fee to cover the costs of such investigation, in an amount to be determined by the Tribal Council but

in no event in excess of the sum of $1,000.00.

D. The Tribal Council may refuse to approve a renewal of a license in the event a background investigation reveals facts that would disqualify the applicant from being licensed under this Liquor Code, or if the Tribal Council determines that the licensee has operated in a manner violative of the provisions of this chapter. In that event, the applicant shall have the right to appeal the Tribal Council's decision to the Tribal Council, which appeal shall be governed by and conducted in accordance with the same requirements and procedures that apply an appeal of a denial of an original application, as set forth in Section 156(C), (D), and (E) of this chapter.

Section 158: Conditions of License

No licensee shall have any property interest in any license issued under the provisions of this Liquor Code, and every such license shall be deemed to confer a non-transferable privilege, revocable by the Pueblo in accordance with the provisions of this Chapter. The continued validity of every package and premises license issued hereunder shall be dependent upon the following conditions:

A. Every representation made by the licensee and any of its officers, directors, shareholders, partners or other persons required to submit information in support of the application, shall have been true at the time such information was submitted, and shall continue to be true, except to the extent the licensee advises the Tribal Council in writing of any change in any such information, and notwithstanding any such change, the licensee shall continue to be qualified to be licensed under the provisions of this Liquor Code.

B. The licensee shall at all times conduct its business on Picuris Pueblo Indian Lands in full compliance with the provisions of this Liquor Code and with the other laws of the Pueblo.

C. The licensee shall maintain in force, public liability insurance covering the licensed premises, insuring the licensee and the Pueblo against any claims, losses or liability whatsoever for any acts or omissions of the licensee or of any business invitee on the licensed premises resulting in injury, loss or damage to any other party, with coverage limits of at least $1 million per injured person, and the Tribal Council shall at all times have written evidence of the continued existence of such policy of insurance.

D. The licensee shall be lawfully entitled to engage in business within Picuris Pueblo Indian Lands, and shall have paid all required rentals, assessments, taxes, or other payments due the Pueblo.

E. The business conducted on the licensed premises shall be conducted by the licensee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee, nor shall any license issued hereunder or any interest therein be sold, assigned, leased or otherwise transferred to any other person.

F. All alcoholic beverages sold on the licensed premises shall have been obtained from a New Mexico licensed wholesaler.

G. No person shall be employed by the licensee as a server who has not, within the past five years, successfully completed an alcohol server education program and examination approved by the director of the New Mexico Alcohol and Gaming Division.

H. No licensee shall sell, serve or deliver any alcoholic beverage to a customer through a drive-up window, or otherwise to a customer who at the time of the transaction is in a motor vehicle.

I. By having applied for and obtained a license hereunder, the licensee shall be deemed to have submitted to the jurisdiction of the Tribal Court of the Pueblo with respect to any action brought by the Pueblo or any of its agencies or offices to enforce the provisions of this Liquor Code or any other provision of tribal law, or by any person claiming to have suffered loss or damage due to any act or omission of the licensee in the course of the conduct of its business on Picuris Pueblo Indian Lands.

Section 159: Sanctions for Violation of License

A. Upon determining that any person licensed by the Pueblo to sell alcoholic beverages under the provisions of the Liquor Code is for any reason no longer qualified to hold such license under the provisions of Section 154 of the Liquor Code, or has violated any of the conditions set forth in Section 158, the Tribal Council shall immediately serve written notice upon such licensee directing that he show cause within ten calendar days why his license should not be suspended or revoked, or a fine imposed, or both. The notice shall specify the precise grounds relied upon and the action proposed.

B. If the licensee fails to respond to such notice within ten calendar days of service of such notice, the Tribal Council shall issue an order suspending the license for such period as the Tribal Council deems appropriate, or revoking the license, effective immediately, or imposing a fine, in such amount as the Tribal Council deems reasonable. The licensee may request a hearing on such notice, by filing a written response and a request for hearing, within the ten-day period, with the Tribal Council and with the Clerk of the Picuris Pueblo Tribal Court. The hearing shall be held before the Tribal Court, no later than 30 calendar days after receipt of such request, unless the Court for good cause extends such time period.

C. At the hearing, the Tribal Council shall have the burden to prove facts supporting the contentions set forth in the notice, and justifying the sanctions proposed in the notice. The licensee shall have the right to present its evidence in response.

D. The Court after considering all of the evidence and arguments shall issue a written decision, within fifteen days after the hearing concludes, either upholding the proposed action of the Tribal Council, modifying such action by imposing some lesser penalty, or ruling in favor of the licensee, and such decision shall be final and conclusive.

Section 160: Special Event License

A. Any established business or any non-governmental organization that includes any member of the Pueblo, that has authority to conduct any activities within Picuris Pueblo Indian Lands and that is not a licensee hereunder, may apply to the Tribal Council for a special event license, which shall entitle the applicant to distribute alcoholic beverages, whether or not for consideration, in connection with a bona fide special event to be held by the applicant within Picuris Pueblo Indian Lands. Any such application must be filed in writing, in a form prescribed by the Tribal Council, no later than 45 calendar days prior to the event, must be accompanied by a fee in the amount of $50.00, and must contain at least the following information:

i. The nature and purpose of the event, the identity of the applicant and its relationship to the event, and a description of the persons who are invited to participate in the event, including their ages;

ii. The precise location within Picuris Pueblo Indian Lands where the event will occur, and where alcoholic beverages will be distributed;

iii. The exact days and times during which the event will occur (provided, that in no event shall any license be in effect for a period exceeding 72 hours, from the beginning of the first day of the event until the end of the last day);

iv. The nature of any food and beverages to be distributed, and the

manner in which such distribution shall occur;

v. Details of all provisions made by the applicant for sanitation, security and other measures to protect the health and welfare of participants at the event;

vi. Certification that the event will be covered by a policy of public liability insurance as described in Section 158(C) of this Liquor Code, that includes the Pueblo as a co-insured.

vii. Any other information required by the Tribal Council relative to the event.

B. The Tribal Council shall consider the application at its next meeting after the application is submitted, and shall vote to approve or reject the application. If the Council votes to approve the application, it shall also decide whether the license should be conditioned or limited in any fashion. If the application is approved, the Governor shall issue the license, including any conditions or limitations approved by the Council, and specifying the hours during which and the premises within which sales, distribution and consumption of alcoholic beverages may occur.

C. Alcoholic beverages may be sold or distributed pursuant to a special event license only at the location and during the hours specified in such license, in connection with the special event, only to participants in such special event, and only for consumption on the premises described in the license. Such sales or distribution must comply with any conditions imposed by the license, and with all other applicable provisions of this Liquor Code. All such alcoholic beverages must have been obtained from a New Mexico licensed wholesaler or retailer.

Section 161: Display of License

Every person licensed by the Pueblo to sell alcoholic beverages within Picuris Pueblo Indian Lands shall prominently display the license on the licensed premises during hours of operation.

Subchapter Four: Offenses

Section 181: Purchase From or Sale to Unauthorized Persons

Within Picuris Pueblo Indian Lands, no person shall purchase any alcoholic beverage at retail except from a person licensed by the Pueblo under the provisions of this title; no person except a person licensed by the Pueblo under the provisions of this title shall sell any alcoholic beverage at retail; nor shall any person sell any alcoholic beverage for resale within Picuris Pueblo Indian Lands to any person other than a person properly licensed by the Pueblo under the provisions of this chapter.

Section 182: Sale to Minors

A. No person shall sell or provide any alcoholic beverage to any person under the age of 21 years.

B. It shall be a defense to an alleged violation of this Section that the purchaser presented to the seller an apparently valid identification document showing the purchaser's age to be 21 years or older, and that the seller had no actual or constructive knowledge of the falsity of the identification document and relied in good faith on its apparent validity.

Section 183: Purchase by Minor

No person under the age of 21 years shall purchase, attempt to purchase or possess any alcoholic beverage.

Section 184: Sale to Person Under the Influence of Alcohol

No person shall sell any alcoholic beverage to a person who the seller has reason to believe is under the influence of alcohol or who the seller has reason to believe intends to provide such alcoholic beverage to a person under the influence of alcohol.

Section 185: Purchase by Person Under the Influence of Alcohol

No person under the influence of alcohol shall purchase any alcoholic beverage.

Section 186: Bringing Liquor Onto Licensed Premises

No person shall bring any alcoholic beverage for personal consumption onto any premises within Picuris Pueblo Indian Lands where liquor is authorized to be sold by the drink, unless such beverage was purchased on such premises, or unless the possession or distribution of such beverages on such premises is otherwise licensed under the provisions of this Liquor Code.

Section 187: Use of False or Altered Identification

No person shall purchase or attempt to purchase any alcoholic beverage by the use of any false or altered identification document that falsely purports to show the individual to be 21 years of age or older.

Section 188: Penalties

A. Any person convicted of committing any violation of this Chapter shall be subject to punishment of up to one (1) year imprisonment or a fine not to exceed Five Thousand Dollars ($5,000.00), or to both such imprisonment and fine.

B. Any person not a member of a federally recognized Indian tribe, upon committing any violation of any provision of this Chapter, may be subject to a civil action for trespass, and upon having been determined by the court to have committed the alleged violation, shall be found to have trespassed upon the Lands of the Pueblo, and shall be assessed such damages as the court deems appropriate in the circumstances.

C. Any person suspected of having violated any provision of this Chapter shall, in addition to any other penalty imposed hereunder, be required to surrender any alcoholic beverages in such person's possession to the officer making the arrest or issuing the complaint.

Section 189: Jurisdiction

Any and all actions, whether civil or criminal, pertaining to alleged violations of this title, or seeking any relief against the Pueblo or any officer or employee of the Pueblo with respect to any matter addressed by this Liquor Code, shall be brought in the Tribal Court of the Pueblo, which court shall have exclusive jurisdiction thereof.

[FR Doc. E7–19364 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–930–07–5870–EU; OR–63956; HAG–07–0135]

Notice of Realty Action; Non-Competitive (Direct) Sale of Public Land; Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: A 240-acre parcel of public land in Harney County, Oregon, is being considered for direct sale to resolve an inadvertent occupancy trespass. The parcel is the minimum size possible to resolve the encroachment. The parcel proposed for sale is identified as suitable for disposal in the BLM Andrews and Drewsey Management Framework Plan, dated September 1987, and the BLM Andrews Resource Management Plan and Record of Decision, dated July 15, 2005.

DATES: Submit comments on or before November 16, 2007. Only written comments will be accepted.

ADDRESSES: Address all written comments to Karla Bird, Andrews Resource Area Field Manager, Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738. Comments

expressed verbally or in electronic format will not be accepted.

FOR FURTHER INFORMATION CONTACT: Holly Orr, Realty Specialist, at (541) 573–4501.

SUPPLEMENTARY INFORMATION: The following described public land in Harney County, Oregon, has been examined and found suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713 and 1719). The parcel proposed for sale is identified as follows:

Willamette Meridian, Oregon

T. 33 S., R. 30 E., Sec. 28, N½S½ and S½SE¼.

The area described contains 240 acres in Harney County.

This parcel will be sold at not less than the appraised market value, currently determined to be $42,500. In accordance with 43 CFR 2711.3–3(a)(5), direct sale procedures are appropriate to resolve inadvertent unauthorized use or occupancy of the land. The encroachment involves portions of outbuildings, an abandoned airstrip, ranch waste, haystacks, cattle supplement tanks, and metal debris that are spread over the entire 240-acre parcel.

Gary Miller, Rock Creek Ranch, Inc., will be allowed 30 days from receipt of a written offer to submit a deposit or at least 10 percent of the appraised market value of the parcel and within 180 days thereafter to submit the balance. No representation, warranty or covenant of any kind, express or implied, will be given or made by the United States, its officers or employees, as to access to or from the above described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition or its past, present or potential uses. However, to the extent required by law, the sale will be subject to the requirements of section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9620(h)).

As proposed, the sale will be made, and the land will be conveyed, subject to:

1. Valid existing rights;

2. A right-of-way for ditches and canals reserved by the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

3. Local zoning and subdivision laws, if any.

By accepting deed/patent, and to the extent allowed by law, the purchaser agrees to indemnify, defend and hold harmless the United States from any cost, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from past, present and future acts or omissions of the purchaser, previous landowners or subsequent landowners or contractors, or lessees, or any third party, arising out of, or in connection with the purchaser's use, occupancy, or operations on the real property which has already resulted or does hereafter result in:

(1) Violations of federal, State, and local laws and regulations which are now or may in the future become applicable to the real property;

(2) Judgments, claims and demands of any kind assessed against the United States;

(3) Cost, expense or damages of any kind incurred by the United States;

(4) Other releases or threatened releases on, into, or under land, property and other interests of the United States by solid or hazardous waste(s), or substance(s) as defined by federal and state law;

(5) Natural resource damages as defined by federal and state law; or

(6) Other activities by which solid or hazardous wastes, as defined by federal and state law were generated, used, stored, released or otherwise disposed of on the real property, and any clean-up, response or remedial action, or other action related in any manner to said solid or hazardous substances or wastes.

This covenant shall be construed as running with the real property, and may be enforced by the United States in a court of competent jurisdiction.

The United States Government shall be neither responsible for compliance with a provision of, nor liability arising from the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA 42 U.S.C. 6901 *et. seq.*), the Resource Conservation and Recovery Act of 1976, as amended (RCRA 42 U.S.C. 6901 *et. seq.*) or any other applicable provision of Federal Law with respect to a release or threat of release of hazardous substance, pollutant or contaminant, or hazardous waste on the real property conveyed under this deed, except to the extent described in the CERCLA Notice, attached hereto and incorporated herein by reference. (Be sure to attach a copy of the CERCLA Notice).

All persons claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

The mineral interests being offered for conveyance have no known mineral value.

Acceptance of the direct sale offer constitutes an application for conveyance of the mineral interests also being offered under the authority of section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). In addition to the full purchase price, a nonrefundable fee of $50 will be required for the purchase of the mineral interest to be conveyed simultaneously with the sale of the land.

On October 3, 2007, the above described land will be segregated from appropriation under the public land laws, including the mining laws, except the sale provisions of the Federal Land Policy and Management Act of 1976. Until completion of the sale, the Bureau of Land Management is no longer accepting land use applications affecting the identified public lands, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or October 5, 2009, unless extended by the Bureau of Land Management, State Director, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

Public Comments: On or before November 16, 2007, any person may submit written comments regarding the proposed sale to the Andrews Resource Area Field Manager at the Burns District Office, Bureau of Land Management, 28910 Hwy. 20 West, Hines, Oregon 97738.

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

Detailed information, including the appraisal, the Environmental Assessment and the Decision relative to this direct land sale is available at the Burns District Office (address above) during business hours. Inquiries may also be directed to Holly Orr, Realty Specialist, Burns District Office at the above address, or by phone (541) 573–4400. Objections will be reviewed by the Bureau of Land Management, Burns District Manager, who may sustain,

vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Dated: August 9, 2007.

Mark W. Sherbourne,

Acting Andrews Resource Area Field Manager.

[FR Doc. E7–19514 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–33–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AGOA–07]

Commercial Availability of Fabric and Yarns in AGOA Countries: Certain Denim

AGENCY: United States International Trade Commission.

ACTION: Notice of determination.

Determination: Based on the information developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 112(c)(2)(B)(ii) of the African Growth and Opportunity Act (AGOA),[1] (1) that denim fabric[2] produced in beneficiary sub-Saharan African (SSA) countries will be available in commercial quantities during the period October 1, 2007–September 30, 2008 (fiscal year 2008) for use by lesser developed beneficiary (LDB) SSA countries in the production of apparel articles receiving U.S. preferential treatment, and (2) that the quantity of such denim fabric that will be so available during fiscal year 2008 is 21,303,613 square meter equivalents.[3]

Background: Section 112(c)(2)(A) of AGOA requires the Commission, following receipt of a petition, to determine whether a fabric or yarn is available in commercial quantities for use by LDB SSA countries, and if the Commission makes an affirmative determination, section 112(c)(2)(B)(i) of AGOA requires the Commission to determine the quantity of such fabric or yarn that will be so available in the following fiscal year. Section 112(c)(2)(B)(ii) of AGOA requires the Commission to make similar determinations for the following year and each year thereafter through 2012 with respect to whether the fabric or yarn will be available in commercial quantities and the quantity so available. Section 112(c)(2)(B)(iii) of AGOA requires the Commission to determine, after the end of each year for which an availability determination was made, the extent to which the fabric or yarn determined to be available in commercial quantities for use in LDB SSA countries was used in the production of apparel articles receiving U.S. preferential treatment. Section 112(c)(2)(C) of AGOA deemed denim fabric to be available in commercial quantities in the amount of 30 million square meter equivalents (smes) during fiscal year 2007, as if the Commission had made an affirmative determination in response to a petition.

The determinations that the Commission has made here are made under section 112(c)(2)(B)(ii) of AGOA and concern whether the subject denim fabric will be available in commercial quantities during fiscal year 2008, and the quantity that will be so available.

Notice of the institution of the Commission's investigation and of the scheduling of a public hearing in connection therewith was given by posting a copy of the notice on the Commission's Web site (*www.usitc.gov*) and by publishing the notice in the **Federal Register** of April 9, 2007 (72 F.R. 17578). The hearing was held on June 5, 2007, in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The views of the Commission are contained in USITC Publication 3950 (September 2007), entitled *Commercial Availability of Fabric and Yarns in AGOA Countries: Certain Denim.*

By order of the Commission.

Issued: September 25, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19476 Filed 10–2–07; 8:45 am]

BILLING CODE 7020–02–P

[1] 19 U.S.C. 3721(c)(2)(B)(ii).

[2] Denim articles provided for in subheading 5209.42.00 of the Harmonized Tariff Schedule. See section 112(c)(2)(C) of AGOA, 19 U.S.C. 3721(c)(2)(C).

[3] Commissioner Dean A. Pinkert determines that the quantity that will be so available during fiscal year 2008 is within a range from 21,303,613 smes to 25,017,171 smes.

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Second Review)]

Certain Pasta From Italy and Turkey

Determinations

On the basis of the record[1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the countervailing duty and antidumping duty orders on certain pasta from Italy and Turkey would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 2, 2006 (71 FR 57999) and determined on January 5, 2007 that it would conduct full reviews (72 FR 2558, January 19, 2007). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on February 8, 2007 (72 FR 5996). The hearing was held in Washington, DC, on July 17, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on September 27, 2007. The views of the Commission are contained in USITC Publication 3947 (September 2007), entitled *Certain Pasta From Italy and Turkey: Investigation Nos. 701–TA–365–366 and 731–TA–734–735 (Second Review).*

By order of the Commission.

Issued: September 27, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19472 Filed 10–2–07; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–340–E and H (Second Review) (Remand)]

Solid Urea From Russia and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice of remand proceedings.

SUMMARY: The U.S. International Trade Commission (''Commission'') hereby gives notice of the court-ordered remand of its five-year review determinations in the antidumping investigation Nos. 731–TA–340–E and H concerning solid urea from Russia and Ukraine. For further information concerning the conduct of this proceeding and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207).

DATES: Effective Date: September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Michael Haldenstein, Office of General Counsel, telephone 202–205–3041, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record of investigation Nos. 731–TA–340 E & H may be viewed on the Commission's electronic docket (''EDIS'') at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: *Background*. In December 2005, the Commission determined that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonable foreseeable time. The Commission's determinations were appealed to the Court of International Trade. On August 28, 2007, the Court issued a decision remanding the matter to the Commission for further proceedings not inconsistent with that opinion. *Nevinnomysskiy Azot* v. *United States*, Slip Op. 07–130 (Ct. Int'l Trade, Aug. 28, 2007). In its opinion, the Court instructed the Commission to: (1) Provide, ''in its examination of whether the likely volume of subject imports would prove significant if the antidumping orders in question are revoked, * * * more rigorous analysis of its assessment of the effects of third-country barriers;'' (2) ''address the deficiencies in its likely price effects argument, particularly the likely price effects of subject imports in light of the already substantial presence of low-cost non-subject imports in the domestic market;'' and (3) ''reassess the likely impact of subject imports on the domestic industry to account for the difference between the first sunset reviews' findings and the findings of the current review within the context of the domestic industry's recent improved performance.''

Participation in the proceeding. Only those persons who were interested parties to the reviews (i.e., persons listed on the Commission Secretary's service list) and were parties to the appeal may participate in the remand proceeding. Such persons need not make any additional filings with the Commission to participate in the remand proceeding. Business proprietary information (''BPI'') referred to during the remand proceeding will be governed, as appropriate, by the administrative protective order issued in the reviews.

Written submissions. The Commission is not reopening the record in this proceeding for submission of new factual information. The Commission will, however, permit the parties to file comments pertaining to the specific issues that are the subject of the CIT's remand instructions. Comments should be limited to no more than fifteen (15) double-spaced and single-sided pages of textual material. The parties may not submit any new factual information and may not address any issue other than those that are the subject of the CIT's remand instructions. Any such comments must be filed with the Commission no later than October 23, 2007.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Parties are also advised to consult with the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subpart A (19 CFR part 207) for provisions of general applicability concerning written submissions to the Commission.

By order of the Commission.

Issued: September 27, 2007.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19456 Filed 10–2–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *September 17 through September 21, 2007*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W–61,855; Colorado Custom Hardware, Chadron Shop, Chadron, NE: July 17, 2006.

TA–W–61,891; Duerr Tool and Die Company, Inc., Union, NJ: July 25, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,895; GF Office Furniture, LTD, Gallatin, TN: July 27, 2006.

TA–W–61,970; Belkin International, Inc., Compton, CA: August 9, 2006.

TA–W–61,836; Hutchinson FTS, Inc., On-Site Leased Workers of Manpower, Quincy, MI: July 17, 2006.

TA–W–61,945; Delphi Corporation, Automotive Holdings Group, Chassis Business Support Functions, Kettering, OH: August 3, 2006.

TA–W–61,965; Stern Manufacturing, Inc., Staples, MN: August 8, 2006.

TA–W–61,996; Standard Textiles, Augusta, GA: August 15, 2006.

TA–W–62,002; Broward Casting Foundry, Ft. Lauderdale, FL: August 15, 2006.

TA–W–62,030; Pechiney Plastics An Alcan, City of Commerce, CA: August 10, 2006.

TA–W–62,079; Penn Specialty Chemical, Memphis, TN: August 30, 2006.

TA–W–62,124; Milan Screw Products, Inc., On-Site Leased Workers of Masterson Personnel, Milan, MI: September 1, 2006.

TA–W–61,951; DI–Mar Industries, Inc., Formerly Know as Northeast Manufacturing, West New York, NJ: August 7, 2006.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,788; TI Automotive, Tool Plant, Brake and Fuel Division, Chesterfield, MI: July 2, 2006.

TA–W–61,804; J.T. Posey Company, Arcadia, CA: June 28, 2006.

TA–W–61,894; Fry's Metals, Inc., d/b/a Cookson Electronics, On-Site Workers From Advantage Resource Group, Altoona, PA: July 26, 2006.

TA–W–62,035; Kadant Web Systems, Auburn, MA: August 22, 2006.

TA–W–62,036; Clover Technologies Group, LLC, Leased Workers of ESSI Staffing Services and Premier, Mesa, AZ: August 20, 2006.

TA–W–62,065; Keykert USA, Inc., Wixom, MI: August 28, 2006.

TA–W–62,076; Ametek, Inc., Instrumentation and Specialty Controls Division, West Chicago, IL: April 14, 2007.

TA–W–62,088; Friedrich Air Conditioning, A Subsidiary of U.S.N.R., San Antonio, TX: September 5, 2006.

TA–W–62,099; CarboMedics, Inc., Austin, TX: September 20, 2007.

TA–W–62,104; Imation Corporation, Magnetic Data Tape Cartridges,

Weatherford, OK: September 5, 2006.

TA–W–62,104A; Imation Corporation, Magnetic Data Tape Cartridges, Weatherford, OK: September 5, 2006.

TA–W–62,106; Laird Technologies, Delaware Water Gap, PA: September 4, 2006.

TA–W–62,139; Springfield LLC, Jericho, NY: September 5, 2006.

TA–W–62,139A; Springfield LLC, Plano, NY: September 5, 2006.

TA–W–62,043; Synergis Technologies Group Corp., On-Site Leased Workers—Forge Industrial Staffing & All Performance Staffing, Grand Rapids, MI: August 24, 2006.

TA–W–62,121; Burly Bear, Inc. d/b/a ProLine Billiards, Valdese, NC: August 31, 2006.

TA–W–62,136; AGI Instore, Leased Workers of Coxe Personnel, Forest City, NC: September 11, 2006.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–61,947; Charlevoix Manufacturing Co., Division of Hater Industries, Charlevoix, MI: August 6, 2006.

TA–W–61,967; The G and C Foundry Company Ltd., Sandusky, OH: August 9, 2006.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–61,855; Colorado Custom Hardware, Chadron Shop, Chadron, NE.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–61,891; Duerr Tool and Die Company, Inc., Union, NJ.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

TA–W–61,905; The Boeing Company, Commercial Aircraft Components, Oak Ridge, TN.

TA–W–61,905A; The Boeing Company, Centrifuge Machine Components, Oak Ridge, TN.

TA–W–61,960; Solutia, Inc., Sauget, IL.

TA–W–62,096; Galey and Lord Industries, LLC, Flint Plant, Gastonia, NC.

TA–W–61,970A; Belkin International, Inc., Compton, CA.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–62,010; Cargill, Inc., Soy Protein Isolate Division, Sidney, OH.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–61,867; Non-Metallic Components, Inc., Rib Lake, WI.

TA–W–61,881; Southern Weaving Company, Tarboro Plant 5, Tarboro, NC.

TA–W–61,925; Ansell Protective Products, Tarboro, NC.

TA–W–61,938; Superior Design and Engineering, Sterling Heights, MI.

TA–W–61,987; The Longaberger Company, Basket Department, Frazeysburg, OH.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–62,090; ABN AMRO Services Co., Inc., A Wholly Owned Subsidiary of Lasalle Bank Corp., Chicago, IL.

TA–W–61,880; LM Services, LLC, A Subsidiary of S. Schwab Co., Corporate Office, Cumberland, MD.

TA–W–61,880A; LM Services, LLC, A Subsidiary of S. Schweb Co., Distribution Center, Cumberland, MD.

TA–W–61,986; IBM Corporation, Integrated Technology Delivery Division, On-Site at Case New Holland, Racine, WI.

TA–W–61,993; Dell USA LP, Roseburg Call Center, Roseburg, OR.

TA–W–62,054; MJM Jewelry Corporation, Brooklyn, NY.

TA–W–62,056; Glaxo Smith Kline, Shared Financial Services Department, Philadelphia, PA.

TA–W–62,118; Southern Council of Industrial Workers, Jackson, MS.

TA–W–62,126; First American Title Insurance Company, Pittsburgh, PA.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of *September 17 through September 21, 2007.* Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 27, 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E7–19479 Filed 10–2–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,955]

Horizon Dental Lab, LLC, Also Known as Q Dental Group PC, Rochester, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment

Assistance on August 20, 2007, applicable to workers of Horizon Dental Lab, LLC, Rochester, New York. The notice was published in the **Federal Register** on September 11, 2007 (72 FR 51844).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of dental prosthesis.

Information provided by the company shows that the correct name of the subject firm should read Horizon Dental Lab, LLC, also know as Q Dental Group PC. Workers separated from employment at the subject firm had their wages reported under the unemployment insurance (UI) tax account for Q Dental Group PC.

Accordingly, the Department is amending this certification to correctly identify the name of the subject firm.

The intent of the Department's certification is to include all workers of Horizon Dental Lab, LLC, Rochester, New York who were adversely affected by increased imports of dental prosthesis.

The amended notice applicable to TA–W–61,955 is hereby issued as follows:

''All workers of Horizon Dental Lab, LLC, also known as Q Dental Group PC, Rochester, New York, who became totally or partially separated from employment on or after August 1, 2006, through August 20, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 25th day of September 2007.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19477 Filed 10–2–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2007.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 15, 2007.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 25th day of September 2007.

Ralph DiBattista,

Director, Division of Trade Adjustment Assistance.

APPENDIX—TAA

[Petitions instituted between 9/17/07 and 9/21/07]

TA—W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
62147	Information Systems Network (Comp)	Buckhead, GA	09/17/07	09/14/07
62148	Unicare Insurance Co. (Wkrs)	Bolingbrook, IL	09/17/07	09/13/07
62149	Aptara (Comp)	York, PA	09/17/07	09/13/07
62150	Qiagen (State)	Plymouth, MN	09/17/07	09/14/07
62151	Johnson Controls (Wkrs)	Plymouth, MI	09/17/07	09/14/07
62152	Interlock Industries (Wkrs)	Nile, OH	09/17/07	09/10/07
62153	ITT Marine and Leisure (State)	Santa Ana, CA	09/18/07	09/17/07
62154	Taylor Togs, Inc. (Comp)	Taylorsville, NC	09/18/07	09/17/07
62155	Daws Manufacturing Co., Inc. (Comp)	Pensacola, FL	09/18/07	09/04/07
62156	Hypercom (State)	Phoenix, AZ	09/18/07	09/14/07
62157	Johnston Textiles, Inc. (Comp)	Opp, AL	09/18/07	09/17/07
62158	Intel (Wkrs)	Rio Rancho, NM	09/18/07	09/10/07
62159	Chicago Miniature Lighting (State)	Hackensack, NJ	09/19/07	08/27/07
62160	Data Products USA (State)	Clexico, CA	09/19/07	09/12/07
62161	Tifton Aluminum Company (Comp)	Tifton, GA	09/19/07	09/18/07
62162	Barn Door Furniture Company (The) (Comp)	Henderson, NC	09/19/07	09/18/07
62163	Smart Novelty Blouse Co., Inc. (Wkrs)	New York, NY	09/19/07	09/17/07
62164	Huntleigh Healthcare, LLC (Comp)	Eatontown, NJ	09/19/07	09/18/07
62165	Omni Futon (Wkrs)	Spring Green, WI	09/19/07	09/13/07
62166	Thompson Scientific (State)	Cherry Hill, NJ	09/19/07	09/18/07
62167	Dura Automotive Systems, Inc. (Comp)	Jacksonville, FL	09/19/07	09/10/07
62168	Sensata Technologies (Comp)	Standish, ME	09/19/07	09/17/07
62169	Flexaust Company, Inc. (Comp)	El Paso, TX	09/20/07	09/14/07
62170	United Machine Works, Inc. (Wkrs)	Greenville, NC	09/20/07	09/12/07
62171	Everett Charles Technologies (Wkrs)	Clifton Park, NY	09/20/07	09/11/07
62172	Carhartt Inc. (Comp)	Galesburg, IL	09/20/07	09/19/07
62173	United Memorial Bible Services (Wkrs)	Gastonia, NC	09/20/07	09/19/07
62174	Penn Union Corporation (Comp)	Edinboro, PA	09/20/07	09/12/07

APPENDIX—TAA—Continued

[Petitions instituted between 9/17/07 and 9/21/07]

TA—W	Subject Firm (petitioners)	Location	Date of institution	Date of petition
62175	Masys Corporation (Comp)	Minneapolis, MN	09/20/07	09/14/07
62176	First American Corporation (Wkrs)	Flint, MI	09/20/07	09/19/07
62177	ASF Keystone, Inc. (USW)	Granite City, IL	09/21/07	09/20/07
62178	Alloc Inc (Comp)	Racine, WI	09/21/07	09/20/07
62179	Desa LLC (Comp)	Manchester, TN	09/21/07	09/20/07
62180	Cooper Standard Automotive (Comp)	Archbold, OH	09/21/07	09/20/07
62181	Louisiana Pacific Corporation (State)	Hines, OR	09/21/07	09/19/07
62182	Ideal Tool Inc. (Wkrs)	Meadville, PA	09/21/07	09/18/07
62183	Hartmann (Comp)	Lebanon, TN	09/21/07	09/19/07
62184	Mark Eyelet, Inc. (State)	Watertown, CT	09/21/07	09/20/07
62185	Halco (Wkrs)	Belle Vernon, PA	09/21/07	09/20/07
62186	TRW Automotive (AFLCIO)	Lebanon, TN	09/21/07	09/20/07
62187	Bock, USA Inc (State)	Monroe, CT	09/21/07	09/20/07
62188	Nortel (Wkrs)	Research Triangle Park, NC	09/21/07	09/12/07

[FR Doc. E7–19478 Filed 10–2–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,601]

Intel Corporation, Fab 23, Colorado Springs, Colorado; Notice of Negative Determination on Reconsideration

On August 22, 2007, the Department issued an Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Intel Corporation, Fab 23, Colorado Springs, Colorado (the subject firm). The Department's Notice of affirmative determination was published in the **Federal Register** on August 29, 2007 (72 FR 49736). The subject workers produce silicon wafers.

The negative determination was based on the Department's findings that, during the relevant period, the subject firm's sales and production of silicon wafers increased, and the subject firm did not import or shift production of silicon wafers abroad. The Department's Notice of negative determination regarding the subject workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) was issued on June 15, 2007, and published in the **Federal Register** on June 28, 2007 (72 FR 35517).

The request for reconsideration makes three allegations.

First, the petitioner alleges that the Department misidentified the article produced at the subject firm (''Intel Fab23 does NOT manufacture Silicon Wafers, FAB23 manufactures electronic circuits called dies on a silicon wafer. These dies are cut from the wafer and then packaged. At this time, the packaged dies are called 'chips' and sold. It should be noted, the manufactured wafer can be sold and the 'test and assembly' of the chip can take place elsewhere. There are three steps here, a) INTEL buys the bare silicon wafer from a supplier, b) Fab23 then manufactures the electronic circuit on the wafer called a die and c) then die is tested and assembly.'') A corollary to this allegation is that the Department should have conducted a TAA investigation with a focus on chips instead of wafers.

Second, the petitioner alleges that the subject workers are eligible to apply for TAA due to a shift of production to Taiwan. The petitioner states that, in 2006, Intel Corporation (Intel) sold the ''Hermon'' line of chips to another company and that the subject firm agreed to produce ''Hermon'' chips for the buyer until the buyer's Taiwan facility could produce the ''Hermon'' chips. The petition asserts that because the subject firm is an ''Agent Manufacturer'' of the buyer, the buyer's decision to use Taiwanese chips should be construed as a shift of production from the subject firm to Taiwan.

Third, the petitioner alleges that the subject workers are eligible to apply for TAA as secondary workers. The petitioner stated, in part, that ''Manufacturing Technicians of INTEL Fab 23 are likely secondary/down stream Employees'' and that eligible secondary workers ''include workers employed by supplier firms, downstream producers, and firms that provide contract services who are separated or threatened with separation if their separation is their separation is due to a loss of business with a firm where workers have been certified as eligible to apply for trade adjustment assistance.''

In order to determine whether the initial investigation focused on the wrong article, the Department carefully reviewed previously-submitted information, all the information provided in the request for reconsideration, new information provided by the subject firm, and information available in the public domain (such as the Internet).

The chip production process consists of three basic steps: first, prepare (purify and polish) a raw silicon wafer; second, process the wafer (add and expose layers of chemicals and circuitry onto the wafer) until engineered patterns of electrical passages (also called integrated circuits or chips) in the desired quantity are created; third, cut the circuit-laden wafer into individual dies and packaged (also called unit packaging).

Steps one and two are known as wafer fabrication. After wafer fabrication is complete, a quality control measure called a wafer sort may take place. Each wafer may carry hundreds or thousands of (usually) identical circuits, depending on the size of the circuitry and the diameter of the wafer.

According to the request for reconsideration, the article that exists at the end of step two is a manufactured wafer. According to the subject firm, the article that exists at the end of step two is a fabricated wafer.

At step three (also known as unit packaging), the fabricated wafer is cut into dies and processed into packaged chips (also called fabricated chips). After the wafer is cut into dies, each chip-bearing die is mounted on a small printed circuit board which will allow it to connect with other devices through solder ball connections. The chip/circuit-board unit is then coated with

epoxy plastic, leaving only the solder balls exposed. While the final package (also called a finished semiconductor chip) can be sold ''as is,'' it is usually connected to other circuit boards so it can be connected to a wide variety of electronic devices (such as cell phones and personal digital assistants).

According to subject firm, the subject facility was engaged in only steps one and two, and step three took place outside the United States. According to the request for reconsideration, ''dies are cut from the wafer and then packaged * * * It should be noted, the manufactured wafer can be sold and the 'test and assembly' of the chip can take place elsewhere.''

Because the reconsideration investigation revealed that only wafer fabrication took place at the subject firm, the Department determines that the subject firm produced silicon wafers and that the focus of the initial TAA investigation was proper.

Under section 113 of the Trade Adjustment Assistance Reform Act of 2002, workers may be eligible to apply for TAA if they were laid-off if their company shifted production abroad to a country that is either a party to a free trade agreement with the United States or named as a beneficiary under the Andean Trade Preferences Act, the African Growth and Opportunity Act or the Caribbean Basin Economic Recovery Act.

Because Taiwan is not a country that is a party to a free trade agreement with the United States or named as a beneficiary under any of the aforementioned acts, the subject workers cannot be certified for TAA based on a shift of production abroad. Further, the subject workers cannot be certified as eligible to apply for TAA because the articles that are being imported following the shift of production to Taiwan are not like or directly competitive with the silicon wafers produced at the subject firm.

In order to make an affirmative determination that the subject workers qualify as secondary workers, the following group eligibility requirements under section 222(b) must be met:

(1) A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

The subject workers are not considered secondary workers because the subject firm neither supplied a component part to the buyer nor finished or assembled a final product for the buyer. Further, the buyer of the ''Hermon'' line of chips is not a company that employs a group of workers who received a certification of eligibility to apply for TAA benefits.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

Conclusion

After careful reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Intel Corporation, Fab 23, Colorado Springs, Colorado.

Signed at Washington, DC, this 26th day of September 2007

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19481 Filed 10–2–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,857]

ASEC Manufacturing, a Subsidiary of Delphi Corporation Now Known as Umicore Autocat USA, Inc., Catoosa, Oklahoma; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 7, 2007, applicable to workers of ASEC Manufacturing, a subsidiary of Delphi Corporation, Catoosa, Oklahoma. The notice was published in the **Federal Register** on May 24, 2007 (72 FR 29182).

At the request of the UAW, Local 286, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of automotive catalysts.

New information shows that as the result of a change in ownership, ASEC Manufacturing, a subsidiary of Delphi Corporation, will become known as Umicore AutoCat USA, Inc. on September 28, 2007. Workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Umicore AutoCat USA, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of ASEC Manufacturing, a subsidiary of Delphi Corporation, now known as Umicore AutoCat USA, Inc. who were adversely affected by increased customer imports of automotive catalysts.

The amended notice applicable to TA–W–60,857 is hereby issued as follows:

''All workers of ASEC Manufacturing, a subsidiary of Delphi Corporation, now known as Umicore AutoCat USA, Inc., Catoosa, Oklahoma, who became totally or partially separated from employment on or after January 22, 2006, through May 7, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 25th day of September 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19480 Filed 10–2–07; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (07–080)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Privacy Act system of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish a description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information for a new system of records on users of NASA's Earth Observation System Data and Information System (EOSDIS). The EOSDIS is a system that processes, archives and distributes NASA's Earth science data, the bulk of which consists of satellite observations from EOS missions and data products derived from them. User information is gathered and maintained by this SOR to establish voluntary user accounts that enable distribution to the users, upon their request, data from Goddard Space Flight Center or one of the eight (8) Distributed Active Archive Centers (DAACs) across the United States.

DATES: Submit comments on or before 60 calendar days from the date of this publication.

ADDRESSES: Patti Stockman, NASA Privacy Act Officer, Office of the Chief Information Officer, NASA Headquarters, 300 E Street, SW., Washington, DC 20546–0001, 202–358–4787, *NASA-PAOfficer@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer, Patti Stockman, 202–358–4787, *NASA-PAOfficer@nasa.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to Section 208 of the E-Government Act of 2002, since the system for collecting EOSDIS User Information has not changed substantially since April 2003, NASA has not conducted a Privacy Impact Assessment (PIA).

SYSTEM NUMBER:

GSFC 51EUI.

SYSTEM NAME:

Earth Observing System Data and Information System (EOSDIS) User Information.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Nine Data Center locations and Clearing House (middleware system) as listed below.

1. Goddard Earth Sciences (GES) Distributed Active Archive Center (DAAC) at Location 4 as set forth in Appendix A.
2. Moderate Resolution Data Center (MRDC) at Location 4 as set forth in Appendix A.
3. Atmospheric Science Data Center (ASDC) DAAC at Location 7 as set forth in Appendix A.
4. Polar Oceanography Distributed Active Archive Center (PO.DAAC) at Location 10 as set forth in Appendix A.
5. Alaska Satellite Facility DAAC, University of Alaska, Fairbanks, AK 99775–7320.
6. Land Processes Distributed Active Archive Center (LP DAAC), Earth Resources Observation and Science (EROS), 47914 252nd Street, Sioux Falls, SD 57918–0001.
7. National Snow and Ice Data Center DAAC, University of Colorado, Boulder, CO 80309.
8. Oak Ridge National Laboratory DAAC, Oak Ridge, TN 37381–6407.
9. Socioeconomic Data and Applications Center, Center for International Earth Science Information Network (CIESIN) at Columbia University, Palisades, NY 10964.
10. EOS Clearing House (ECHO) at Location 4 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from the NASA, university, and research communities, as well as the general public, who request satellite data or other data products from any of the EOSDIS data centers indicated above, or individuals who register to save their data search parameters for reuse in the future.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system consist of information obtained from individual users that enables, on request, shipping of data on media to the users. Records include individual's mailing addresses, telephone numbers and e-mail addresses. This information is used to enable secure user access to specific science datasets, as well as, the shipping of data on media to EOSDIS users.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Aeronautics and Space Act of 1958, as amended; 42 U.S.C. 2473, *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in these records may be disclosed:

(1) To the two DAACs at (i) at United States Geological Survey's EROS and (ii) the Alaska SAR Facility at University of Alaska, Fairbanks, to facilitate payments and collections for individuals' purchasing proprietary scientific data under international agreements;

(2) To government contractors conducting OMB-approved annual user satisfaction surveys collecting user feedback for aggregating reports to OMB and enabling NASA to improve its systems, processes, and services to the user community;

(3) To contractors supporting the Earth Science Data and Information System (ESDIS) Project for analysis of EOSDIS usage through aggregated data usage metrics;

(4) To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained;

(5) To a staff member of the Executive Office of the President in response to an official inquiry from the White House;

(6) To the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. §§ 2904 and 2906.

(7) To agency contractors, grantees, or volunteers who have been engaged to assist the agency in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(8) To provide relevant information to an internal or external organization or element thereof conducting audit activities of a NASA contractor or subcontractor;

(9) In accordance with standard routine uses set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records at all the data centers except MRDC and ECHO are stored electronically on a secure server and archival media as encrypted electronic records. The information about users accessing science data or contacting the user support office at the MRDC is stored unencrypted in password-protected electronic files with limited access. The information about registered and guest users of ECHO is stored unencrypted on disk in a database.

RETRIEVABILITY:

User account records containing information about individuals,

including their names, mailing addresses, telephone numbers and email addresses are typically indexed and retrieved by user's name.

SAFEGUARDS:

Approved security plans for each of the data centers in this system have been established in accordance with OMB Circular A–130, Management of Federal Information Resources. The aggregation of these plans constitutes the security plan for EOSDIS. Individuals will have access to the system only in accordance with approved authentication methods. Only key authorized employees with appropriately configured system roles can access the system. All specific user information kept in our systems are managed according to NASA guidelines. Data Centers that keep user information (Land Processes and Alaska Satellite Facility) store the data in properly safeguarded systems, which are subjected to periodic security reviews by the ESDIS Security group (typically three times a year). Paper and electronic copies are kept offline in locked cabinets. This information is updated on a yearly basis, and superceded records deleted.

RETENTION AND DISPOSAL:

The ESDIS Project has a plan under configuration control according to which the original data are deleted in accordance with NASA Records Retention Schedule 2, Item 15A.3. Only aggregated statistics on those original records are kept. The data centers reauthorize specific users' information on an annual basis and user information is deleted when no longer needed in accordance with NASA Records Retention Schedule 2, Item 19A. Mailing lists containing user information are maintained in order to permit shipping data products to users and are disposed of according to the NASA Records Retention Schedule 1, Item 88.

SYSTEM MANAGERS AND ADDRESSES:

System Manager: 423/Science Operations Office Manager, ESDIS Project, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771.

Subsystem Managers: Data Center Managers at each of the locations 1–9 whose addresses are listed under item SYSTEM LOCATION above.

ECHO Manager: 423/ECHO Manager, ESDIS Project, Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771.

NOTIFICATION PROCEDURE:

Individuals inquiring about their records should contact the System Manager at the address given above and provide their name and e-mail address. The System Manager can be reached by phone at (301) 614–5048.

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address given above. The System Manager may also be reached by phone at (301) 614–5048.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records and procedures for contesting the contents, and for appealing initial determinations are set forth in 14 CFR Part 1212.

RECORD SOURCE CATEGORIES:

The information is received directly from users needing to obtain or access NASA's Earth science data products by the Data Centers mostly through an electronic interface permitting the users to search for and order data products. The information may be obtained through the ECHO middleware system for access to data located at multiple data centers. Occasionally, users provide this information via telephone calls to the user services staff at data centers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Jonathan Q. Pettus,

NASA Chief Information Officer.

Appendix A—Location Numbers and Mailing Addresses of NASA Installations at Which Records Are Located

Location 1

NASA Headquarters, National Aeronautics and Space Administration, Washington, DC 20546–0001

Location 2

Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000

Location 3

Dryden Flight Research Center, National Aeronautics and Space Administration, PO Box 273, Edwards, CA 93523–0273

Location 4

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771–0001

Location 5

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058–3696

Location 6

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899–0001

Location 7

Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23681–2199

Location 8

John H. Glenn Research Center at Lewis Field, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135–3191

Location 9

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812–0001

Location 10

HQ NASA Management Office-JPL, National Aeronautics and Space Administration, 4800 Oak Grove Drive, Pasadena, CA 91109–8099

Location 11

John C. Stennis Space Center, National Aeronautics and Space Administration, Stennis Space Center, MS 39529–6000

Location 12

JSC White Sands Test Facility, National Aeronautics and Space Administration, PO Drawer MM, Las Cruces, NM 88004–0020

Location 13

GRC Plum Brook Station, National Aeronautics and Space Administration, Sandusky, OH 44870

Location 14

MSFC Michoud Assembly Facility, National Aeronautics and Space Administration, PO Box 29300, New Orleans, LA 70189

Location 15

NASA Independent Verification and Validation Facility (NASA IV&V), 100 University Drive, Fairmont, WV 26554

Location 16

Office of Inspector General, Post of Duty, 402 E. State Street, Suite 3036, Trenton, NJ 08608

Location 17

Office of Inspector General, Western Field Office, Glenn Anderson Federal Building, 501 West Ocean Blvd., Long Beach, CA 90802–4222

Location 18

NASA Shared Services Center (NSSC), Building 5100, Stennis Space Center, MS 39529–6000

Appendix B— Standard Routine Uses—NASA

The following routine uses of information contained in SORs, subject to the Privacy Act of 1974, are standard for many NASA systems. They are cited by reference in the paragraph ''Routine uses of records maintained in the system, including

categories of users and the purpose of such uses'' of the **Federal Register** Notice on those systems to which they apply.

Standard Routine Use No. 1—Law Enforcement—In the event this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the SOR may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Standard Routine Use No. 2—Disclosure When Requesting Information—A record from this SOR may be disclosed as a ''routine use'' to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Standard Routine Use No. 3—Disclosure of Requested Information—A record from this SOR may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4—Disclosure to the Department of Justice for Use in Litigation—A record from this SOR may be disclosed to the Department of Justice when (a) the Agency, or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Department of Justice or the Agency has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Agency is deemed by the Agency to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

Standard Routine Use 5—Routine Use for Agency Disclosure in Litigation—It shall be a routine use of the records in this system of records to disclose them in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when: (a) The Agency, or any component thereof; or (b) any employee of the Agency in his or her official capacity; or (c) any employee of the Agency in his or her individual capacity where the Agency has agreed to represent the employee; or (d) the United States, where the Agency determines that litigation is likely to affect the Agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Agency is deemed to be relevant and necessary to the litigation, provided, however, that in each case, the Agency has determined that the disclosure is compatible with the purpose for which the records were collected.

Standard Routine Use No. 6—Suspected or Confirmed Confidentiality Compromise—A record from this SOR may be disclosed to appropriate agencies, entities, and persons when (1) NASA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) NASA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NASA or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with NASA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. E7–19541 Filed 10–2–07; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modifications issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On August 28, 2007, the National Science Foundation published a notice in the **Federal Register** of permit modification requests received. Modifications to existing permits were issued on September 28, 2007 to: Rennie S. Holt (2007–003) and Markus Horning (2007–007).

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E7–19510 Filed 10–2–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an application,'' please take notice that the Nuclear Regulatory Commission has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/reading-rm.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to amend a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment request follows.

NRC EXPORT LICENSE APPLICATION FOR HIGH-ENRICHED URANIUM

Name of applicant, date of application, date received, application No., docket No.	Description of material		Description of amendment end use	Country of destination
	Material type	Total qty		
Transnuclear, Inc., September 18, 2007, September 20, 2007, XSNM03060/03, 11005070.	High-Enriched Uranium (HEU) (93.60%).	Total quantity of HEU authorized for export remains unchanged.	License is amended to: (1) transfer the current license from Transnuclear, Inc. to BWXT NOD–L as licensee; (2) remove BWXT and insert DOE/NNSA and BWXT Y–12, LLC as "Other Parties to Export"; and (3) extend the license expiration date from 12/31/07 to 12/31/12. HEU is used to produce medical radioisotopes.	Canada.

Dated this 27th day of September 2007 at Rockville, Maryland.

For the U.S. Nuclear Regulatory Commission.

Scott W. Moore,

Deputy Director, Office of International Programs.

[FR Doc. E7–19492 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste and Materials Meeting on Planning and Procedures; Notice of Meeting

The Advisory Committee on Nuclear Waste and Materials (ACNW&M) will hold a Planning and Procedures meeting on October 17, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW&M, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, October 17, 2007—4 p.m.–5:30 p.m.

The Committee will discuss proposed ACNW&M activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Dr. Antonio F. Dias (Telephone: 301/415–6805) between 8:15 a.m. and 5 p.m. (ET) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACNW&M meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54693).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 8:15 a.m. and 5 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least 2 working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: September 27, 2007.

Antonio F. Dias,

Chief, Nuclear Waste & Materials Branch.

[FR Doc. E7–19502 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the Subcommittee on Early Site Permits; Notice of Meeting

The ACRS Subcommittee on Early Site Permits will hold a meeting on October 24, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, October 24, 2007—8:30 a.m. until 5 p.m.

The Subcommittee will review and discuss the application submitted by Southern Nuclear Operating Company (Southern Company or SNC—the applicant) for the Vogtle early site permit and the associated NRC staff safety evaluation report (SER) with open items. The Committee must review the application and the final SER to fulfill the requirement of 10 CFR 52.23 that the ACRS report on those portions of an early site permit application that concern safety. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Southern Nuclear Operating Company, and other interested persons regarding this matter. The Subcommittee will also discuss with the NRC staff the efficiency and effectiveness of staff's implementation of lessons learned from its review activities performed pursuant to 10 CFR part 52. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, David C. Fischer (telephone 301/415–6889) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 7:15 a.m. and 4 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 26, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E7–19494 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ESBWR Subcommittee; Notice of Meeting

The ACRS ESBWR Subcommittee will hold a meeting on October 25, 2007, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed to discuss unclassified safeguards and proprietary information pursuant to 5 U.S.C. 552b(c)(3) and (4).

The agenda for the subject meeting shall be as follows:

Thursday, October 25, 2007—8:30 a.m. Until 5 p.m.

The Subcommittee will review and discuss several chapters of the Draft Safety Evaluation Report with Open Items associated with the ESBWR Design Certification. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, GE-Hitachi Nuclear Energy Americas LLC, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer, Mr. Charles G. Hammer (telephone 301/415–7363) 5 days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 26, 2007 (72 FR 54695).

Further information regarding this meeting can be obtained by contacting the Designated Federal Officer between 6:45 a.m. and 3:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: September 27, 2007.

Cayetano Santos,

Chief, Reactor Safety Branch.

[FR Doc. E7–19503 Filed 10–2–07; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28001; 812–13398]

American Capital Strategies, Ltd.; Notice of Application

September 27, 2007.

AGENCY: Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of an application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant, American Capital Strategies, Ltd., requests an order approving a proposal to grant certain stock options to directors who are not also employees or officers of the applicant (the ''Non-employee Directors'') under its 2007 Stock Option Plan (the ''Plan'').

FILING DATES: The application was filed on June 15, 2007 and amended on September 27, 2007.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2007, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicant, 2 Bethesda Metro Center, 14th Floor, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873, or Nadya B. Roytblat, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–0102 (telephone 202–551–5850).

Applicant's Representations

1. Applicant, a Delaware corporation, is a business development company (''BDC'') within the meaning of section 2(a)(48) of the Act.[1] Applicant's primary business objectives are to increase its net operating income and net asset value by investing its assets in senior debt, subordinated debt, with and without detachable warrants, and equity of small to medium sized businesses with attractive current yields and potential for equity appreciation. Applicant's investment decisions are made either by its board of directors (the ''Board''), based on recommendations of the executive officers of applicant, or, for investments that meet certain objective criteria established by the Board, by the executive officers of applicant, under authority delegated by the Board. Applicant does not have an external investment adviser within the meaning of section 2(a)(20) of the Act.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving its proposal to grant certain stock options under the Plan to its Non-employee Directors.[2] Applicant has a nine member Board. Seven of the eight current members of the Board are not ''interested persons'' (as defined in section 2(a)(19) of the Act) of the applicant (''Disinterested Directors'').[3] The Board approved the Plan at a meeting held on March 8, 2007. Applicant's stockholders approved the Plan at the annual meeting of stockholders held on May 4, 2007.

3. Applicant's officers and employees, and Non-employee Directors are eligible to receive options under the Plan. Under the Plan, a maximum of 400,000 shares of applicant's common stock, in the aggregate, may be issued to Non-employee Directors and 50,000 shares of

[1] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of such securities.

[2] The Non-employee Directors receive a $75,000 per year retainer payment and $2,500 for each Board or committee meeting or other designated Board-related meeting attended, and reimbursement for related expenses. Non-employee Directors who chair a committee of the Board receive an additional $10,000 retainer per year. Non-employee Directors who serve as directors on the boards of portfolio companies also receive an annual retainer from applicant set at $30,000 per board, in lieu of any payment from the portfolio company. Further, under the terms of a disinterested director retention plan that applicant established in 2006, Non-employee Directors are generally entitled to receive a payment upon termination of service as a director equal to a multiple of the number of years of service as a Non-employee Director.

[3] The Board presently has one vacancy. All of the Non-employee Directors are Disinterested Directors.

applicant's common stock may be issued to any one Non-employee Director. Each of the seven Non-employee Directors serving on the Board as of May 4, 2007 will be granted options to purchase 50,000 shares of applicant's common stock (the ''Initial Grants'') on the date that the Commission issues an order on the application (''Order Date''). The options issued under the Initial Grants will vest in three equal parts on each of the first three anniversaries of May 4, 2007. Any person who becomes a Non-employee Director after May 4, 2007 will be entitled to receive options to purchase 50,000 shares of applicant's common stock (the ''Other Grants'') on the later of the date such person becomes a Non-employee Director and the Order Date. The options issued under the Other Grants will vest in three equal parts on each of the first three anniversaries of the date such person becomes a Non-employee Director.

4. Under the terms of the Plan, the exercise price of an option will not be less than 100% of the current market value of, or if no such market value exists, the current net asset value per share of, applicant's common stock on the date of the issuance of the option.[4] Options granted under the Plan will expire within ten years from the date of grant and may not be assigned or transferred other than by will or the laws of descent and distribution. In the event of the death or disability of a Non-employee Director during such director's service, all such director's unexercised options will immediately become exercisable and may be exercised for a period of three years following the date of death (by such director's personal representative) or one year following the date of disability, but in no event after the respective expiration dates of such options. In the event of the termination of a Non-employee Director for cause, any unexercised options will terminate immediately. If a Non-employee Director's service is terminated for any reason other than by death, disability, or for cause, the options may be exercised within one year immediately following the date of termination, but in no event later than the expiration date of such options.

5. Applicant's officers and employees are eligible or have been eligible to receive options under applicant's six stock option plans under which Non-employee Directors are not entitled to participate (the ''Employee Plans''), applicant's 2006 stock option plan (the ''2006 Option Plan'') and the Plan. Non-employee Directors are eligible or have been eligible to receive options under applicant's two Disinterested Director stock option plans (the ''Disinterested Director Plans'') and the 2006 Option Plan (collectively, the 2006 Option Plan, the Disinterested Director Plans and the Employee Plans are the ''Other Plans''). As of August 31, 2007, applicant had 186,436,201 shares of common stock outstanding.[5] The 400,000 shares of applicant's common stock that may be issued to Non-employee Directors under the Plan represent 0.2% of applicant's outstanding voting securities as of August 31, 2007. As of the same date, applicant had no outstanding warrants or rights to purchase its voting securities and had no outstanding options to purchase its voting securities other than the outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan. As of August 31, 2007, the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 19,173,168 shares of applicant's common stock, or approximately 10.3% of applicant's outstanding voting securities. As of the same date, the maximum number of voting securities that would result from the exercise of all outstanding options issued and all options issuable to applicant's directors, officers, and employees under the Other Plans and the Plan would be 25,225,611 shares of applicant's common stock, or approximately 13.5% of applicant's outstanding voting securities.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a BDC to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3). Section 61(a)(3)(B) provides, in pertinent part, that a BDC may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (c) the proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the BDC receives any compensation described in section 205(a)(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (b)(1) or (b)(2) of that section; and (f) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3) provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that its proposal to grant certain stock options to Non-employee Directors under the Plan meets all the requirements of section 61(a)(3)(B). Applicant states that the Board is actively involved in the oversight of applicant's affairs and that it relies extensively on the judgment and experience of its Board. In addition to their duties as Board members generally, applicant states that the Non-employee Directors provide guidance and advice on operational issues, underwriting policies, credit policies, asset valuation and strategic direction, as well as serving on committees. Applicant believes that the availability of options under the Plan will provide significant at-risk incentives to Non-employee Directors to remain on the Board and devote their best efforts to ensure applicant's success. Applicant states that the options will provide a means for the Non-employee Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with those of applicant and its stockholders. Applicant asserts that by providing incentives such as options, applicant will be better able to maintain continuity in the Board's membership and to attract and retain the highly

[4] Under the Plan, ''current market value'' (defined as ''fair market value'') is generally the closing sales price of applicant's shares as quoted on the Nasdaq Global Select Market, or alternatively, on the exchange where applicant's shares are traded, on the date the option is granted.

[5] Applicant's common stock constitutes the only voting security of applicant currently outstanding.

experienced, successful and dedicated business and professional people who are critical to applicant's success as a BDC.

4. Applicant states that the amount of voting securities that would result from the exercise of all outstanding options issued to applicant's directors, officers, and employees under the Other Plans and the Plan would be 19,173,168 shares of applicant's common stock, or approximately 10.3% of applicant's outstanding voting securities as of August 31, 2007, which is below the percentage limitations in the Act. Applicant asserts that, given the relatively small amount of common stock issuable to Non-employee Directors upon their exercise of options under the Plan, the exercise of such options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of applicant's common stock.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19539 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28000; 812–13390]

Rydex ETF Trust, et al.; Notice of Application

September 27, 2007.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

APPLICANTS: Rydex ETF Trust (''Trust''), PADCO Advisors II, Inc. (''Adviser''), and Rydex Distributors, Inc. (''Distributor'').

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits: (a) Certain open-end management investment companies (''Initial Funds'') to issue shares redeemable in large aggregations only (''Shares''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) dealers to sell Shares to secondary market purchasers unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933; and (d) certain affiliated persons of the Initial Funds to deposit securities into, and receive securities from, the Initial Funds in connection with the purchase and redemption of aggregations of Shares (''Prior Order'').[1] Applicants seek an amended order to permit the Trust to offer series (''New Inverse Funds'') that seek to achieve the inverse performance of certain international equity and fixed income securities indices (collectively, ''New Underlying Indices''). The amended order also would permit the Trust to offer future series (''Future Funds'') that seek to achieve a multiple or the inverse of the performance of additional equity and fixed income securities indices (the New Inverse Funds and Future Funds are ''New Funds,'' and the New Funds and Initial Funds are ''Funds'').

FILING DATES: The application was filed on May 23, 2007, and amended on September 21, 2007. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 22, 2007, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants: Rydex ETF Trust; Rydex Distributors, Inc.; and PADCO Advisors II, Inc., 9601 Blackwell Road, Suite 500, Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Julia Kim Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington, DC 20549–0102 (tel. 202–551–5850).

Applicants' Representations

1. The Trust, a Delaware statutory trust, is an open-end management investment company registered under the Act and is organized as a series fund with multiple separate Funds. The Adviser, which is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), serves as investment adviser to each Fund. The Adviser may in the future retain one or more sub-advisers (''Sub-Advisers'') to manage particular Funds' portfolios. Any Sub-Adviser to a Fund will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, serves as the principal underwriter and distributor for the Funds.

2. The Prior Order permits the Initial Funds to seek daily investment results, before fees and expenses, that (a) Correspond to 125%, 150% or 200% of the return of certain equity securities indices, or (b) move in the opposite direction of the performance of certain equity securities indices in multiples of 100%, 125%, 150% or 200%. Applicants seek to amend the Prior Order to permit the Trust to issue shares of New Inverse Funds using the New Underlying Indices,[2] and Future Funds using additional securities indices (such additional indices, together with the New Underlying Indices and the underlying indices for the Initial Funds, the ''Underlying Indices'').

3. A New Fund using a fixed income index as its Underlying Index will not: (a) Hold restricted securities eligible for resale pursuant to Rule 144A under the Securities Act of 1933, or (b) engage in ''to-be-announced'' transactions when trading mortgage-backed securities. Additionally, such New Funds will use the same portfolio investment methodology currently used by the Trust except that, where relevant, such Funds may also invest in the fixed income equivalents of the portfolio investments described in the application for the Prior Order. A New Fund that uses an international index as its Underlying Index will not hold depositary receipts.

[1] Rydex ETF Trust, et al., Investment Company Act Release Nos. 27703 (Feb. 20, 2007) (notice) and 27754 (Mar. 20, 2007) (order).

[2] The New Underlying Indices, which are described in the application, include 41 international equity indices and 18 fixed income indices.

4. Applicants state that the New Funds will operate in a manner identical to the Initial Funds that were the subject of the Prior Order, and be offered pursuant to the same terms and conditions of the Prior Order, except as modified by this application. No entity that creates, compiles, sponsors, or maintains an Underlying Index (the ''Underlying Index Provider'') is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a promoter, the Adviser, any Sub-Adviser, or the Distributor. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

Future Relief

1. Applicants seek to amend the Prior Order to modify the terms under which the Trust may offer Future Funds. The Prior Order is currently subject to a condition that does not permit relief for Future Funds unless applicants request and receive with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission.

2. The order would amend the Prior Order to delete this condition. Any Future Fund will: (a) Be advised by the Adviser, or an entity controlled by or under common control with the Adviser; (b) use an Underlying Index where the Underlying Index Provider is not an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, a promoter, the Adviser, any Sub-Adviser, or the Distributor; and (c) comply with the terms and conditions of the Prior Order, as amended by the present application.

3. Applicants believe that the modification of the future relief available under the Prior Order would be consistent with sections 6(c) and 17(b) of the Act. Applicants believe that granting the requested relief will facilitate the timely creation of Future Funds and the commencement of secondary market trading of such Future Funds by removing the need to seek additional exemptive relief. Applicants submit that the terms and conditions of the Prior Order were appropriate for the Initial Funds and would remain appropriate for Future Funds.

Applicants' Condition

Applicants agree that any amended order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 1 to the Prior Order, which will be deleted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19538 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of China Expert Technology, Inc.; Order of Suspension of Trading

October 1, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of China Expert Technology, Inc. (''China Expert'') because of questions regarding the adequacy and accuracy of publicly-disseminated information concerning, among other things, China Expert's: (1) Financial performance and business prospects and (2) current financial condition.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, October 1, 2007 through 11:59 p.m. EDT, on October 12, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–4915 Filed 10–1–07; 11:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of ConnectAJet.com, Inc.; Order of Suspension of Trading

October 1, 2007.

It appears to the Securities and Exchange Commission that the market for the securities of ConnectAJet.com, Inc. (''ConnectAJet'') may be reacting to manipulative forces or deceptive practices and that there is a lack of current and accurate information about ConnectAJet upon which an informed investment decision can be made. It also appears that there may be inaccurate assertions by ConnectAJet in publicly-disseminated press releases and on ConnectAJet's Web site about, among other things, the existence of the company's partnerships and affiliations with aviation companies.

ConnectAJet was quoted on the Pink Sheet under the ticker symbol CAJT. Recently, there have been advertisements in newspapers and on television, information mailers, spam e-mails and a blast fax touting the company's shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, October 1, 2007 through 11:59 p.m. EDT, on October 12, 2007.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 07–4916 Filed 10–1–07; 11:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56567; File No. SR–Amex–2007–96]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to an Extension and Expansion of the Options Quoting Pilot Program

September 27, 2007.

I. Introduction

On August 21, 2007, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend and expand a pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on August 29, 2007.[3] The Commission received one comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56307 (August 22, 2007), 72 FR 49750 (''Amex Notice'').

letter on the proposed rule change.[4] On September 27, 2007, the Exchange filed Amendment No. 1 to the proposed rule change.[5] This order approves the proposed rule change as modified by Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

Currently, the six options exchanges, including the Amex, participate in the thirteen class Pilot Program,[6] which is scheduled to expire on September 27, 2007.[7] The Exchange proposes to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[8]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[9]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, the Amex commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[12] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[13] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[14] The exchanges have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by the Amex will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. Amex has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter'').

[5] In Partial Amendment No. 1, Amex made non-substantive modifications to the description of the proposal and text of the proposed information circular. The notice of Amex's proposal that was published for comment reflected all of these changes, except two technical amendments to the proposed information circular to: (1) Include a reference to QQQQ, which was inadvertently left out, in the list of the thirteen existing Pilot classes; and (2) change the ticker symbol for Sun Microsystems. *See* Amex Notice, *supra* note 3, at note 3 (noting that the proposed rule change submitted by the Exchange contained non-substantive errors which, for purposes of the notice, were corrected and further noting that the Exchange would address those errors in an amendment following publication of the notice). The amendments not included in the notice of Amex's proposal published for comment are technical in nature and therefore are not subject to notice and comment.

[6] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[7] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56159 (July 27, 2007), 72 FR 43300 (August 3, 2007) (SR–Amex–2007–76). *See also* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (SR–Amex–2006–106) (''Original Pilot Program Approval Order'').

[8] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[9] The Exchange has committed to file a proposed rule change under section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

[13] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[14] *See* Securities Exchange Act Release Nos. 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). As noted above, *supra* note 7 and accompanying text, the current Pilot is scheduled to expire on September 27, 2007.

include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[15] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[16] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that Amex's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. The Commission also notes that Amex has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[17]

Overall trading activity in the options markets is very concentrated, with relatively few options classes accounting for a significant share of total options volume. Amex's proposal, which will expand the Pilot to include a limited number of options from among the most actively-traded classes (based on average trading volume), will provide an opportunity for reduced spreads where the greatest amount of trading occurs, thus maximizing the economic benefit of the Pilot while minimizing the impact of increased quote traffic.

The commenter suggests that relative trading volume is the measure that should be used to assess the success of quoting in smaller increments.[18] The commenter reported the percentage change in the relative trading volume before and after the Pilot for each of the thirteen classes.[19] The commenter's data shows an increase in relative trading volume for QQQQ, IWM, SHM, AMD, and SUNW, and a decrease in relative trading volume for MSFT, INTC, GE, TXN, A, CAT, WFMI and FLEX. The commenter believes the data shows that the Pilot works well for index and sector products, but smaller increments caused a decline in the relative trading volume for single stock options. The commenter argues that much of the decrease in relative trading volume in Pilot classes is a symptom of the decrease in displayed size available for those classes. On the basis of a decline in the relative trading volume, the commenter argues that single stock option classes should be removed from the Pilot and replaced with liquid index or sector option classes.

Much of the recent growth in options volume has been in the large index and ETF products, such as the SPX, SPY, and the QQQQ. As their relative trading volume increases, the aggregate relative trading volume of other products necessarily declines (although actual volume levels may increase). For example, the SPX, SPY, QQQQ, and IWM accounted for 16.1% of total options volume in the four months before the pilot and rose to 21.7% of volume in the five months after the pilot.[20] By definition, the relative trading volume of all other classes (Pilot and non-Pilot) falls from 83.9% in the pre-Pilot period to 78.3% in the post-Pilot period. Using the commenter's numerical approach, the relative market share of SPX, SPY, QQQ, and IWM increased by 34.8% ((21.7%/16.1%)–;1). In contrast, the relative trading volume of *all* other classes fell by 6.7% (78.3/83.9%)–1) in the post-Pilot period compared to the pre-Pilot period. Thus, in addition to the random variation in relative trading volume that occurs over time, there was an overall decline in the relative trading volume of issues outside the four largest index and ETF options, although their actual aggregate volume levels increased.

More specifically, for the 100 and 500 most active classes,[21] relative trading volume fell for 63% and 56%, respectively, of non-Pilot classes. In the Pilot classes, seven, or 54%, of the thirteen Pilot classes had a decline in market share and seven, or 70%, of the ten single stock option classes had a decline in relative trading volume.[22]

The Commission does not believe that the data at this time supports the conclusion that a decrease in relative trading volume in the Pilot classes is due to a reduction of the minimum quoting variation. In fact, the data demonstrates that declines in relative trading volume were not limited to stocks included in the Pilot, and substantial declines in relative trading volume, as defined by the commenter, describe a large portion of classes that were not in the Pilot. Therefore, based on the data reviewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities. Therefore, the Commission believes that Amex's proposal to select additional classes from among the most actively-traded options has a reasonable basis and is consistent with the Act.[23]

The Commission believes that the impact of smaller increments on trading

[15] *See* Amex, Penny Quoting Pilot Program Report, June 8, 2007 (''Amex Report''). *See also* Box, Penny Pilot Data Review, June 18, 2007 (''Box Report''); CBOE, Penny Pilot Report, June 1, 2007 (''CBOE Report''); ISE, Penny Pilot Analysis, May 23, 2007 (''ISE Report''); NYSE Arca Options, Understanding Economic and Capacity Impacts of the Penny Pilot, May 31, 2007 (''NYSE Arca Report''); and Phlx, Options Penny Pricing Pilot Report, May 31, 2007 (''Phlx Report'').

[16] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

[17] *See* Securities Exchange Act Release No. 55162 (January 24, 2007), 72 FR 4738 FR (February 1, 2007) (SR–Amex–2006–106). In its filing, Amex proposes to extend the effectiveness of its quote mitigation strategies through March 27, 2009. Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

[18] *See* Citadel Letter, *supra* note 4.

[19] The commenter measures the relative trading volume of a class as that class' trading volume as a percentage of total OCC volume. The change in relative trading volume is the relative trading volume from date of entrance into the Pilot to August 27, 2007 divided by the relative trading volume from November 1, 2006 through entrance in the Pilot.

[20] The pre-Pilot period consists of the four months before the Pilot commenced (October 1–January 25, 2007) and the post-Pilot period consists of the five months after the Pilot commenced (February 9, 2007–June 30, 2007). The two-week period when the Pilot classes were introduced are excluded from the analysis.

[21] All of the thirteen Pilot classes fall into the 500 most actively-traded, and nine are within the 100 most actively-traded group.

[22] The change in relative trading volume for the median stock for the top 500 (100) classes is −8% (−13%), compared to a change of −3% for the thirteen Pilot stocks and a change of −24% for the ten single stock options. The Commission notes that, with a Pilot sample size of thirteen or ten, these statistics will be highly sensitive to the performance of one or two classes.

[23] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA, OIH, XLF, and XLE—are among classes proposed by Amex to be included in the Pilot Program beginning September 28, 2007.

volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[24] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot. The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[25] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect Amex to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[26] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[27] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[28] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of Amex's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of the notice in the **Federal Register**.[29] The Commission notes that in this filing the Amex is proposing to participate in an industry-wide extension and expansion of the Penny Pilot, which is scheduled to begin on September 28, 2007. Concurrent with this approval, the Commission also is approving proposed rule changes submitted by the other five options exchanges to extend and expand the Pilot. Accelerating approval of this filing will permit the Exchange to continue its participation in the Pilot without interruption.

Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[30] to approve the proposal, as modified by Amendment No. 1, on an accelerated basis. For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[31] that the proposed rule change (SR–Amex–2007–96), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis, for a pilot period, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19497 Filed 10–2–07; 8:45 am]

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[24] *See* Amex Report, *supra* note 15, at 6–7; CBOE Report, *supra* note 15, Attachment at pages 5–6; ISE Report, *supra* note 15, at 17–20; and NYSE Arca Report, *supra* note 15, at 15.

[25] *See* Amex Report, *supra* note 15, at 6; BOX Report, *supra* note 15, at 2; CBOE Report, *supra* note 15, at Attachment page 2; ISE Report, *supra* note 15, at 7–8; NYSE Arca Report, *supra* note 15, at 9–10; and Phlx Report, *supra* note 15, at 3–4 and 6–7.

[26] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 15, and ISE Report, *supra* note 15, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 15, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 15, at 8.

[27] The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx.* The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[28] *See supra,* note 23.

[29] The Commission notes that the thirtieth day after publication of notice of this filing in the **Federal Register** is September 28, 2007.

[30] 15 U.S.C. 78s(b)(2).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56566; File No. SR–BSE–2007–40)]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change To Extend and Expand the Pilot Program To Quote Certain Options in Pennies

September 27, 2007.

I. Introduction

On August 10, 2007, the Boston Stock Exchange, Inc. (''BSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Boston Options Exchange (''BOX'') Rules to extend and expand the pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on August 21, 2007.[3] The Commission received two comment letters on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

Currently, the six options exchanges, including BOX, participate in the thirteen class Pilot Program,[5] which is scheduled to expire on September 27, 2007.[6] The Exchange proposes to amend Chapter V, Section 33 of the BOX Rules to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[7]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[8]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, the Exchange commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

III. Discussion

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[11] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[12] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[13] The exchanges have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56253 (August 15, 2007), 72 FR 46691.

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter'') and e-mail from Abraham Kohen, Algorithmic Trading Engineer, dated September 21, 2007 (''Kohen Letter'').

[5] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[6] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56149 (July 26, 2007), 72 FR 42450 (August 2, 2007) (SR–BSE–2007–38). *See also* Securities Exchange Act Release No. 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49) (''Original Pilot Program Approval Order'').

[7] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[8] The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

[12] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

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provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by the Exchange will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. The Exchange has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[14] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[15] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that the Exchange's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. The Commission also notes that the Exchange has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[16]

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[16] See Securities Exchange Act Release No. 55073 (January 9, 2007), 72 FR 2047 (January 17, 2007) (SR–BSE–2007–49). Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

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The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[23] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot.[24] The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[25] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect the Exchange to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[26] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[27] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[28] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of the Exchange's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot.[29] Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–BSE–2007–40), be, and hereby is, approved on a pilot basis, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19496 Filed 10–2–07; 8:45 am]

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[22] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA, OIH, XLF, and XLE—are among classes proposed by the Exchange to be included in the Pilot Program beginning September 28, 2007.

[23] *See* Amex Report, *supra* note 14, at 6–7; CBOE Report, *supra* note 14, Attachment at pages 5–6; ISE Report, *supra* note 14, at 17–20; and NYSE Arca Report, *supra* note 14, at 15.

[24] *See* Citadel Letter, *supra* note 4.

[25] *See* Amex Report, *supra* note 14, at 6; BOX Report, *supra* note 14, at 2; CBOE Report, *supra* note 14, at Attachment page 2; ISE Report, *supra* note 14, at 7–8; NYSE Arca Report, *supra* note 14, at 9–10; and Phlx Report, *supra* note 14, at 3–4 and 6–7.

[26] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 14, and ISE Report, *supra* note 14, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 14, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 14, at 8.

[27] *See* Citadel Letter, *supra* note 4. The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ ArcaBook/tabid/293/Default.aspx.* The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[28] *See supra,* note 22.

[29] One commenter, stating that some exchanges would like to switch some options back from pennies to nickels, noted that a penny is the minimum increment and that there is no obligation to quote a one cent spread; participants are simply allowed to do so, and can quote a wider spread. *See* Kohen Letter, *supra* note 4. The Commission notes that any mechanism for removing option classes from the Pilot must meet the requirements of the Act.

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56565; File No. SR–CBOE–2007–98]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to a Proposed Rule Change Regarding the Extension and Expansion of the Penny Pilot Program

September 27, 2007.

I. Introduction

On August 14, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to extend and expand the pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on August 22, 2007.[3] The Commission received three comment letters on the proposed rule change.[4] The Exchange responded to the Citadel Letter on September 21, 2007.[5] This order approves the proposed rule change.

II. Description of the Proposal

Currently, the six options exchanges, including CBOE, participate in the thirteen class Pilot Program,[6] which is scheduled to expire on September 27, 2007.[7] The Exchange proposes to amend its rules to extend and expand the Pilot Program to include fifty-two additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[8]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[9]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

CBOE also proposes quote and trade two index options, the Mini-SPX Index Options (XSP) and options on the Dow Jones Industrial Average (DJX), in the same minimum increments as the SPY and DIA options, which will be included in Phase One of the Pilot. XSP options are based on the S&P 500 Index; SPY options are based on the SPDR exchange-traded fund (''ETF''), which is designed to track the performance of the S&P 500 Index. DJX options are based on the Dow Jones Industrial Average (''DJIA''); DIA options are based on an ETF designed to track the performance of the DJIA. CBOE believes it is important that these products have the same minimum increment for consistency and competitive reasons.

During the extended and expanded Pilot Program, the CBOE commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

III. Discussion

After careful review of the proposal, the comment letters, and the CBOE Response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[12] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56276 (August 17, 2007), 72 FR 47096.

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter''); letter to Nancy M. Morris, Secretary, Commission, from Michael T. Bickford, Senior Vice President, Options, American Stock Exchange LLC, dated September 19, 2007 (''Amex Letter''); and letter to Nancy M. Morris, Secretary, Commission, from Andrew B. Stevens, Assistant General Counsel, NYSE Arca, Inc., dated September 26, 2007 (''NYSE Arca Letter'').

[5] *See* letter to Nancy M. Morris, Secretary, Commission, from Edward J. Joyce, President and Chief Operating Officer, CBOE, dated September 21, 2007 (''CBOE Response'').

[6] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[7] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56139 (July 26, 2007), 72 FR 42159 (August 1, 2007) (SR–CBOE–2007–86). *See also* Securities Exchange Act Release No. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92) (''Original Pilot Program Approval Order'').

[8] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[9] The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[13] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[14] The exchanges have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by CBOE will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. CBOE has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[15] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[16] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that CBOE's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. The Commission also notes that CBOE has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[17]

Overall trading activity in the options markets is very concentrated, with a relatively few options classes accounting for a significant share of total options volume. CBOE's proposal, which will expand the Pilot to include a limited number of options from among the most actively-traded classes (based on average trading volume), will provide an opportunity for reduced spreads where the greatest amount of trading occurs, thus maximizing the economic benefit of the Pilot while minimizing the impact of increased quote traffic.

One commenter suggests that relative trading volume is the measure that should be used to assess the success of quoting in smaller increments.[18] The commenter reported the percentage change in the relative trading volume before and after the Pilot for each of the thirteen classes.[19] The commenter's data shows an increase in relative trading volume for QQQQ, IWM, SHM, AMD, and SUNW, and a decrease in relative trading volume for MSFT, INTC, GE, TXN, A, CAT, WFMI and FLEX. The commenter believes the data shows that the Pilot works well for index and sector products, but smaller increments caused a decline in the relative trading volume for single stock options. The commenter argues that much of the decrease in relative trading volume in Pilot classes is a symptom of the decrease in displayed size available for those classes. On the basis of a decline in the relative trading volume, the commenter argues that single stock option classes should be removed from the Pilot and replaced with liquid index or sector option classes.

Much of the recent growth in options volume has been in the large index and ETF products, such as the SPX, SPY, and the QQQQ. As their relative trading volume increases, the aggregate relative trading volume of other products necessarily declines (although actual volume levels may increase). For example, the SPX, SPY, QQQQ, and IWM accounted for 16.1% of total options volume in the four months before the pilot and rose to 21.7% of volume in the five months after the pilot.[20] By definition, the relative trading volume of all other classes (Pilot and non-Pilot) falls from 83.9% in the pre-Pilot period to 78.3% in the post-Pilot period. Using the commenter's numerical approach, the relative market share of SPX, SPY, QQQ, and IWM increased by 34.8% ((21.7%/16.1%)–1). In contrast, the relative trading volume of all other classes fell by 6.7% (78.3/83.9%)–1) in the post-Pilot period compared to the pre-Pilot period. Thus, in addition to the random variation in relative trading volume that occurs over time, there was an overall decline in the relative trading volume of issues outside the four largest index and ETF options, although their actual aggregate volume levels increased.

[13] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[14] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). As noted above, *supra* note 7 and accompanying text, the current Pilot is scheduled to expire on September 27, 2007.

[15] *See* CBOE, Penny Pilot Report, June 1, 2007 (''CBOE Report''). *See also* Amex, Penny Quoting Pilot Program Report, June 8, 2007 (''Amex Report''); Box, Penny Pilot Data Review, June 18, 2007 (''Box Report''); ISE, Penny Pilot Analysis, May 23, 2007 (''ISE Report''); NYSE Arca Options, Understanding Economic and Capacity Impacts of the Penny Pilot, May 31, 2007 (''NYSE Arca Report''); and Phlx, Options Penny Pricing Pilot Report, May 31, 2007 (''Phlx Report'').

[16] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

[17] *See* Securities Exchange Act Release Nos. 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2007–92), 55772 (May 16, 2007), 72 FR 28732 (May 22, 2007) (SR–CBOE–2007–45), and 55853 (June 4, 2007), 72 FR 32151 (June 11, 2007) (SR–CBOE–2007–56). Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

[18] *See* Citadel Letter, *supra* note 4.

[19] The commenter measures the relative trading volume of a class as that class' trading volume as a percentage of total OCC volume. The change in relative trading volume is the relative trading volume from date of entrance into the Pilot to August 27, 2007 divided by the relative trading volume from November 1, 2006 through entrance in the Pilot.

[20] The pre-Pilot period consists of the four months before the Pilot commenced (October 1–January 25, 2007) and the post-Pilot period consists of the five months after the Pilot commenced (February 9, 2007–June 30, 2007). The two week period when the Pilot classes were introduced are excluded from the analysis.

More specifically, for the 100 and 500 most active classes,[21] relative trading volume fell for 63% and 56%, respectively, of non-Pilot classes. In the Pilot classes, seven, or 54%, of the thirteen Pilot classes had a decline in market share and seven, or 70%, of the ten single stock option classes had a decline in relative trading volume.[22]

The Commission does not believe that the data at this time supports the conclusion that a decrease in relative trading volume in the Pilot classes is due to a reduction of the minimum quoting variation. In fact, the data demonstrates that declines in relative trading volume were not limited to stocks included in the Pilot, and substantial declines in relative trading volume, as defined by the commenter, describe a large portion of classes that were not in the Pilot. Therefore, based on the data reviewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities. Therefore, the Commission believes that CBOE's proposal to select additional classes from among the most actively-traded options has a reasonable basis and is consistent with the Act.[23]

The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[24] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot.[25] The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[26] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect CBOE to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[27] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[28] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

The commenter also recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[29] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of CBOE's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

[21] All of the thirteen Pilot classes fall into the 500 most actively-traded, and nine are within the 100 most actively-traded group.

[22] The change in relative trading volume for the median stock for the top 500 (100) classes is −8% (−13%), compared to a change of −3% for the thirteen Pilot stocks and a change of −24% for the ten single stock options. The Commission notes that, with a Pilot sample size of thirteen or ten, these statistics will be highly sensitive to the performance of one or two classes.

[23] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA, OIH, XLF, and XLE—are among classes proposed by CBOE to be included in the Pilot Program beginning September 28, 2007.

[24] *See* Amex Report, *supra* note 15, at 6–7; CBOE Report, *supra* note 15, Attachment at pages 5–6; ISE Report, *supra* note 15, at 17–20; and NYSE Arca Report, *supra* note 15, at 15.

[25] See Citadel Letter, supra note 4.

[26] *See* Amex Report, *supra* note 15, at 6; BOX Report, *supra* note 15, at 2; CBOE Report, *supra* note 15, at Attachment page 2; ISE Report, *supra* note 15, at 7–8; NYSE Arca Report, *supra* note 15, at 9–10; and Phlx Report, *supra* note 15, at 3–4 and 6–7.

[27] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 15, and ISE Report, *supra* note 15, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 15, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 15, at 8.

[28] *See* Citadel Letter, *supra* note 4. The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx*. The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[29] *See supra*, note 23 and Citadel Letter, *supra* note 4. The Exchange also supports removing from the Pilot option classes that, after analysis and review, are found not to be good choices for quoting in penny increments, and recommends replacing them with other classes that are suitable for quoting in a penny increment. CBOE notes that data collected to date clearly suggests that some Pilot classes may not be good candidates for penny quoting. CBOE also notes that, in its Pilot report to the Commission, it stated that further analysis must be conducted over a longer period of time before drawing any firm conclusions as to the impact of quoting in penny increments, and to determine which classes benefit from penny quoting compared to those that do not. *See* CBOE Response, *supra* note 5.

Finally, the Commission received two comment letters on CBOE's proposal to quote and trade XSP and DJX in the same minimum increments as the SPY and DIA options, for consistency and competitive reasons.[30] One commenter argues that it is inconsistent with the Pilot Program and the purpose and objectives of the Act to permit CBOE to quote singly-listed products in penny increments.[31] Specifically, the commenter believes that it is inconsistent with the Pilot Program and the advancement of competition to allow CBOE to unilaterally expand the Pilot Program by including two products subject to exclusive licensing agreements.[32]

The Commission does not believe that the issue of exclusive licensing agreements is raised by this proposed rule change. CBOE already lists and trades XSP and DJX options, pursuant to Commission approval, and is only proposing in this filing to change the minimum price variation for those options. The Commission believes that, because XSP and DJX are designed to track the same indexes as multiply-listed options included in the Pilot, CBOE's proposal to quote and trade XSP and DJX in the same minimum increments as classes in the Pilot is consistent with the Act.

The commenter also believes that, based on CBOE's rationale for quoting XSP and DJX in the same increments as SPY and DIA, the Exchange should have proposed to also quote the S&P 500 index (SPX) in smaller increments because it is a ''related'' product.[33] CBOE argues that the XSP and DJX are competitive products to the SPY and DIA, not merely that they are ''related products.'' The Commission does not believe that CBOE's decision not to propose reducing the minimum increment in SPX (or any other product that is based on the same index as a class included in the Pilot) makes its proposal to reduce the minimum increment for XSP and DJX inconsistent with the Act. Moreover, the Commission does not believe that CBOE's proposal to quote two additional singly-listed classes in smaller increments impedes the ability of any exchange or the Commission to evaluate the Pilot Program. The Commission also notes that it would consider other proposals by exchanges to reduce the minimum quoting increment for other options, whether for the same reasons put forth by CBOE in its proposal, or other reasons.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[34] that the proposed rule change (SR–CBOE–2007–98), be, and hereby is, approved on a pilot basis, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19495 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[30] *See* Amex Letter and NYSE Arca Letter, *supra* note 4.

[31] *See* Amex Letter, *supra* note 4

[32] NYSE Arca also believes that the proposal is not wholly consistent with the Pilot. *See* NYSE Arca Letter, *supra* note 4.

[33] *See* Amex Letter, *supra* note 4. NYSE Arca also believes that CBOE's proposal is incomplete because it did not propose to also quote options on the Nasdaq 100 Index (NDX), and options on the Russell 2000 Index (RUT) in smaller increments. *See* NYSE Arca Letter, *supra* note 4.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56532; File No. SR–CBOE–2006–104]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Codify the Hybrid Price Check Parameter

September 26, 2007.

I. Introduction

On December 7, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 6.13, CBOE Hybrid System's Automatic Execution Feature, to codify an automated system feature that prevents executions at potentially erroneous prices (''price check parameter functionality''). On August 1, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 20, 2007.[3] The Commission received no comments regarding the proposal.

II. Description of the Proposal

The proposed rule change would amend CBOE Rule 6.13 to adopt the price check parameter functionality, which the Exchange would activate, on a series by series basis for a given option class, to prevent an automatic execution of a market order through CBOE's Hybrid System if such execution would occur outside a prescribed market width. Specifically, the functionality would be triggered to block an execution of a market order if the width between the Exchange's best bid and best offer is not within an ''acceptable price range.'' The applicable acceptable price range for each series of an option class would be determined by the appropriate Exchange Procedure Committee and could be no less than 1.5 times the corresponding bid/ask differentials in CBOE Rule 8.7(b)(iv)(A).[4] The acceptable price range for each series of an option class would be announced to the CBOE membership via Regulatory Circular at least one day in advance.

When the price check parameter functionality is triggered for a particular market order, such market order no longer would be eligible for automatic execution and would be routed on a class by class basis to PAR (the public automated routing system) or BART (the booth automated routing terminal) or, at the order entry firm's discretion, to the order entry firm's booth printer.

The Exchange also proposed that the senior official in CBOE's Control Room or two Floor Officials could grant intra-day relief by widening the acceptable price range for one or more option series. If such intra-day relief is granted, it would be announced via verbal message to the trading crowd, printer message to member organizations on the trading floor, and electronic message to members that request to receive such messages. The granting of such intra-day relief would be for no more than the duration of the particular trading day. Any decision to extend relief beyond an intra-day basis would be announced to the membership via Regulatory Circular.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56245 (August 14, 2007), 72 FR 46525.

[4] CBOE Rule 8.7(b)(iv)(A) sets forth the bid/ask differentials for open outcry trading, which are as follows: No more than $0.25 between the bid and offer for each option contract for which the bid is less than $2.00; no more than $0.40 where the bid is at least $2.00 but does not exceed $5.00; no more than $0.50 where the bid is more than $5.00 but does not exceed $10; no more than $0.80 where the bid is more than $10 but does not exceed $20; and no more than $1.00 where the bid is more than $20.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. In the Commission's view, CBOE's price check parameter functionality potentially would benefit customers whose market orders otherwise would receive an automatic execution at a price that is outside of an acceptable price range that is established by the Exchange and based on criteria set forth in CBOE Rule 6.13. Because such orders would be routed to PAR, BART, or the order-entry firm's booth, customers potentially could receive a more favorable price than the price then available through CBOE's Hybrid System.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2006–104), as modified by Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19540 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56552; File No. SR–DTC–2007–10]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change To Implement the New Issue Information Dissemination Service for Municipal Securities

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on August 16, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 12, 2007, amended[3] the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks approval to implement the New Issue Information Dissemination System (''NIIDS'') for municipal securities. NIIDS is an automated system developed by DTC at the request of the Securities Industry and Financial Markets Association (''SIFMA'')[4] in order to improve the mechanism for disseminating new issue information regarding municipal securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Municipal Securities Rulemaking Board (''MSRB'') Rule G–14 generally requires municipal securities dealers to report municipal securities transactions to the MSRB within 15 minutes of the time of the trade.[6] Inter-dealer trades eligible for comparison by a clearing agency are required to be submitted through NSCC's Real Time Trade Matching System (''RTTM'') within the time frame in Rule G–14. They are subsequently reported to the MSRB by NSCC. NSCC requires certain securities information in order to process and report transactions involving those securities. Therefore, it is necessary that dealers trading newly issued municipal securities have the securities information needed for trade submission by the time the trade reporting is required.

Pursuant to current practice in the municipal securities market, each information vendor works separately to obtain information from offering documents and underwriters. Each information vendor's success depends in large part upon the voluntary cooperation of the underwriters. It is not unusual for information vendors to have inconsistent information or for some information vendors to receive information before others. Consequently, critical new issue information may be missing or inaccurate in the automated trade processing systems used by dealers to report the initial trades in new issues. This can result in late trade reports or trade reports that must be canceled and resubmitted or amended because they contain with inaccurate data.

NIIDS is designed to improve the process by which new issue information is provided by underwriters to information vendors by collecting information about a new issue from underwriters or their representatives in an electronic format and making that data available immediately to information vendors. NIIDS is designed to ensure that information is disseminated as quickly and efficiently as possible after the information is made available by the underwriters.

To address concerns that dealers often lack timely access to electronically formatted securities information necessary to process and report municipal securities transactions in real-time, MSRB Rule G–14 includes a three-hour exemption available to dealers transacting in ''when, as, and if issued'' municipal securities that are not syndicate managers or members, that have not traded the issue, and that do not have the CUSIP information or indicative data for that issue in their securities master file (''Reporting Exemption'').[7] The Reporting Exemption will expire on December 31, 2007. In order to prepare for the Reporting Exemption's expiration, SIFMA asked DTC to incorporate a centralized automated mechanism for the collection and dissemination on a real-time basis of the required information as part of the planned reengineering of DTC's underwriting system. DTC built NIIDS to help make

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The amendment changed a misplaced word in a footnote.

[4] The request originated from The Bond Market Association (''BMA''), which has since merged with the Securities Industry Association to form SIFMA.

[5] The Commission has modified the text of the summaries prepared by DTC.

[6] MSRB Rule G–14 RTRS Procedures (a)(ii).

[7] MSRB Rule G–14 RTRS Procedures (a)(ii)(C).

the collection and dissemination of new issue information with respect to municipal securities more efficient for the industry.

An industry working group of municipal securities dealers, SIFMA members, the MSRB, and DTC have identified key data elements required for the reporting, comparison, confirmation, and settlement of trades in municipal securities (''NIIDS Data Elements'').

Initially, DTC is proposing to make NIIDS available to the municipal securities industry on an optional basis to allow dealers to have some experience with NIIDS before the MSRB mandates its use. Only DTC participants or those entities specifically authorized by a participant (''Correspondent'') may input information on NIIDS.[8]

To commence the process, the dissemination agent (''Dissemination Agent'') for a new issue must input the NIIDS Data Elements thereby requesting that DTC make the information available to the industry through NIIDS. DTC will not confirm the NIIDS Data Elements but rather will act as a conduit to pass along such information to data vendors.[9] DTC anticipates the data vendors will then disseminate the information to the industry thereby allowing dealers to make timely reporting of their municipal trades. DTC will record the name of the Dissemination Agent who inputs the Data Elements and the time such information is submitted. DTC will begin disseminating the data when it has received authorization from the Dissemination Agent through NIIDS. In addition, NIIDS will contain the contact information for the Dissemination Agent that populated the NIIDS Data Elements for a particular issue to enable users of the data to contact them with questions or comments.

DTC is proposing to provide NIIDS to the industry in order to facilitate the collection and dissemination of new issue information in relation to municipal securities. As DTC is only a conduit of the information and does not confirm the validity of any of the NIIDS Data Elements, use of NIIDS will constitute an agreement that DTC shall not be liable for any loss in relation to the dissemination of NIIDS Data Elements. In the event that inaccurate information is input into NIIDS, the Dissemination Agent shall bear any and all liability related to such inaccuracies.

Optional Use of NIIDS

The MSRB would like dealers to be able to use NIIDS before requiring them to so by rule.[10] DTC anticipates that once the industry is able to use NIIDS, the MSRB will finalize the MSRB proposal that will effect the expiration of the Reporting Exemption (''Final MSRB Proposal'') and will file it with the Commission for approval. Concurrently, DTC plans to collaborate with the MSRB to conform NIIDS to the Final MSRB Proposal and will seek an approval order from the Commission to make use of NIIDS a prerequisite for municipal securities to be DTC-eligible. DTC intends to mandate the use of NIIDS for municipal securities in April 2008. DTC believes that members of the municipal securities industry will be using NIIDS during the period NIIDS is optional (''Test Period'') to become accustomed to using it. This may result in Dissemination Agents inputting incomplete NIIDS Data Elements while getting acquainted with NIIDS. Therefore, no one should rely on the accuracy of the NIIDS Data Elements during the Test Period but rather must continue to use existing authorized sources of such information.

DTC will not charge a service fee to underwriters that input or receive information through NIIDS. Additionally, DTC will not charge a service fee to information vendors that will receive information for further dissemination through NIIDS.[11]

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder because the proposed changes promote the prompt and accurate clearance and settlement of securities transactions by streamlining the collection and dissemination of new issue information for municipal securities throughout the industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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 been solicited or received. DTC will notify the Commission of any written comments received by DTC.

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. 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–DTC–2007–10 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–DTC–2007–10. 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

[8] Participants will be required to identify an authorized party at the Correspondent with whom DTC may interact.

[9] Data vendors or others that wish to receive NIIDS Data Elements must register in advance with DTC.

[10] The MSRB received comment on proposed rules that would require underwriters of municipal securities to participate in NIIDS. See MSRB Notice 2007–10 (March 5, 2007) at *www.msrb.org.*

[11] DTC will charge a connectivity fee to underwriters, service providers, and information vendors that use NIIDS.

[12] 15 U.S.C. 78q–1.

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10.pdf* and *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-10-amendment.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–DTC–2007–10 and should be submitted on or before October 18, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19489 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56538; File No. SR–DTC–2007–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Revise Its Procedures With Respect To Processing of Certain Voluntary Events in Its Reorganization Service and Clarifying Legal Considerations Set Forth in Its Procedures Relating To Usage of Information Obtained by Participants

September 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 29, 2007, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend DTC's Procedures with respect to the processing of certain voluntary events in its Reorganization service and to clarify legal considerations set forth in its Procedures relating to usage of information obtained by participants from DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's Reorganization service distributes information to participants about various reorganization activity and processes participants' elections with respect to this activity on their behalf. Currently, DTC's participant procedures for its Reorganization Service Guide provide several different functions for participants to submit instructions to DTC.[5] DTC has determined that greater efficiency would be created if the more automated functions (*e.g.*, DTC's Automated Tender Offer Program [''ATOP'']) were available to be utilized for a broader range of voluntary reorganization events. For example, the processing of conversions would be enhanced if they were directed through ATOP, which is currently used for the acceptance and processing of other types of voluntary offers such as tender offers and exchanges. In addition to conversions, processing of elections to receive cash in lieu of fractional shares pursuant to a mandatory reorganization and the exercise of put options with a withdrawal privilege would similarly be enhanced. Therefore, DTC now proposes to add flexibility to utilize the function that provides the most efficient means for receiving and processing instructions.

Initially DTC will add functionality to permit (1) conversion instructions, (2) elections to receive cash in lieu of fractional shares, and (3) the exercise of put options with withdrawal privileges to be processed through ATOP. DTC's Procedures would be amended to allow such instructions to be submitted through the Participant Tenders Over PTS (''PTOP'') function, which is currently utilized primarily in connection with tender offers and exchanges.

In addition, DTC is revising its Procedures to clarify how participants may redistribute information provided to them by DTC. DTC compiles security description and event information derived from its core processes to support its own and its participants' operations. DTC proposes to revise its current procedures to clarify that this information may not be redistributed to any other persons who, to a Participants's knowledge, use the information as a basis for data products or services.

The proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to DTC because it would provide for more efficient processing of certain reorganization transactions and further clarify participants' responsibilities with regard to information provided by DTC thus facilitating the safeguarding of securities in DTC's custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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. DTC will notify

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] For background information on the DTC's Reorganization Service Guide, which replaced applicable Participating Operating Procedures relating to the Reorganization service, see Securities Exchange Act Release No. 44719 (August 17, 2001), 66 FR 44656 (August 24, 2001) [File No. SR–DTC–2001–01].

the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(4) [7] thereunder because the proposed rule effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within 60 days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–DTC–2007–09 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–DTC–2007–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days from 10 a.m. to 3 p.m. The text of the proposed rule change is available at DTC, the Commission's Public Reference Room, and *http://www.dtcc.com/downloads/legal/rule_filings/2007/dtc/2007-09.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–DTC–2007–09 and should be submitted on or before October 24, 2007.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19534 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(4).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56540; File No. SR–NASD–2006–109]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. (n/k/a Financial Industry Regulatory Authority, Inc.); Order Approving Proposed Rule Change as Modified by Amendment Nos. 1 and 2 Thereto Relating to Representation of Parties in Arbitration and Mediation

September 26, 2007.

I. Introduction

On September 14, 2006, the National Association of Securities Dealers, Inc. (''NASD'') (n/k/a Financial Industry Regulatory Authority, Inc. (''FINRA'')), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution'') (n/k/a, FINRA Dispute Resolution, Inc.), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to representation of parties in arbitration and mediation.[3] On November 9, 2006 and February 23, 2007, NASD Dispute Resolution submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on April 13, 2007.[4] The Commission received five comments on the proposal.[5] For the reasons discussed below, the Commission is approving the proposed rule change, as amended.

II. Description of the Proposal

The changes to NASD's Code of Arbitration Procedure for Customer Disputes, Code of Arbitration Procedure for Industry Disputes, and Code of Mediation Procedure provide that in both arbitration and mediation: (1) Parties may represent themselves; (2) parties may be represented by an attorney, provided certain criteria are met; (3) parties may be represented by a person who is not an attorney, unless state law prohibits such representation or the person is currently suspended or barred from the securities industry in any capacity or is currently suspended from the practice of law or disbarred; and (4) issues regarding qualifications of a representative are governed by applicable law.

First, the proposed rule change codifies current practice by explicitly stating that parties may represent themselves in arbitration.

Second, the proposed rule change codifies current practice permitting the multi-jurisdictional practice of law by attorneys in the NASD Dispute Resolution forum to the extent permitted by state law. In addition, the proposed rule change states that if a party chooses to be represented by an attorney, the attorney must be licensed to practice in a U.S. jurisdiction and be

[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* Securities Exchange Act Release No. 55604 (April 9, 2007), 72 FR 18703 (April 13, 2007).

[5] *See* letters to Nancy Morris, Secretary, Commission, from Timothy Canning, Law Offices of Timothy A. Canning, dated May 4, 2007 (''*Canning*''); Vincent DiCarlo, Law Offices of Vincent DiCarlo, dated May 4, 2007 (''*DiCarlo*''); Jill I. Gross, Director of Advocacy, Pace Investor Rights Project, dated May 4, 2007 (''*Pace*''); Richard L. Sacks, dated May 3, 2007 (''*Sacks*''); and Irwin G. Stein, dated May 4, 2007 (''*Stein*'').

in good standing in that jurisdiction.[6] NASD stated that requiring an attorney to be licensed and in good standing in a U.S. jurisdiction will protect investors by prohibiting individuals who have been suspended from the practice of law or disbarred from representing parties in the NASD forum. Further, NASD stated that the requirement for an attorney to be licensed to practice in a U.S. jurisdiction sets a standard of practice for its forum that is consistent with the other rules and proceedings of NASD.

Third, the proposed rule change addresses the representation of parties by non-attorneys in the NASD forum. Under the proposed rule change, parties may be represented in an arbitration or mediation by a person who is not an attorney, unless applicable law prohibits such representation or the person is currently suspended or barred from the securities industry in any capacity or is currently suspended from the practice of law or disbarred.

While this provision would be applicable to all arbitration claims, it may be particularly beneficial for certain investors that may have difficulty retaining an attorney on a contingency-fee basis. For example, investors with small claims may be unable to retain an attorney because the attorney may believe that the attorney's share of any award would be too small to justify the effort. In these circumstances, investors may benefit from being able to seek other assistance to resolve their arbitration or mediation claims for a more affordable fee.[7] At the same time, NASD stated that such non-attorney representatives should not be persons who have been found by a regulatory body in essence to be unfit to represent clients or to conduct securities business with the public. Thus, to protect investors, the rule would prohibit non-attorney representatives who are currently suspended or barred from the securities industry, or are currently suspended from the practice of law or disbarred, from representing parties in the NASD Dispute Resolution forum.

Last, the proposed rule change would allow an attorney to represent a client in an NASD arbitration or mediation held in any U.S. hearing location, regardless of the jurisdiction in which the attorney is licensed. An attorney's ability to represent clients in a jurisdiction in which he or she is not licensed, however, would be subject to the applicable law of that jurisdiction. The proposed rule change is not intended to preempt state law; it is intended to reflect current practice in the forum which, based on experience, indicates that the outcome of a dispute resolution proceeding depends more on the level of knowledge, training and skill of the attorneys, rather than the jurisdiction from which the attorneys received their license to practice.

III. Comment Summary and Response to Comments

The Commission received five comments[8] on the proposal and a response to comments.[9] One commenter generally expressed support for the proposed rule change.[10] The remaining four commenters opposed the proposed rule change and the NASD Response addressed these comments.[11]

Three commenters expressed the view that there should be a uniform national rule governing who can represent a party in a NASD forum, rather than permitting the incorporation of state rules that may vary from jurisdiction to jurisdiction.[12] These commenters suggested that NASD should adopt a uniform rule that would preempt contrary state laws.[13] NASD indicated that it had determined that ''there is no overriding need for a uniform rule in this area, and that the continued compliance with state rules is in the best interests of all participants in its arbitration forum.'' [14] NASD also noted that this position is consistent with its previous position with respect to arbitrator disclosure, distinguishing attorney qualification rules and rules regulating arbitration procedure.[15]

Four commenters stated that the proposed rule change would penalize retroactively those persons who are currently suspended or barred from the securities industry by prohibiting them from representing a party in an arbitration or mediation proceeding.[16] In their view, it would impose a new penalty on those who have had their misconduct adjudicated and sanctions imposed.[17] NASD indicated that the rule is ''designed to protect investors'' and that at a minimum a non-attorney representative should not be ''a person whom a regulatory body has suspended or barred from representing clients or conducting securities business with the public.'' [18]

In addition, in response to comments that the proposed rule may unduly limit investor choices,[19] NASD stated that it believes that the limitations on the choice of representation under the proposed rule are appropriate and would protect investors.[20]

IV. Discussion and Findings

The Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[21] which requires, among other things, that NASD's 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 Commission believes that the proposed rule change meets this standard by balancing the needs of investors to have access to representation, particularly in small cases, with NASD's responsibility to protect investors, the integrity of its forum, and the public interest.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASD–2006–109), as amended, be, and hereby is, approved.

[6] The requirement to be licensed to practice in a U.S. jurisdiction and be in good standing in that jurisdiction is in addition to and not in lieu of the requirement that an attorney must comply with applicable laws of the relevant jurisdiction. While the multi-jurisdictional practice of law may be permitted in many jurisdictions, it may constitute a violation of certain states' unauthorized practice of law provisions.

[7] Consistent with current practice, the proposed rule would allow a relative, friend or associate to represent or assist a person (*e.g.*, an elderly or disabled person) with his or her arbitration or mediation. In addition, law school securities arbitration clinics can provide investors with affordable legal representation. A securities arbitration clinic also can help an investor who has a smaller claim but is unable to hire an attorney, provided the investor qualifies for assistance. *See How to Find an Attorney* (for more information on clinic locations and eligibility requirements), available at: *http://www.finra.org/ArbitrationMediation/StartanArbitrationorMediation/HowtoFindanAttorney/index.htm.*

[8] Canning, DiCarlo, Pace, Sacks, and Stein.

[9] *See* letter to Nancy Morris, Secretary, Commission, from Mignon McLemore, Assistant Chief Counsel, FINRA Dispute Resolution, dated September 17, 2007 (''NASD Response''). While FINRA had been formed at the time of the submission of the NASD Response, for ease of reference the term NASD is used throughout.

[10] Pace.

[11] Canning, DiCarlo, Sacks, and Stein. *See also* NASD Response.

[12] Canning, DiCarlo, and Stein.

[13] *Id.*

[14] NASD Response.

[15] *Id.*

[16] Canning, DiCarlo, Sacks, and Stein.

[17] *Id.*

[18] NASD Response. NASD noted that ''[t]he proposal will apply prospectively as to representation on or after the effective date. If a barred or suspended individual is representing a party in a case pending on the effective date of the rule, he or she may continue to serve on that case, but may not serve on new ones.''

[19] Canning, DiCarlo, Sacks, and Stein.

[20] *Id.*

[21] 15 U.S.C. 78o–3(b)(6).

[22] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19536 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56564; File No. SR–ISE–2007–74]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendment No. 1, Relating to an Extension and Expansion of the Penny Pilot Program

September 27, 2007.

I. Introduction

On August 21, 2007, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend and expand a pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). On August 22, 2007, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on August 29, 2007.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal

Currently, the six options exchanges, including ISE, participate in the thirteen class Pilot Program,[5] which is scheduled to expire on September 27, 2007.[6] The Exchange proposes to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[7]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase.[8] The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[9]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, the ISE commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[11] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[12] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[13] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[14] The exchanges

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56306 (August 22, 2007), 72 FR 49753.

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter).

[5] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[6] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56151 (July 26, 2007), 72 FR 42452 (August 2, 2007) (SR-ISE–2007–68). *See also* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62) (''Original Pilot Program Approval Order'').

[7] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[8] The Exchange has committed to file a proposed rule change under section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

[9] As proposed in its filing, ISE represents that options trading in penny increments will not be eligible for split pricing, as permitted under ISE Rule 716.

[10] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

[13] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[14] *See* Securities Exchange Act Release Nos. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR-ISE–2006–62); 55162 (January 24, 2007),

have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by ISE will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. ISE has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[15] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[16] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that ISE's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. The Commission also notes that ISE has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[17]

Overall trading activity in the options markets is very concentrated, with a relatively few options classes accounting for a significant share of total options volume. ISE's proposal, which will expand the Pilot to include a limited number of options from among the most actively-traded classes (based on average trading volume), will provide an opportunity for reduced spreads where the greatest amount of trading occurs, thus maximizing the economic benefit of the Pilot while minimizing the impact of increased quote traffic.

The commenter suggests that relative trading volume is the measure that should be used to assess the success of quoting in smaller increments.[18] The commenter reported the percentage change in the relative trading volume before and after the Pilot for each of the thirteen classes.[19] The commenter's data shows an increase in relative trading volume for QQQQ, IWM, SHM, AMD, and SUNW, and a decrease in relative trading volume for MSFT, INTC, GE, TXN, A, CAT, WFMI and FLEX. The commenter believes the data shows that the Pilot works well for index and sector products, but smaller increments caused a decline in the relative trading volume for single stock options. The commenter argues that much of the decrease in relative trading volume in Pilot classes is a symptom of the decrease in displayed size available for those classes. On the basis of a decline in the relative trading volume, the commenter argues that single stock option classes should be removed from the Pilot and replaced with liquid index or sector option classes.

Much of the recent growth in options volume has been in the large index and ETF products, such as the SPX, SPY, and the QQQQ. As their relative trading volume increases, the aggregate relative trading volume of other products necessarily declines (although actual volume levels may increase). For example, the SPX, SPY, QQQQ, and IWM accounted for 16.1% of total options volume in the four months before the pilot and rose to 21.7% of volume in the five months after the pilot.[20] By definition, the relative trading volume of all other classes (Pilot and non-Pilot) falls from 83.9% in the pre-Pilot period to 78.3% in the post-Pilot period. Using the commenter's numerical approach, the relative market share of SPX, SPY, QQQ, and IWM increased by 34.8% ((21.7%/16.1%)–1). In contrast, the relative trading volume of *all* other classes fell by 6.7% (78.3/83.9%)–1) in the post-Pilot period compared to the pre-Pilot period. Thus, in addition to the random variation in relative trading volume that occurs over time, there was an overall decline in the relative trading volume of issues outside the four largest index and ETF options, although their actual aggregate volume levels increased.

More specifically, for the 100 and 500 most active classes,[21] relative trading volume fell for 63% and 56%, respectively, of non-Pilot classes. In the Pilot classes, seven, or 54%, of the thirteen Pilot classes had a decline in market share and seven, or 70%, of the ten single stock option classes had a decline in relative trading volume.[22]

72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). As noted above, *supra* note 6 and accompanying text, the current Pilot is scheduled to expire on September 27, 2007.

[15] *See* ISE, Penny Pilot Analysis, May 23, 2007 (''ISE Report''). *See also* Amex, Penny Quoting Pilot Program Report, June 8, 2007 (''Amex Report''); Box, Penny Pilot Data Review, June 18, 2007 (''Box Report''); CBOE, Penny Pilot Report, June 1, 2007 (''CBOE Report''); NYSE Arca Options, Understanding Economic and Capacity Impacts of the Penny Pilot, May 31, 2007 (''NYSE Arca Report''); and Phlx, Options Penny Pricing Pilot Report, May 31, 2007 (''Phlx Report'').

[16] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

[17] *See* Securities Exchange Act Release No. 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2007–62). Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

[18] *See* Citadel Letter, *supra* note 4.

[19] The commenter measures the relative trading volume of a class as that class' trading volume as a percentage of total OCC volume. The change in relative trading volume is the relative trading volume from date of entrance into the Pilot to August 27, 2007 divided by the relative trading volume from November 1, 2006 through entrance in the Pilot.

[20] The pre-Pilot period consists of the four months before the Pilot commenced (October 1–January 25, 2007) and the post-Pilot period consists of the five months after the Pilot commenced (February 9, 2007–June 30, 2007). The two week period when the Pilot classes were introduced are excluded from the analysis.

[21] All of the thirteen Pilot classes fall into the 500 most actively-traded, and nine are within the 100 most actively-traded group.

[22] The change in relative trading volume for the median stock for the top 500 (100) classes is −8% (−13%), compared to a change of −3% for the thirteen Pilot stocks and a change of −24% for the ten single stock options. The Commission notes that, with a Pilot sample size of thirteen or ten, these statistics will be highly sensitive to the performance of one or two classes.

The Commission does not believe that the data at this time supports the conclusion that a decrease in relative trading volume in the Pilot classes is due to a reduction of the minimum quoting variation. In fact, the data demonstrates that declines in relative trading volume were not limited to stocks included in the Pilot, and substantial declines in relative trading volume, as defined by the commenter, describe a large portion of classes that were not in the Pilot. Therefore, based on the data reviewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities. Therefore, the Commission believes that ISE's proposal to select additional classes from among the most actively-traded options has a reasonable basis and is consistent with the Act.[23]

The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[24] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot. The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[25] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect the Exchange to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[26] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[27] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[28] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of ISE's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after publication of the notice in the **Federal Register**.[29] The Commission notes that in this filing the ISE is proposing to participate in an industry-wide extension and expansion of the Penny Pilot, which is scheduled to begin on September 28, 2007. Concurrent with this approval, the Commission also is approving proposed rule changes submitted by the other five options exchanges to extend and expand the Pilot. Accelerating approval of this filing will permit the Exchange to continue its participation in the Pilot without interruption.

Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[30] to approve the proposal, as modified by Amendment No. 1, on an accelerated basis. For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

[23] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA, OIH, XLF, and XLE—are among classes proposed by ISE to be included in the Pilot Program beginning September 28, 2007.

[24] *See* Amex Report, *supra* note 15, at 6–7; CBOE Report, *supra* note 15, Attachment at pages 5–6; ISE Report, *supra* note 15, at 17–20; and NYSE Arca Report, *supra* note 15, at 15.

[25] *See* Amex Report, *supra* note 15, at 6; BOX Report, *supra* note 15, at 2; CBOE Report, *supra* note 15, at Attachment page 2; ISE Report, *supra* note 15, at 7–8; NYSE Arca Report, *supra* note 15, at 9–10; and Phlx Report, *supra* note 15, at 3–4 and 6–7.

[26] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 15, and ISE Report, *supra* note 15, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 15, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 15, at 8.

[27] The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx*. The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[28] *See supra*, note 23.

[29] The Commission notes that the thirtieth day after publication of notice of this filing in the **Federal Register** is September 28, 2007.

[30] 15 U.S.C. 78s(b)(2).

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[31] that the proposed rule change (SR–ISE–2007–74), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis, for a pilot period, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19500 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56551; File No. SR–NYSE–2007–82]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 124 (Odd-Lot Orders)

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The Exchange has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 124 (Odd-Lot Orders) to modify the way in which Exchange systems price and execute certain types of odd-lot orders. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This filing is submitted to amend Exchange Rule 124 to change the way in which certain odd-lot orders[5] are priced and executed by Exchange systems. The Exchange proposes that buy and sell odd-lot market orders and odd-lot limit orders marketable upon receipt by Exchange systems (collectively referred to herein as ''marketable odd-lot orders'') be paired and executed at the price of the next round-lot transaction, with any imbalance of buy or sell marketable odd-lot orders executed at the price of the national best bid or offer (''NBBO'')[6] pursuant to specific conditions described herein; and under certain circumstances, that non-marketable odd-lot limit orders be executed at their limit price upon becoming marketable.

a. Current Execution of Odd-Lot Orders

Currently, odd-lot orders do not enter the Exchange's auction market but are executed systemically by Exchange systems designated solely for odd-lot orders (the ''odd-lot System'').[7] The odd-lot System executes all odd-lot orders against the specialist as the contra party. Odd-lot market orders are executed in time priority at the price of the next round-lot transaction.[8] Buy and sell odd-lot market orders are, in essence, netted against one another and executed; however, since the specialist is buying the same amount that he or she is selling, there is no economic consequence to the specialist in this type of pairing-off of orders. There is a volume limitation inherent in the execution of odd-lot market orders in that any imbalance of buy or sell odd-lot market orders are executed against the specialist, but only up to the size of the round-lot transaction.[9] Any odd-lot market orders that do not receive an execution because of the volume limitation are executed, in order of time priority, at the price of the next round-lot transaction.[10] An odd-lot market order that is not executed within 30 seconds is executed at the price of the national best bid or offer (''NBBO'').[11] There is no volume limitation for odd-lot market orders that receive an execution after 30 seconds have elapsed. Odd-lot market orders to sell short are executed at the price of the next round-lot transaction that follows the entry of the order that is higher than the last different last round-lot price (a ''plus tick'' or a ''zero plus tick''). There is no volume limitation for odd-lot market orders to sell short.

Odd-lot limit orders to buy or sell are executed at the price of the first round-lot transaction that is at or higher/lower than the limit price of the odd-lot limit order, subject to the volume limitation of the round-lot transaction.[12] Odd-lot limit orders are aggregated with odd-lot market orders for purposes of the volume limitation. Odd-lot limit orders eligible for execution are combined with odd-lot market orders in order to determine time priority. Odd-lot limit orders are similarly aggregated with odd-lot market orders for purposes of the netting provision. As with odd-lot market orders, odd-lot limit orders that would otherwise receive a partial execution will be executed in full. There is no 30-second default execution

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] Odd-lot orders are orders for a size less than the standard unit (round-lot) of trading, which is 100 shares for most stocks, although some stocks trade in 10 share units.

[6] The National best bid or offer is defined by Rule 600 (b)(42) of Regulation NMS under the Act (''Regulation NMS''), 17 CFR 242.600(b)(42).

[7] *See* Exchange Rule 124(a).

[8] *See* Exchange Rule 124(b)(i).

[9] *See* Exchange Rule 124(b)(i). *See also* Exchange Rule 124(b)(ii), which provides that any odd-lot market order that would otherwise receive a partial execution will be executed in full.

[10] *See* Exchange Rule 124(b)(iii).

[11] Exchange Rule 124(b)(iv) provides that any odd-lot market order that is not executed within 30 seconds shall be executed at the price of the ''adjusted ITS offer'' or ''adjusted ITS bid'', as those terms are defined in Exchange Rule 124.60, rather than the NBBO. However, with the elimination of the Intermarket Trading System (''ITS'') Plan on March 5, 2007, (*see* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (File No. 4–208)), the ability to price such odd-lot orders in terms of the ''adjusted ITS'' bid or offer no longer existed. The Exchange states that, as of March 5, 2007, all odd-lot market orders that remain unexecuted after 30 seconds have been executed at the price of the NBBO, which is in fact the functional equivalent of the adjusted bid or offer. Through this filing, the Exchange, among other things, seeks to remove the concept of ''adjusted ITS bid'' and ''adjusted ITS offer''.

[12] *See* Exchange Rule 124(c).

provision for odd-lot limit orders.[13] Odd-lot limit orders to sell short are executed at the price of the first round-lot transaction which is a plus or a zero plus tick.

The odd-lot portion of partial round-lot (''PRL'') orders [14] are executed at the same price as the round lot portion, and are processed through the odd-lot System with the specialist as the contra party. The PRL order is automatically executed in accordance with Exchange Rules 1000–1004. Where there is more than one transaction required to effect the complete execution of the round-lot portion of a PRL order, the odd-lot portion is executed at the price of the first transaction in which a round-lot portion of the PRL order is executed.

b. Representing Odd-Lot Orders in the Round-Lot Market

The Exchange has always believed that the most appropriate way to execute odd-lot orders is to represent them in the round-lot auction market where they would interact with all other market interest and be priced in accordance with supply and demand dynamics. However, such representation required technical changes to a number of Exchange systems and was not a readily viable option.[15] In view of this, the pricing methodology of Exchange Rule 124 was amended in 2004 (as is reflected in its current operation today, *i.e.*, using the next round-lot sale price) as an interim measure to accommodate the pricing and execution of odd-lot orders in a manner that was based on the prevailing market.[16]

The Exchange has continued its move towards the goal of integrating odd-lots into the round-lot market. The Exchange states that this proposal should be seen as part of the Exchange's efforts to prepare its membership for subsequent changes in market structure. The Exchange proposes to amend the pricing and execution methodology of Exchange Rule 124 to more precisely emulate executions in the round-lot market.

c. Proposed Change to Odd-Lot Trading Platform

Through this filing, the Exchange seeks to modify the execution of odd-lot orders such that: (i) Marketable odd-lot orders will begin automatic execution only following the first round-lot transaction in the subject security; (ii) marketable odd-lot buy and sell orders will be netted against one another and executed, in time priority of receipt, at the price of the next round-lot transaction on the Exchange; (iii) any imbalance of marketable odd-lot buy and sell orders incapable of being netted will be executed at the price of the NBBO; (iv) odd-lot limit orders that are not marketable upon receipt will be executed, upon becoming marketable, at their limit price subject to certain conditions; and (v) in certain instances as described below, odd-lot executions will be limited in size to the lesser of either the number of shares of the last round-lot transaction or the number of shares of the national best bid (in the case of an odd-lot order to sell) or the national best offer (in the case of an odd-lot order to buy). Moreover, the odd-lot portion of a PRL order will be executed only if the entire round-lot portion of the PRL order has completed execution.[17] The odd-lot portion of a PRL will be executed with and at the same price of the last round lot transaction that completes the round lot portion of the PRL. With respect to all the proposed modifications above, the specialist remains the contra side to all odd-lot executions. The pricing and execution of odd-lot orders are set forth in Exchange Rule 124.[18]

Section (a) of the rule remains unchanged. A new section (b) will be created to define the term ''marketable'' as it pertains to odd-lot limit orders. For the purposes of the rule, the term ''marketable'' when applied to an odd-lot limit order to buy shall mean at a price that is at or higher than the current Exchange best offer and when applied to an odd-lot limit order to sell shall mean at a price that is at or lower than the current Exchange best bid. The original section (b) of the rule, which governs the pricing and execution of odd-lot market orders, will be amended to become section (c).

Marketable Odd-Lot Orders—Proposed Section (c)

Proposed section (c) of the rule will govern the execution of marketable odd-lot orders, and provides that marketable odd-lot orders will begin automatic execution only after the first round-lot transaction on the Exchange in the subject security. If there is no initial round-lot transaction in the subject security, then no odd-lot orders will be executed in the trading session.[19] After the initial round-lot transaction in the subject security, marketable odd-lot orders will be executed in time priority upon receipt by the odd-lot System at the price of the next round-lot transaction in the subject security.

Subsection (b)(i) of the original rule text will be amended to become subsection (c)(i). Proposed subsection (c)(i) retains the netting provision of the original rule text, and provides that an equal number of shares of marketable buy and sell odd-lot orders will be paired-off against one another and executed at the price of the applicable round-lot transaction with the specialist as the contra side to the executions.

A new subsection (c)(ii) will be created to provide that marketable odd-lot orders that do not receive an execution pursuant to proposed subsection (c)(i) will be executed in time priority of receipt at the price of the NBBO with the specialist as the contra side to the executions. Subsection (b)(ii) of the original rule text will be amended to become subsection (c)(iii). Proposed subsection (c)(iii) modifies the volume limitation of the original rule text and provides that the number of shares of marketable odd-lot orders executed at the price of the NBBO [20] will not exceed the lesser of either (1) the number of shares in the last round-lot transaction, or (2) the number of shares available at the national bid (in the case of an odd-lot order to sell) or the national best offer (in the case of an odd-lot order to buy).[21] Proposed subsection (c)(iii) also provides that a marketable odd-lot order that would receive a partial execution as a consequence of the volume limitation will continue to be executed in full.

Subsection (b)(iii) of the original rule text, which explains the execution of odd-lot market orders that do not receive an execution because of the volume limitation, will be amended to

[13] *See* Exchange Rule 124(c), which states that execution of an odd-lot limit order is subject to the principles of paragraphs (b)(i), (ii) and (iii) of the rule.

[14] *See* Exchange Rule 124.50.

[15] *See* Securities Exchange Act No. 49536 (April 7, 2004), 69 FR 19890, 19893 (April 14, 2004) (SR–NYSE–2003–37).

[16] *See* Securities Exchange Act No. 49745 (May 20, 2004), 69 FR 29998 (May 26, 2004) (SR–NYSE–2003–37).

[17] Telephone conversation between Gillian Rowe, Principal Rule Counsel, NYSE, and Jennifer Dodd, Special Counsel, Division of Market Regulation, Commission, on September 24, 2007.

[18] The Exchange has provided examples of the operation of the most relevant aspects of this proposed rule change. These examples are available on the Commission's Web site at *http://www.sec.gov/rules/sro/nyse.shtml*.

[19] It should be noted that execution of odd-lot orders after a trading halt will be governed by proposed subsection (c)(vii) and executions on the close will be governed by proposed subsection (c)(viii), as described more fully below.

[20] Non-marketable odd-lot limit orders that become marketable and do not receive an execution pursuant to subsection (c)(i) will be executed pursuant to (c)(ii) and (c)(iii) at their limit price.

[21] In determining the size of the volume limitation described in proposed subsection (c)(iii), the Exchange will only consider the size of displayed ''protected bids'' and ''protected offers'' as defined by Rule 600(b)(57) of Regulation NMS, 17 CFR 242.600(b)(57).

become subsection (c)(iv). The purpose of this subsection is to make clear that the procedure of proposed subsection (c)(i), (ii) and (iii) will repeat itself after each round-lot transaction on the Exchange. Since the same principle also applies to the operation of the 30-second timing provision described in proposed subsection (c)(v), the Exchange has further amended this subsection to include a reference to subsection (c)(v). Accordingly, proposed subsection (c)(iv) provides that marketable odd-lot orders that do not receive an execution pursuant to subsections (c)(i), (ii), (iii) and (v), will be executed, in time priority of receipt, following subsequent round-lot transactions on the Exchange subject to the same procedures of proposed subsections (c)(i), (ii), (iii) and (v).

Subsection (b)(iv) of the original rule text, which governs the handling of odd-lot market orders that do not receive an execution after the next round lot transaction within 30 seconds of receipt, will be amended to become subsection (c)(v). Proposed subsection (c)(v) provides that marketable odd-lot orders that do not receive an execution within 30 seconds of receipt by the System will be executed, after 30 seconds, in time priority of receipt, at the price of the national best bid (in the case of an order to sell) or at the price of the national best offer (in the case of an order to buy) at the time of the execution, subject to the volume restrictions in subsection (c)(iii). The practical effect of this timing provision is that, starting with the initial round-lot transaction on the Exchange in the subject security, the operation of proposed subsection (c)(v) will repeat itself every 30 seconds, providing for the execution of marketable odd-lots at the price of the NBBO and the execution of non-marketable odd-lot limit orders that have become marketable at their limit price.

Subsection (b)(v) of the original rule text, which explains the handling of odd-lot market orders entered prior to the opening in the subject security, will be changed to become subsection (c)(vi). Proposed subsection (c)(vi) of the rule states that marketable odd-lot orders entered before the opening transaction of the subject security will be executed at the price of the opening transaction. The volume limitation of proposed subsection (c)(iii) will not apply to the opening transaction in the subject security.

A new subsection enumerated as (c)(vii) will be added to the rule text. Proposed subsection (c)(vii) provides that, in the event the Exchange halts trading in a subject security, marketable odd-lot orders that have been received by Exchange systems during the trading halt shall be executed at the price of the re-opening transaction in the subject security. The volume limitation of proposed subsection (c)(iii) will not apply to any re-opening transaction in the subject security.

Subsection (b)(vi) of the original rule text, which explains the handling of odd-lot market orders entered prior to the close of trading, will be changed to become subsection (c)(viii). Proposed subsection (c)(viii) describes the pricing of marketable odd-lot orders at the close of trading; however, it also governs the pricing and execution of non-marketable odd-lot limit orders that become marketable but remain unexecuted prior to the close of trading. The pricing and execution of non-marketable odd-lot limit orders is specifically described in proposed section (d) of the rule text.[22]

Proposed subsection (c)(viii) states that Marketable Odd-lot Orders at the Close will be executed, in time priority of receipt, at the price of the closing transaction. This subsection includes a netting provision (*i.e.*, the execution of Marketable Odd-lot Orders at the Close will total an equal number of shares bought and sold). After such netting has occurred, any additional shares of Marketable Odd-lot Orders at the Close that remain will be executed subject to the volume limitation. The volume limitation of proposed subsection (c)(viii) is related specifically to the size of the closing transaction (*i.e.*, the execution of additional shares of Marketable Odd-lot Orders at the Close will not exceed the number of shares of the closing transaction). Proposed subsection (c)(viii) also provides that Marketable Odd-lot Orders at the Close that would otherwise receive a partial execution will be executed in full.

Subsection (b)(vii) of the original rule text, which governs the execution of odd-lot market orders to sell short, will be removed entirely as it is no longer necessary in light of the Commission's elimination of restrictions on the execution prices of short sales under the Act and prohibition of self-regulatory organizations from having a short sale price test.[23]

Non-Marketable Odd-Lot Limit Orders—Proposed Section (d)

Section (c) of the original rule text governs the operation of odd-lot limit orders. In this filing, the Exchange proposes to amend section (c) to become section (d). Proposed section (d) will govern the execution of odd-lot limit orders that are not marketable upon receipt by the odd-lot System. Pursuant to proposed section (d), non-marketable odd-lot limit orders shall, upon becoming marketable, be executed in time priority of receipt at the price of subsequent round-lot transactions on the Exchange in the subject security based on the conditions of proposed subsections (c)(i)–(v), except that when an odd-lot execution occurs pursuant to subsections (c)(ii) or (v), such odd-lot limit order will be executed *at its limit price.* Thus, a non-marketable odd-lot limit order that becomes marketable is eligible to be netted and executed at the price of the next round-lot transaction pursuant to proposed subsection (c)(i). If this odd-lot limit order does not receive an execution then, pursuant to proposed subsection (c)(ii), the odd-lot limit order is eligible to be executed, *at its limit price,* subject to the volume limitation of proposed subsection (c)(iii) and the provisions of subsections (c)(iv) and (c)(v).[24] With respect to proposed subsection (c)(v), which explains the operation of the 30-second timing provision, if this odd-lot limit order remains unexecuted within 30 seconds, it will receive an execution after 30 seconds *at its limit price,* in accordance with proposed section (d). As previously discussed in this filing, proposed section (d) includes a second exception which provides that non-marketable odd-lot limit orders that become marketable, but remain unexecuted prior to the close of trading will be executed at the price of the closing transaction, subject to the specific principals of proposed subsection (c)(viii), which governs the execution of odd-lots at the close of trading.

Odd-Lot Market Orders To Sell Short

Section (d) of the original rule text governs the operation of odd-lot limit orders to sell short and will be removed entirely pursuant to the Commission's elimination of the short sale price test.[25]

[22] In order to avoid confusion with respect to the description of how odd-lot orders are handled at the close, the Exchange collectively refers to marketable odd-lot orders and non-marketable odd-lot limit orders that have become marketable prior to the close of trading as ''Marketable Odd-lot Orders at the Close'' in its discussion below of the execution and pricing of odd-lot orders at the close of trading.

[23] *See* Securities Exchange Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

[24] Proposed subsection (c)(iv) explains how a non-marketable odd-lot limit order that has become eligible for execution will be executed if it does not receive an execution because of the volume limitation.

[25] See footnote 23, supra.

Odd-Lot Stop Orders—Section (e)

Section (e) of Exchange Rule 124 delineates the operation of odd-lot market stop orders. While the lettering of this section remains the same, this filing proposes to amend section (e) by removing term ''market'' from the description of the order type. Section (e) of the rule will retain the use of a round-lot transaction as a trigger to convert each type of odd-lot stop order delineated in section (e) into a market order. A new subsection (e)(i) will be added to indicate that stop orders entered prior to the opening which would be elected by the opening transaction will be executed at the price of the opening transaction.

Subsections (e)(i) (Buy Stop Orders) and (e)(ii) (Sell Stop Orders, Marked ''Long'') of the original rule text will be amended to become subsection (e)(ii) and subsection (e)(iii), respectively. Pursuant to proposed subsections (e)(ii) and (e)(iii), once a buy stop order or a sell stop order is elected at its stop price and becomes a market order, it shall be filled, subject to all the provisions of proposed section (c) of the rule. In other words, once these orders are elected and become market orders they are priced and executed as any other marketable odd-lot order. References to the phrase ''marked 'Long''' will be removed from proposed subsection (e)(iii) since the Commission's elimination of the short sale price test renders such distinctions between stop orders marked ''short'' and ''long'' unnecessary.

Subsection (e)(iii) of the original rule text (Sell Stop Orders, Marked ''Short'') will be removed entirely pursuant to the Commission's elimination of the short sale price test.[26]

Other Types of Odd-Lot Orders—Proposed Section (g)

The lettering of section (h) (Other Types of Orders) of the rule will be amended in this filing to become section (g). Proposed subsection (g)(2) (Sell ''On Close'') will be amended to remove the phrase ''marked 'Long''' and the sentence ''[a]n order to sell ''On Close'' marked ''short'' shall not be accepted'' in order to conform with the elimination of the short sale price test by the Commission.[27] The phrase ''closing round-lot 'sell''' found in proposed subsection (g)(2) will be changed to the phrase ''closing round-lot 'sale''' in order to clarify the sentence.

PRL Orders

The execution of PRL orders is discussed in section .50 of the Supplementary Material of the rule. The Exchange proposes to amend section .50 of the Supplementary Material to reflect that, where more than one round lot transaction is required to effect the complete execution of the round-lot portion of a PRL, the odd lot portion will receive an execution *only* if the *entire* round lot portion of the order as received by the Exchange is executed. Moreover, the odd lot portion will then be executed at the same price as the *last* round lot transaction that is needed to complete the entire round-lot portion of the PRL.

Conforming Changes to Exchange Rule 124

The Exchange further proposes to make conforming changes to other sections of Exchange Rule 124. The lettering of the original section (g) (Limited Order, ''With or Without Sale'') of Exchange Rule 124 will be changed to section (f).[28] Section .60 of the Supplementary Material of the rule, which defines the term ''adjusted ITS bid/offer'' for the purposes of the rule, will be removed in its entirety to conform with the elimination of ITS.

Section .70 of the Supplementary Material of the original rule text will be re-numbered to become section .60. Proposed section .60, which explains the handling of odd-lot market orders in instances when quotation collection or dissemination facilities are inoperable or the market in a security is in a ''non-firm'' mode, will be amended to reflect that marketable odd-lot orders will resume execution once quotation information is available, at a price that is in accordance with all the provisions of proposed section (c) of the rule.

Finally, section .80 of the Supplementary Material of the original rule text will be re-numbered to become section .70. Proposed section .70 of the Supplementary Material will be amended to reflect that the execution of odd-lot orders will be suspended and resume trading pursuant to Exchange Rule 1000, paragraph (a), subsections (i)–(v). References to Exchange Rules 1002, 1003 and 1004 will be removed because they do not specifically pertain to the suspension of automatic executions.

The Exchange believes that the aforementioned proposed modifications to the odd-lot System will further the efficient execution of customer odd-lot orders while ensuring that the odd-lot orders are appropriately executed without an unfair time priority or price advantage over round-lot orders.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[29] in general, and with Section 6(b)(5) of the Act,[30] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange also states that the proposed rule change also is designed to support the principles of Section 11A(a)(1)[31] in that it seeks to assure economically efficient execution of securities transactions, make it practicable for brokers to execute investors' orders in the best market and provide an opportunity for investors' orders to be executed without the participation of a dealer.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that does not (1) significantly affect the protection of investors of the public interest, (2) impose any significant burden on competition, and (3) have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[32] and Rule 19b–4(f)(5) thereunder.[33]

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

[26] *Id.*

[27] *Id.*

[28] The original section (f) of Exchange Rule 124 (''Limit Stop Orders'') was removed in a previous rule filing and the lettering of the remainder of the rule was not revised at that time. *See* Securities Exchange Act Release No. 54820 (November 27, 2006), 71 FR 70824 (December 6, 2006) (SR–NYSE–2006–65).

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78k–1(a)(1).

[32] 15 U.S.C. 78s(b)(3)(A)(iii).

[33] 17 CFR 240.19b–4(f)(5).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2007–82 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–82. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–82 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19488 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56554; File No. SR–NYSE–2007–84]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NYSE Rule 104.10(6) (Dealings With Specialists)

September 27, 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 September 25, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the NYSE. The NYSE has designated the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing to extend for three (3) months the current pilot related to specialist stabilization requirements operating pursuant to NYSE Rule 104.10(6) (Specialist Transactions in Active Securities that Establish or Increase the Specialist's Position) (''Stabilization Pilot''),[5] that is scheduled to terminate on September 30, 2007. The text of the proposed rule change is available on NYSE's Web site at *http://www.nyse.com*, at NYSE's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to extend the operation of the Stabilization Pilot pursuant to NYSE Rule 104.10(6) from September 30, 2007 to the earlier of December 31, 2007 or such time as the Commission approves a proposal by the Exchange to modify the current Pilot.[6]

a. Stabilization Pilot

On December 1, 2006, the Commission approved changes to NYSE Rules 104.10(5) and 104.10(6) governing specialist stabilization requirements.[7] The amendments to the Rule moved away from defining stabilization in terms of the last sale to focus on market conditions, the type of trade in question and the specialist's existing position. The amendments to NYSE Rule 104.10(6) govern Conditional Transactions (as defined below) in active securities (''Stabilization Pilot'').[8]

Pursuant to the Stabilization Pilot, specialists can trade in active securities that establish or increase a position by reaching across the market to trade in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54860 (December 1, 2006), 71 FR 71221 (December 8, 2006) (SR–NYSE 2006–76).

[6] On September 14, 2007, the Exchange filed SR–NYSE–2007–83 in order to amend NYSE Rule 104.10 to (i) extend the duration of the Stabilization Pilot to March 31, 2008; (ii) remove the ''active securities'' limitation on Conditional Transactions that establish or increase a specialist's position and reach across the market to transact with the Exchange's published quote; and (iii) make certain conforming changes to NYSE Rule 104.10(5). *See* Securities Exchange Act Release No. 56455 (September 18, 2007), 72 FR 54499 (September 25, 2007) (SR–NYSE–2007–83).

[7] *See* Securities Exchange Act Release No. 54860, *supra* note 5.

[8] ''Active'' securities are: (a) securities comprising the S&P 500® Stock Index; (b) securities trading on the Exchange during the first five trading days following their initial public offering of such securities; and (c) securities that have been designated as ''active'' by a Floor Official subject to the provisions of the Rule.

the Exchange published bid (in the case of a specialist's sale) or offer (in the case of a specialist's purchase) when such bid (offer) is priced below (above) the last differently priced published bid (offer) (''Conditional Transaction''). A specialist is allowed to execute Conditional Transactions without restriction as to price provided the specialist follows said transaction with an appropriate transaction on the opposite side of the market commensurate with the size of the specialist's transaction, which is referred to as ''appropriate re-entry.''[9]

The Exchange states that the Stabilization Pilot provides the specialist with the ability to effect transactions for its dealer account to provide support to the Hybrid Market. The Exchange believes that the specialists have a greater ability to position themselves to provide more liquidity against market trend and thus moderate volatility. The Exchange, therefore, requests that the Stabilization Pilot be extended for three (3) months to continue to afford specialists this needed flexibility to continue their adaptation to the new challenges of the Hybrid Market.

The Exchange believes that extension of the Stabilization Pilot will continue to allow specialists to effectively manage their inventory in order to provide liquidity during times of market volatility. As such, the Exchange requests that the Commission extend the Stabilization Pilot to December 31, 2007, or such earlier time that the Commission approves the expansion of the Stabilization Pilot as discussed above.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirement under Section 6(b)(5)[10] of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange also believes that the proposed rule change also is designed to support the principles of Section 11A(a)(1)[11] in that it seeks to assure economically efficient execution of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6) thereunder.[13] As required under Rule 19b–4(f)(6)(iii),[14] the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE requests that the Commission waive the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii), which would make the rule change effective and operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the Stabilization Pilot to continue without interruption through the earlier of (i) December 30, 2007 or (ii) when the Commission acts on a corresponding proposed rule change,[15] and provide the Exchange and the Commission additional time to evaluate the pilot.[16] Accordingly, the Commission designates that the proposed rule change effective and operative upon filing with the Commission.

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–84 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–84. 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

[9] ''Appropriate re-entry'' for Conditional Transactions shall mean the specialist's stabilization obligation to re-enter a transaction on the opposite side of the market at or before the price participation point (''PPP''). The PPP is an Exchange-issued minimum guideline that identifies the price at or before which a specialist is expected to re-enter the market after effecting a Conditional Transaction. PPPs are only minimum guidelines and compliance with them does not guarantee a specialist is meeting his or her obligation.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See* Securities Exchange Act Release No. 56455, *supra* note 6.

[16] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–84 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19490 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56556; File No. SR–NYSE–2007–86]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Moratorium on the Qualification and Registration of New Registered Competitive Market Makers and New Competitive Traders, Governed by Rules 107A and 110, Respectively, for an Additional Three Months

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 27, 2007, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to extend for three months the moratorium related to the qualification and registration of Registered Competitive Market Makers (''RCMMs'') pursuant to Exchange Rule 107A and Competitive Traders (''CTs'') pursuant to Exchange Rule 110. The text of the proposed rule change is available on the NYSE's Web site (*http://www.nyse.com*), at the NYSE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend for three months the current moratorium related to the qualification and registration of RCMMs pursuant to Exchange Rule 107A and CTs pursuant to Exchange Rule 110.

On September 22, 2005, the Exchange filed SR–NYSE–2005–63[3] with the Commission proposing to implement a moratorium on the qualification and registration of new RCMMs and CTs (''Moratorium''). The purpose of the Moratorium was to allow the Exchange an opportunity to review the viability of RCMMs and CTs in the NYSE HYBRID MARKET℠ (''Hybrid Market'').[4]

The phased-in implementation of the Hybrid Market required the Exchange to extend the Moratorium an additional three times over the next fifteen (15) months.[5] During each phase of the Hybrid Market, new system functionality was included in the operation of Exchange systems and new data was generated. As a result, the Exchange was unable to make an informed decision as to the viability of RCMMs and CTs in the Hybrid Market.

The Exchange continued to review the data related to RCMMs and CTs generated during the phasing-in of the Hybrid Market. Based on its review, the Exchange believes that it now has the requisite data to decide what roles, if any, RCMMs and CTs should perform in the current Hybrid Market.

The Exchange now proposes to extend the Moratorium, as amended,[6] for an additional three months to December 31, 2007 in order to finalize its determination as to the roles of RCMMs and CTs in the Exchange's Hybrid Market and to formally submit a proposal to the Commission outlining these roles.

The Exchange will issue an Information Memo announcing the extension of the Moratorium.

2. Statutory Basis

The basis under the Act[7] for this proposed rule change is the requirement under Section 6(b)(5)[8] that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any

[3] *See* Securities Exchange Act Release No. 52648 (October 21, 2005), 70 FR 62155 (October 28, 2005) (SR–NYSE–2005–63).

[4] *See* Securities Exchange Act Release No. 53539 (March 22, 2006), 71 FR 16353 (March 31, 2006) (SR–NYSE–2004–05) (establishing the Hybrid Market).

[5] *See* Securities Exchange Act Release Nos. 54140 (July 13, 2006), 71 FR 41491 (July 21, 2006) (SR–NYSE–2006–48); 54985 (December 21, 2006), 72 FR 171 (January 3, 2007) (SR–NYSE–2006–113); and 55992 (June 29, 2007), 72 FR 37289 (July 9, 2007) (SR–NYSE–2007–57).

[6] *See* Securities Exchange Act Release No.53549 (2006), 71 FR 16388 (March 31, 2006) (SR–NYSE–2006–11) (making certain amendments to the Moratorium).

[7] 15 U.S.C. 78a.

[8] 15 U.S.C. 78f(b)(5).

significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[11] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The NYSE has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the moratorium to continue without interruption so that the Exchange may have additional time to make a final determination as to the future roles of RCMMs and CTs in the Hybrid Market, if any, and to file with the Commission a proposed rule change outlining such roles. For these reasons, the Commission designates that the proposed rule change become operative immediately.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2007–86 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2007–86. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2007–86 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19537 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the five-day pre-filing requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56568; File No. SR–NYSEArca–2007–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval to a Proposed Rule Change Relating to an Extension and Expansion of the Penny Pilot Program

September 27, 2007.

I. Introduction

On August 16, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend and expand a pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on August 24, 2007.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

Currently, the six options exchanges, including NYSE Arca, participate in the thirteen class Pilot Program,[5] which is scheduled to expire on September 27, 2007.[6] The Exchange proposes to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56280 (August 17, 2007), 72 FR 48717.

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter'').

[5] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[6] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56150 (July 26, 2007), 72 FR 42460 (August 2, 2007) (SR–NYSEArca–2007–56). *See also* Securities Exchange Act Release No. 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73) (''Original Pilot Program Approval Order'').

(SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[7]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[8]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, NYSE Arca commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

[7] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[8] The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[11] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[12] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[13] The exchanges have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by NYSE Arca will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. NYSE Arca has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[14] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[15] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that NYSE Arca's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

[12] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[13] *See* Securities Exchange Act Release Nos. 55156 (January 23, 2007), 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007) (SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); and 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74). As noted above, *supra* note 6 and accompanying text, the current Pilot is scheduled to expire on September 27, 2007.

[14] *See* NYSE Arca Options, Understanding Economic and Capacity Impacts of the Penny Pilot, May 31, 2007 (''NYSE Arca Report''). See also Amex, Penny Quoting Pilot Program Report, June 8, 2007 (''Amex Report''); Box, Penny Pilot Data Review, June 18, 2007 (''Box Report''); CBOE, Penny Pilot Report, June 1, 2007 (''CBOE Report''); ISE, Penny Pilot Analysis, May 23, 2007 (''ISE Report''); and Phlx, Options Penny Pricing Pilot Report, May 31, 2007 (''Phlx Report'').

[15] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex–2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

timely receipt of quote information. The Commission also notes that NYSE Arca has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[16]

Overall trading activity in the options markets is very concentrated, with a relatively few options classes accounting for a significant share of total options volume. NYSE Arca's proposal, which will expand the Pilot to include a limited number of options from among the most actively-traded classes (based on average trading volume), will provide an opportunity for reduced spreads where the greatest amount of trading occurs, thus maximizing the economic benefit of the Pilot while minimizing the impact of increased quote traffic.

The commenter suggests that relative trading volume is the measure that should be used to assess the success of quoting in smaller increments.[17] The commenter reported the percentage change in the relative trading volume before and after the Pilot for each of the thirteen classes.[18] The commenter's data shows an increase in relative trading volume for QQQQ, IWM, SHM, AMD, and SUNW, and a decrease in relative trading volume for MSFT, INTC, GE, TXN, A, CAT, WFMI and FLEX. The commenter believes the data shows that the Pilot works well for index and sector products, but smaller increments caused a decline in the relative trading volume for single stock options. The commenter argues that much of the decrease in relative trading volume in Pilot classes is a symptom of the decrease in displayed size available for those classes. On the basis of a decline in the relative trading volume, the commenter argues that single stock option classes should be removed from the Pilot and replaced with liquid index or sector option classes.

Much of the recent growth in options volume has been in the large index and ETF products, such as the SPX, SPY, and the QQQQ. As their relative trading volume increases, the aggregate relative trading volume of other products necessarily declines (although actual volume levels may increase). For example, the SPX, SPY, QQQQ, and IWM accounted for 16.1% of total options volume in the four months before the pilot and rose to 21.7% of volume in the five months after the pilot.[19] By definition, the relative trading volume of all other classes (Pilot and non-Pilot) falls from 83.9% in the pre-Pilot period to 78.3% in the post-Pilot period. Using the commenter's numerical approach, the relative market share of SPX, SPY, QQQ, and IWM increased by 34.8% ((21.7%/16.1%) − 1). In contrast, the relative trading volume of *all* other classes fell by 6.7% (78.3/83.9%) − 1) in the post-Pilot period compared to the pre-Pilot period. Thus, in addition to the random variation in market shares that occur over time, there was an overall decline in the relative trading volume of issues outside the four largest index and ETF options although their actual aggregate volume levels increased.

More specifically, for the 100 and 500 most active classes,[20] relative trading volume fell for 63% and 56%, respectively, of non-Pilot classes. In the Pilot classes, seven, or 54%, of the thirteen Pilot classes had a decline in market share and seven, or 70%, of the ten single stock option classes had a decline in relative trading volume.[21]

The Commission does not believe that the data at this time supports the conclusion that a decrease in relative trading volume in the Pilot classes is due to a reduction of the minimum quoting variation. In fact, the data demonstrates that declines in relative trading volume were not limited to stocks included in the Pilot, and substantial declines in relative trading volume, as defined by the commenter, describe a large portion of classes that were not in the Pilot. Therefore, based on the data reviewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities. Therefore, the Commission believes that NYSE Arca's proposal to select additional classes from among the most actively-traded options has a reasonable basis and is consistent with the Act.[22]

The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[23] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot. The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[24] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect NYSE Arca to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market

[16] *See* Securities Exchange Act Release No. 56157 (July 27, 2007), 72 FR 42459 (August 2, 2007) (SR–NYSEArca–2007–71). Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

[17] *See* Citadel Letter, *supra* note 4.

[18] The commenter measures the relative trading volume of a class as that class' trading volume as a percentage of total OCC volume. The change in relative trading volume is the relative trading volume from date of entrance into the Pilot to August 27, 2007 divided by the relative trading volume from November 1, 2006 through entrance in the Pilot.

[19] The pre-Pilot period consists of the four months before the Pilot commenced (October 1–January 25, 2007) and the post-Pilot period consists of the five months after the Pilot commenced (February 9, 2007–June 30, 2007). The two week period when the Pilot classes were introduced are excluded from the analysis.

[20] All of the thirteen Pilot classes fall into the 500 most actively-traded, and nine are within the 100 most actively-traded group.

[21] The change in relative trading volume for the median stock for the top 500 (100) classes is −8% (−13%), compared to a change of −3% for the thirteen Pilot stocks and a change of −24% for the ten single stock options. The Commission notes that, with a Pilot sample size of thirteen or ten, these statistics will be highly sensitive to the performance of one or two classes.

[22] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA OIH, XLF, and XLE—are among classes proposed by NYSE Arca to be included in the Pilot Program beginning September 28, 2007.

[23] *See* Amex Report, *supra* note 14, at 6–7; CBOE Report, *supra* note 14, Attachment at pages 5–6; ISE Report, *supra* note 14, at 17–20; and NYSE Arca Report, *supra* note 14, at 15.

[24] *See* Amex Report, *supra* note 14, at 6; BOX Report, *supra* note 14, at 2; CBOE Report, *supra* note 14, at Attachment page 2; ISE Report, *supra* note 14, at 7–8; NYSE Arca Report, *supra* note 14, at 9–10; and Phlx Report, *supra* note 14, at 3–4 and 6–7.

participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[25] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[26] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[27] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of NYSE Arca's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2007–88) be, and hereby is, approved on a pilot basis, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19498 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[25] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 14, and ISE Report, *supra* note 14, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 14, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 14, at 8.

[26] The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx.* The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[27] *See supra,* note 22.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56545; File No. SR–NYSEArca–2007–95]

Self-Regulatory Organizations; NYSEArca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rules 7.34 and 7.35

September 27, 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 September 17, 2007, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary, NYSE Arca Equities, Inc. (''NYSE Arca Equities'' or ''Corporation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has designated this proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes, among other minor changes, to amend NYSE Arca Equities Rule 7.35 in order to reduce the Opening, Market Order, and Closing auction lock-out period to one minute. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has substantially prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.35 in order to reduce the Opening, Market Order, and Closing Auction lock-out periods to one minute.[5] The Exchange believes that compressing the lock-out periods will offer its Users[6] greater order entry or cancellation flexibility and more informed market participation by allowing its Users to benefit from the dissemination of auction related information for an additional minute prior to the lock-out periods.

Opening Auction

Pursuant to NYSE Arca Rule 7.35(a)(4), Users are currently prevented from cancelling orders that are eligible

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] NYSE Arca Equities Rule 7.34(a) provides for three equities trading sessions on the Exchange: The Opening Session (4 a.m. to 9:30 a.m. Eastern Time (''E.T.'')), the Core Trading Session (9:30 a.m. to 4 p.m. E.T.), and the Late Trading Session (4 p.m. to 8 p.m. E.T.).

[6] *See* NYSE Arca Rule 1.1(yy) for the definition of ''User.''

for the Opening Auction in the last two minutes prior to the Opening Session until the conclusion of the Opening Auction. The Exchange proposes to reduce this freeze or lock-out period to one minute.

Market Order Auction

Pursuant to NYSE Arca Rule 7.35(c)(2), Users are also currently prevented from entering certain orders for the final two minutes before the Opening Auction and the Start of the Exchange's Core Trading Session. Specifically, Market Orders and Auction-Only Limit Orders may not be entered on the same side as the imbalance between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction. Also, Limited Price Orders not eligible for the Opening Session, Market Orders, Auction-Only Limit Orders, and Cleanup Orders may not be cancelled between 6:28 a.m. (Pacific Time) and the conclusion of the Market Order Auction. The Exchange proposes herein to amend NYSE Arca Rule 7.35(c)(2)(A)(1)(iii) and NYSE Arca Rules 7.35(c)(2)(A)(2) & (3) to compress these freeze or lock-out periods to one minute. In addition, the Exchange proposes to amend NYSE Arca Rules 7.35(d)(1) & (2) in order to compress the lock-out periods governing the execution eligibility of Limit Price Orders and Market Orders entered before the Market Order Auction to one minute, from 6:28 a.m. (Pacific Time) to 6:29 a.m. (Pacific Time). Similarly, the Exchange proposes amending Rule 7.34(d)(1)(H) to permit Limit Price Orders designated for the Core Trading Session, entered for an additional minute up until 6:29 a.m. (Pacific Time) (instead of 6:28 a.m. Pacific Time), to participate in the Market Order Auction.

Closing Auction

Further, according to NYSE Arca Rule 7.35(e)(2)(B), Market-on-Close Orders and Limit-on-Close Orders may not be cancelled between 12:58 p.m. (Pacific Time) and the conclusion of the Closing Auction. In addition, according to NYSE Arca Rule 7.35(e)(2)(C), Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the imbalance between 12:58 p.m. (Pacific Time) and the conclusion of the Closing Auction. The Exchange proposes to compress the lock-out periods for either entering or cancelling certain orders preceding the Closing Auction, as described above, from two minutes to one minute.

Exchange Traded Funds

The Closing Auction for Exchange Traded Funds (''ETFs'') commences at 1:15 p.m. (Pacific Time). Pursuant to NYSE Arca Rule 7.35(e)(3)(E), Closing Auctions for ETFs follow the same two-minute freeze or lock-out limitations described above. Specifically, Market-on-Close Orders and Limit-on-Close Orders may not be cancelled, and Market-on-Close Orders and Limit-on-Close Orders may not be entered on the same side as the imbalance between 1:13 p.m. (Pacific Time) and the conclusion of the Closing Auction.[7] Consistent with the above described rule change pertaining to Closing Auctions, the Exchange proposes reducing this lock-out period to one minute.

By compressing the lock-out periods to one minute as described above, Users will benefit from the dissemination of auction related information for an additional minute resulting in greater order entry or cancellation flexibility and more informed market participation. The Exchange intends this system change to be effective on filing and operative on September 17, 2007.

2. Statutory Basis

The Exchange 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)(5) of the Act[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[7] Pursuant to telephone conversation between Hong-Anh Tran, Special Counsel, Division of Market Regulation, and Andrew Stevens, Assistant General Counsel, Exchange, dated September 19, 2007.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change effects a change in an existing order-entry or trading system of a self-regulatory organization that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system, it has become effective pursuant to Section 19(b)(3)(A)[10] of the Act and Rule 19b–4(f)(5)[11] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2007–95 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2007–95. 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

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(5).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2007–95 and should be submitted on or before October 24, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19535 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56541; File No. SR–Phlx–2007–63]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Relating to Short Interest Reporting

September 26, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on August 16, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), and on September 20, 2007 amended, the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Section 19(b)(1) of the Act[3] and Rule 19b–4 thereunder,[4] proposes to make a technical amendment to the text of Phlx Rule 786, Supplementary Material .01, changing the reference to Rule 200 of Regulation SHO to Rule 200(a) of Regulation SHO. In addition, Phlx proposes to add a new Supplementary Material section to Rule 786 to amend the exceptions to the short interest reporting requirement for certain transactions.

The text of the amended Phlx Rule is set forth below. Underlining indicates additions; brackets indicate deletions.

* * * * *

Rule 786.

Periodic Reports

Member organizations shall submit, as required by the Exchange, periodic reports with respect to short positions in securities.

Supplementary Material: * * *

.01 Short Positions—Member organizations for which the Exchange is the designated examining authority (''DEA'') are required to report short positions, including odd-lots, in each stock or warrant traded on the Exchange, and in each other stock or warrant not traded on the Exchange for which short positions are not otherwise reported to another United States securities exchange or association, using such automated format and methods as prescribed by the Exchange. Such reports must include customer and proprietary positions and must be made at such times and covering such time period as may be designated by the Exchange. Member organizations whose short positions have properly been reported to, and are carried by, a non-member clearing organization will be in compliance with this rule if adequate arrangements have been made providing for the clearing organization to properly report such positions to the Exchange or to another United States securities exchange or association.

• ''Short'' positions to be reported are those resulting from ''short'' sales as defined in Securities and Exchange Commission Rule 200*(a)* of Regulation SHO, but excluding sales *that meet an exception in .02 below*[marked ''sell short exempt'' pursuant to Rule 200(g) of Regulation SHO]. Also, to be excluded are ''short'' positions carried for other members and member organizations reporting for themselves.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

Only one report should be made for each stock or warrant *for* which there is a short position, if more than one ''account'' has a short position in the same stock or warrant, the combined aggregate should be reported.

Member organizations for which the Exchange is not the DEA must report short positions to its DEA if such DEA has a requirement for such reports. If the DEA does not have such a reporting requirement, then such member organization must comply with the provisions of this rule.

.02 Exceptions

(a) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense.

(b) Any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security.

(c) Any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profitting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(d) Any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profitting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately.

(e) Any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to conform Phlx Rule 786 to other proposed rule changes that other self-regulatory organizations (''SROs'') have filed and will soon file that will implement uniform changes to the short interest reporting requirements across SROs. The purpose of this Amendment No. 1, which replaces the original proposed rule change in its entirety, is to make clarifying changes to the original proposed rule change.

First, Phlx proposes to make a technical change to the text of Phlx Rule 786, Supplementary Material .01. Phlx Rule 786, Supplementary Material .01 provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term ''short sale'' is actually defined in Rule 200(a) of Regulation SHO.[5] Therefore, Phlx is proposing to amend the text of Phlx Rule 786, Supplementary Material .01 to reference Rule 200(a) of Regulation SHO, not Rule 200 of Regulation SHO to eliminate any confusion.

Second, Phlx proposes to add Supplementary Material .02, and conforming language in Supplementary Material .01, which adopts exceptions to the short interest reporting requirement. Currently, any transaction that is marked ''sell short exempt'' is exempt from the reporting requirement. Beginning on July 6, 2007, the ''short exempt'' marking requirement was eliminated by the Commission.[6] Therefore, beginning on July 6, 2007, all transactions marked short will be covered by Phlx's reporting requirement. However, other SROs are modifying their short interest reporting rules to exclude five specific transactions, which were previously contained in the now eliminated Rule 10a–1 under the Act.[7] The proposed change should conform Phlx's reporting requirement to those of other SROs and increase uniformity for broker-dealers as they comply with various rules across SROs, which should reduce costs and increase efficiency for those broker-dealers.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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 Phlx consents, the Commission shall: (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–Phlx–2007–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2007–63. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2007–63 and should be submitted on or before October 24, 2007.

[5] 17 CFR 242.200(a).

[6] *See* Securities Exchange Act Release No. 55970 (June 28, 2007), 72 FR 36348 (July 3, 2007).

[7] *See, e.g.*, Securities Exchange Act Release No. 56300 (August 22, 2007) (NYSEArca–2007–63), 72 FR 49342 (August 28, 2007).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19487 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56563; File No. SR–Phlx–2007–62]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to a Proposed Rule Change Relating to the Extension and Expansion of a Pilot Program To Quote Certain Option Series in Increments of $0.01

September 27, 2007.

I. Introduction

On August 17, 2007, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to extend and expand a pilot program to quote certain options in smaller increments (''Pilot Program'' or ''Pilot''). The proposed rule change was published for comment in the **Federal Register** on August 24, 2007.[3] The Commission received one comment letter on the proposed rule change.[4] This order approves the proposed rule change.

II. Description of the Proposal

Currently, the six options exchanges, including the Phlx, participate in the thirteen class Pilot Program,[5] which is scheduled to expire on September 27, 2007.[6] The Exchange proposes to extend and expand the Pilot Program to include fifty additional classes, in two phases.

Phase One will begin on September 28, 2007 and will continue for six months, until March 27, 2008. Phase One will add the following twenty-two options classes to the Pilot: SPDRs (SPY); Apple, Inc. (AAPL); Altria Group Inc. (MO); Dendreon Corp. (DNDN); Amgen Inc. (AMGN); Yahoo! Inc. (YHOO); QUALCOMM Inc. (QCOM); General Motors Corporation (GM); Energy Select Sector (XLE); DIAMONDS Trust, Series 1 (DIA); Oil Services HOLDRs (OIH); NYSE Euronext, Inc. (NYX); Cisco Systems, Inc. (CSCO); Financial Select Sector SPDR (XLF); AT&T Inc. (T); Citigroup Inc. (C); Amazon.com Inc. (AMZN); Motorola Inc. (MOT); Research in Motion Ltd. (RIMM); Freeport-McMoRan Copper & Gold Inc. (FCX); ConocoPhillips (COP); and Bristol-Myers Squibb Co. (BMY). These twenty-two options classes are among the most actively-traded, multiply-listed options classes, and account, together with the current thirteen Pilot classes, for approximately 35% of total industry trading volume.[7]

Phase Two will begin on March 28, 2008, and will continue for one year, until March 27, 2009. During the second phase, the number of options classes trading in pennies will again increase. The Exchange proposes to add twenty-eight more classes from among the most actively-traded, multiply-listed options classes.[8]

The minimum price variation for all classes to be included in the Pilot Program, except for the QQQQs, will continue to be $0.01 for all quotations in option series that are quoted at less than $3 per contract and $0.05 for all quotations in option series that are quoted at $3 per contract or greater. The QQQQs will continue to be quoted in $0.01 increments for all options series.

During the extended and expanded Pilot Program, the Phlx commits to deliver four reports to the Commission. Each report will analyze the impact of penny pricing on market quality and options system capacity. The first report will analyze the penny pilot results from May 1, 2007 through September 27, 2007; the second will analyze the results from September 28, 2007 through January 31, 2008; the third will analyze the results from February 1, 2008 through July 31, 2008; and the fourth and final report will examine the results from August 1, 2008 through January 31, 2009. These reports will be provided to the Commission within thirty days of the conclusion of the reporting period.

III. Discussion

After careful review of the proposal and the comment letter, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

On June 28, 2005, the Pacific Exchange (now known as NYSE Arca) announced its intention to begin quoting and trading all listed options in penny increments.[11] In June 2006, to facilitate the orderly transition to quoting a limited number of options in penny increments, Chairman Cox sent a letter to the six options exchanges urging the exchanges that chose to begin quoting in smaller increments to plan for the implementation of a limited penny pilot program to commence in January 2007.[12] All six of the options exchanges submitted proposals to permit quoting a limited number of classes in smaller increments, and, in January 2007, the Commission approved those proposals to implement the current Pilot Program.[13] The exchanges

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 56284 (August 17, 2007), 72 FR 48722.

[4] *See* letter to Nancy Morris, Secretary, Commission, from John C. Nagel, Director & Associate General Counsel, Citadel, dated September 12, 2007 (''Citadel Letter'').

[5] The thirteen option classes currently in the Pilot are: Ishares Russell 2000 (IWM); NASDAQ–100 Index Tracking Stock (QQQQ); SemiConductor Holders Trust (SMH); General Electric Company (GE); Advanced Micro Devices, Inc. (AMD), Microsoft Corporation (MSFT); Intel Corporation (INTC); Caterpillar, Inc. (CAT); Whole Foods Market, Inc. (WFMI); Texas Instruments, Inc. (TXN); Flextronics International Ltd. (FLEX); Sun Microsystems, Inc. (JAVA); and Agilent Technologies, Inc. (A).

[6] The Pilot Program began on January 26, 2007 and is currently set to expire on September 27, 2007. *See* Securities Exchange Act Release No. 56141 (July 24, 2007), 72 FR 42216 (August 1, 2007) (SR–Phlx–2007–53). *See also* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (''Original Pilot Program Approval Order''). In its filing, the Phlx proposed to extend the effective date of conforming amendments to various Exchange rules in order to be consistent with the Pilot through March 27, 2009.

[7] This volume is based on the Options Clearing Corporation (''OCC'') year-to-date trading volume data through July 16, 2007.

[8] The Exchange has committed to file a proposed rule change under Section 19(b)(3)(A) of the Act to identify the options classes to be included in the second expansion.

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] PCX News Release, ''Pacific Exchange to Trade Options in Pennies,'' June 28, 2005.

[12] Commission Press Release 2006–91, ''SEC Chairman Cox Urges Options Exchanges to Start Limited Penny Quoting,'' June 7, 2006.

[13] *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74); 55162 (January 24, 2007), 72 FR 4738 (February 1, 2007) (Amex–2006–106); 55155 (January 23, 2007), 72 FR 4741 (February 1, 2007) (SR–BSE–2006–49); 55154 (January 23, 2007), 72 FR 4743 (February 1, 2007)

Continued

have now submitted proposals to extend and further expand the Pilot.

The continued operation and phased expansion of the Pilot Program will provide further valuable information to the exchanges, the Commission, and others about the impact of penny quoting in the options market. In particular, extending and expanding the Pilot Program as proposed by the Phlx will allow further analysis of the impact of penny quoting in the Pilot classes over a longer period of time on, among other things: (1) Spreads; (2) peak quote rates; (3) quote message traffic; (4) displayed size; (5) ''depth of book'' liquidity; and (6) market structure. Phlx has committed to provide the Commission with periodic reports, which will analyze the impact of the expanded Pilot Program. The Commission expects the Exchange to include statistical information relating to these factors in its periodic reports.

An analysis of the current Pilot shows that the reduction in the minimum quoting increment has resulted in narrowing the average quoted spreads in all classes in the Pilot.[14] A reduction in quoted spreads means that customers and other market participants may be able to trade options at better prices. The reduction in spreads also has led the exchanges to reduce or eliminate their exchange-sponsored payment-for-order-flow programs.[15] The Commission believes that the proposed rule change is designed to continue the narrowing of spreads.

The Commission notes that, as anticipated, the Pilot has contributed to the increase in quotation message traffic from the options markets. However, while the increase in quotation message traffic is appreciable, it has been manageable by the exchanges and the Options Price Reporting Authority, and the Commission did not receive any reports of disruptions in the dissemination of pricing information as a result of quote capacity restraints. Although the Commission anticipates that the proposed expansion of the Pilot Program may contribute to further increases in quote message traffic, the Commission believes that Phlx's proposal is sufficiently limited such that it is unlikely to increase quote message traffic beyond the capacity of market participants' systems and disrupt the timely receipt of quote information. The Commission also notes that Phlx has adopted and will continue to utilize quote mitigation strategies that should mitigate the expected increase in quote traffic.[16]

Overall trading activity in the options markets is very concentrated, with a relatively few options classes accounting for a significant share of total options volume. Phlx's proposal, which will expand the Pilot to include a limited number of options from among the most actively-traded classes (based on average trading volume), will provide an opportunity for reduced spreads where the greatest amount of trading occurs, thus maximizing the economic benefit of the Pilot while minimizing the impact of increased quote traffic.

The commenter suggests that relative trading volume is the measure that should be used to assess the success of quoting in smaller increments.[17] The commenter reported the percentage change in the relative trading volume before and after the Pilot for each of the thirteen classes.[18] The commenter's data shows an increase in relative trading volume for QQQQ, IWM, SHM, AMD, and SUNW, and a decrease in relative trading volume for MSFT, INTC, GE, TXN, A, CAT, WFMI and FLEX. The commenter believes the data shows that the Pilot works well for index and sector products, but smaller increments caused a decline in the relative trading volume for single stock options. The commenter argues that much of the decrease in relative trading volume in Pilot classes is a symptom of the decrease in displayed size available for those classes. On the basis of a decline in the relative trading volume, the commenter argues that single stock option classes should be removed from the Pilot and replaced with liquid index or sector option classes.

Much of the recent growth in options volume has been in the large index and ETF products, such as the SPX, SPY, and the QQQQ. As their relative trading volume increases, the aggregate relative trading volume of other products necessarily declines (although actual volume levels may increase). For example, the SPX, SPY, QQQQ, and IWM accounted for 16.1% of total options volume in the four months before the pilot and rose to 21.7% of volume in the five months after the pilot.[19] By definition, the relative trading volume of all other classes (Pilot and non-Pilot) falls from 83.9% in the pre-Pilot period to 78.3% in the post-Pilot period. Using the commenter's numerical approach, the relative market share of SPX, SPY, QQQ, and IWM increased by 34.8% ((21.7%/16.1%) − 1). In contrast, the relative trading volume of all other classes fell by 6.7% (78.3/83.9%) − 1) in the post-Pilot period compared to the pre-Pilot period. Thus, in addition to the random variation in relative trading volume that occurs over time, there was an overall decline in the relative trading volume of issues outside the four largest index and ETF options, although their actual aggregate volume levels increased.

More specifically, for the 100 and 500 most active classes,[20] relative trading volume fell for 63% and 56%, respectively, of non-Pilot classes. In the Pilot classes, seven, or 54%, of the thirteen Pilot classes had a decline in market share and seven, or 70%, of the ten single stock option classes had a decline in relative trading volume.[21]

(SR–CBOE–2006–92); 55161 (January 24, 2007), 72 FR 4754 (February 1, 2007) (SR–ISE–2006–62); 55156 (January 23, 2007), and 72 FR 4759 (February 1, 2007) (SR–NYSEArca–2006–73). As noted above, *supra* note 6 and accompanying text, the current Pilot is scheduled to expire on September 27, 2007.

[14] *See* Phlx, Options Penny Pricing Pilot Report, May 31, 2007 (''Phlx Report''). *See also* Amex, Penny Quoting Pilot Program Report, June 8, 2007 (''Amex Report''); Box, Penny Pilot Data Review, June 18, 2007 (''Box Report''); CBOE, Penny Pilot Report, June 1, 2007 (''CBOE Report''); ISE, Penny Pilot Analysis, May 23, 2007 (''ISE Report''); and NYSE Arca Options, Understanding Economic and Capacity Impacts of the Penny Pilot, May 31, 2007 (''NYSE Arca Report'').

[15] *See* Securities Exchange Act Release Nos. 55328 (February 21, 2007), 72 FR 9050 (February 28, 2007) (SR–Amex-2007–16); 55197 (January 30, 2007), 72 FR 5772 (February 7, 2007) (SR–BSE–2007–02); 55265 (February 9, 2007), 72 FR 7697 (February 16, 2007) (SR–CBOE–2007–11); 55271 (February 12, 2007), 72 FR 7699 (February 16, 2007) (SR–ISE–2007–08); 55223 (February 1, 2007) 72 FR 6306 (February 9, 2007) (SR–NYSEArca–2007–07); and 55290 (February 13, 2007), 72 FR 8051 (February 22, 2007) (SR–Phlx–2007–05).

[16] *See* Securities Exchange Act Release No. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2007–74). *See also*, Securities Exchange Act Release Nos. 54648 (October 24, 2006), 71 FR 63375 (October 30, 2006) (SR–Phlx–2006–52); 54807 (November 21, 2006), 71 FR 69173 (November 29, 2006) (SR–Phlx–2006–53); 54859 (December 1, 2006), 71 FR 71605 (December 11, 2006) (SR–Phlx–2006–51); 54914 (December 11, 2006), 71 FR 75798 (December 18, 2006) (SR–Phlx–2006–81); 55689 (May 1, 2007), 72 FR 26192 (May 8, 2007) (SR–Phlx–2007–36). Further, the Commission notes that the other options exchanges participating in the Pilot also have adopted and will continue to utilize quote mitigation strategies.

[17] *See* Citadel Letter, *supra* note 4.

[18] The commenter measures the relative trading volume of a class as that class' trading volume as a percentage of total OCC volume. The change in relative trading volume is the relative trading volume from date of entrance into the Pilot to August 27, 2007 divided by the relative trading volume from November 1, 2006 through entrance in the Pilot.

[19] The pre-Pilot period consists of the four months before the Pilot commenced (October 1–January 25, 2007) and the post-Pilot period consists of the five months after the Pilot commenced (February 9, 2007–June 30, 2007). The two week period when the Pilot classes were introduced are excluded from the analysis.

[20] All of the thirteen Pilot classes fall into the 500 most actively-traded, and nine are within the 100 most actively-traded group.

[21] The change in relative trading volume for the median stock for the top 500 (100) classes is −8% (−13%), compared to a change of −3% for the

The Commission does not believe that the data at this time supports the conclusion that a decrease in relative trading volume in the Pilot classes is due to a reduction of the minimum quoting variation. In fact, the data demonstrates that declines in relative trading volume were not limited to stocks included in the Pilot, and substantial declines in relative trading volume, as defined by the commenter, describe a large portion of classes that were not in the Pilot. Therefore, based on the data reviewed to date, the Commission cannot conclude that the Pilot has had an adverse impact on volume in the Pilot securities. Therefore, the Commission believes that Phlx's proposal to select additional classes from among the most actively-traded options has a reasonable basis and is consistent with the Act.[22]

The Commission believes that the impact of smaller increments on trading volume is one of the more difficult aspects of the Pilot to assess, and notes that the exchange reports did not show a clear change in trading volume.[23] While some industry participants expressed disappointment that volume had not increased, the bid-ask spread is only one factor that influences volume. Other factors that impact option volume are trading activity in the underlying security and in related products, volatility in the market and in the underlying security, as well as firm and market specific information and events. The Commission believes that the addition of more securities in the next phase will increase the sample size and should help in further analysis of such issues.

The commenter also expressed concern that the quoted size in the Pilot classes is dropping to levels that are ''sub-optimal'' or ''inadequate'' for institutional size orders, and recommended that the Commission carefully evaluate the impact of penny quoting on liquidity before allowing the exchanges to expand the Pilot. The Commission fully agrees that the impact of the Pilot on displayed size, as well as non-displayed ''depth of book,'' and the impact of any decreased size on market and execution quality, is an area that should be carefully analyzed as the Pilot continues. The Commission also recognizes that the exchange reports show there has, in fact, been a reduction in the displayed size available in the Pilot classes.[24] The Commission is not at this time, however, able to conclude that this decrease has caused a decrease in trading volume or relative trading volume, or other harm to the market, as a result of the Pilot Program. The Commission does, however, expect Phlx to include in its reports an analysis of the market impact of reducing the minimum price increment, particularly on the ability of market participants to effectively execute large-sized orders. The Commission will analyze the information provided in the Exchange's reports, in conjunction with the information provided by other exchanges and market participants, to inform its evaluation and consideration of any exchange's proposed further expansion of the Pilot.

The commenter further noted, to the extent that additional size may be available below the best bid or offer,[25] options market participants discount the value of such liquidity because it is generally not transparent to the market and is not easily accessible even if displayed.[26] The commenter noted that, unlike in the equities markets, market participants cannot quickly sweep multiple markets through multiple price levels to reach such additional liquidity. The Commission encourages the exchanges to consider measures that would facilitate access to depth of book quotes.

Finally, the commenter recommends removing the poorest performing single stock names from the Pilot and replacing them with liquid index or sector products.[27] The Commission agrees that there should be a mechanism for removing option classes from the Pilot. The Commission specifically requested comment in the notice of Phlx's proposal on: (1) Whether there are circumstances under which classes included in the Pilot should be removed; (2) if so, what factors should be considered in making the determination to remove a class from the Pilot, specifically whether an objective standard should be used or whether a more subjective analysis should be allowed; (3) what concerns might arise by removing a class from the Pilot, and how could such concerns be ameliorated; (4) how frequently should such an analysis be undertaken, or should the evaluation be automated; and (5) if a class is to be removed from the Pilot, how much notice should be given to market participants that the quoting increment will change, but did not receive any comments. The Commission will continue to consider comments on how to fairly and objectively determine if a class should be removed from the Pilot. Finally, to the extent that the Exchange files a proposed rule change to further expand the Pilot, the Commission urges it to include in any such proposal a methodology for removing classes from the Pilot.

For the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–Phlx–2007–62), be, and hereby is, approved on a pilot basis, which will end on March 27, 2009.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–19499 Filed 10–2–07; 8:45 am]

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thirteen Pilot stocks and a change of −24% for the ten single stock options. The Commission notes that, with a Pilot sample size of thirteen or ten, these statistics will be highly sensitive to the performance of one or two classes.

[22] The Commission notes that the classes the commenter specifically recommends for inclusion in the expanded Pilot—SPY, DIA, OIH, XLF, and XLE—are among classes proposed by Phlx to be included in the Pilot Program beginning September 28, 2007.

[23] *See* Amex Report, *supra* note 14, at 6–7; CBOE Report, *supra* note 14, Attachment at pages 5–6; ISE Report, *supra* note 14, at 17–20; and NYSE Arca Report, *supra* note 14, at 15.

[24] *See* Amex Report, *supra* note 14, at 6; BOX Report, *supra* note 14, at 2; CBOE Report, *supra* note 14, at Attachment page 2; ISE Report, *supra* note 14, at 7–8; NYSE Arca Report, *supra* note 14, at 9–10; and Phlx Report, supra note 14, at 3–4 and 6–7.

[25] Only two exchanges provided information on ''depth of book'' on their markets in the Pilot classes. *See* NYSE Arca Report at 8–10, *supra* note 14, and ISE Report, *supra* note 14, at 9. ISE reported that the average total size of all quotes on its book at all price levels, weighted for volume, for all thirteen Pilot classes was reduced by 61%. *See* ISE Report, *supra* note 14, at 9. NYSE Arca compared liquidity resident in its book within the legacy minimum price variation to pre-Pilot top of book liquidity and reported that volume weighted liquidity across all thirteen Pilot classes decreased 1%. *See* NYSE Arca Report, *supra* note 14, at 8.

[26] The Commission notes that currently only NYSE Arca makes available quotes and orders on its book below the NBBO. *See http://www.nysedata.com/nysedata/InformationProducts/ArcaBook/tabid/293/Default.aspx*. The Commission anticipates that to the extent this display of information proves to be valuable to the options market as a whole, other exchanges may choose to make this information available as well.

[27] *See supra*, note 22.

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11046 and # 11047]

Illinois Disaster # IL–00010

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Illinois (FEMA–1729–DR), dated 09/25/2007.

Incident: Severe Storms And Flooding

Incident Period: 08/20/2007 through 08/31/2007.

Effective Date: 09/25/2007.

Physical Loan Application Deadline Date: 11/26/2007.

Economic Injury (EIDL) Loan Application Deadline Date: 06/25/2008.

ADDRESSES: Submit completed loan applications to:

U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/25/2007, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Dekalb, Grundy, Kane, La Salle, Lake, Will.

Contiguous Counties (Economic Injury Loans Only):

Illinois:

Boone, Bureau, Cook, Dupage, Kankakee, Kendall, Lee, Livingston, Marshall, McHenry, Ogle, Putnam. Winnebago, Woodford.

Indiana:

Lake.

Wisconsin:

Kenosha.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	6.250
Homeowners Without Credit Available Elsewhere	3.125
Businesses With Credit Available Elsewhere	8.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 110466 and for economic injury is 110470.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E7–19389 Filed 10–2–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the optional ''peg'' rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 5.125 (5⅛ percent for the October–December quarter of FY 2008.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for a commercial loan which funds any portion of the cost of a project (see 13 CFR 120.801) shall be the greater of 6% over the New York Prime rate or the limitation established by the constitution or laws of a given State.

Grady B. Hedgespeth,

Director, Office of Financial Assistance.

[FR Doc. E7–19483 Filed 10–2–07; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board Public Meeting

Pursuant to the Federal Advisory Committee Act, Appendix 2 of Title 5, United States Code, Public Law 92–463, notice is hereby given that the U.S. Small Business Administration (SBA), National Small Business Development Center Advisory Board will be hosting a public meeting via conference call to discuss such matters that may be presented by members, and the staff of the U.S. Small Business Administration, and interested others. The conference call is scheduled on Tuesday, October 16, 2007 at 1 p.m. Eastern Standard Time.

The purpose of the meeting is to discuss follow-up information from the Association of Small Business Development Centers (ASBDC) Annual Conference that was held on September 16–20, 2007 in Denver, Colorado.

Anyone wishing to make an oral presentation to the Board must contact Alanna Falcone, Program Analyst, U.S. Small Business Administration, Office of Small Business Development Centers, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 619–1612 or fax (202) 481–0134.

Matthew Teague,

Committee Management Officer.

[FR Doc. E7–19482 Filed 10–2–07; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5949]

Culturally Significant Objects Imported for Exhibition Determinations: ''Antinous-Dionysos''

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 ''Antinous–Dionysos,'' 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 owner or custodian. I also determine that conservation of the objects at the Getty Villa from November 1, 2007, to November 1, 2008, and the exhibition or display of the exhibit objects at the Getty Villa, from on or about December 11, 2008, until on or about June 1, 2009, 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: September 25, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–19526 Filed 10–2–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5950]

Culturally Significant Objects Imported for Exhibition Determinations: ''Picturing the Bible: The Earliest Christian Art''

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 ''Picturing the Bible: The Earliest Christian Art'', 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 Kimbell Art Museum, Fort Worth, Texas, from on or about November 18, 2007, until on or about March 30, 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 26, 2007.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E7–19524 Filed 10–2–07; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5948]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10 a.m. on Tuesday, October 16, 2007, in Room 1422 of the United States Coast Guard Headquarters Building, 2100 2nd Street SW., Washington, DC, 20593–0001. The purpose of this meeting is to prepare for the Ninety-third Session of the International Maritime Organization's (IMO) Legal Committee (LEG 93) scheduled from 22–26 October 2007.

The provisional LEG 93 agenda calls for the Legal Committee to examine the Provisions of Financial Security which includes a progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers. To be addressed as well are the Guidelines on fair treatment of seafarers in the event of a maritime accident. The Legal Committee will also review the Report on the International Conference on the Removal of Wrecks, 2007. Also on the LEG 93 agenda are monitoring of the implementation of the HNS Convention, matters arising from the ninety-seventh and the ninety-eighth regular sessions of the Council, and the election of officers. Finally the committee will review technical cooperation activities related to maritime legislation, and the status of Conventions and other treaty instruments adopted as a result of the work of the Legal Committee, in addition to allotting time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Charles Michel or Lieutenant Amber Ward, at U.S. Coast Guard, Office of Maritime and International Law (CG–0941), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *Amber.S.Ward@uscg.mil*, telephone (202) 372–3794; fax (202) 372–3972.

Dated: September 25, 2007.

Mark W. Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E7–19527 Filed 10–2–07; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2007–4)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the fourth quarter 2007 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The fourth quarter 2007 RCAF (Unadjusted) is 1.280. The fourth quarter 2007 RCAF (Adjusted) is 0.595. The fourth quarter 2007 RCAF–5 is 0.565.

DATES: *Effective Date:* October 1, 2007.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* To purchase a copy of the full decision, write to, e-mail or call the Board's contractor, ASAP Document Solutions; 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* phone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS: 1–800–877–8339.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: September 27, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19485 Filed 10–2–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Department of the Treasury.

ACTION: Notice of alteration of the Department's Privacy Act Systems of Records.

SUMMARY: The Department of the Treasury gives notice of a proposed alteration to each of its systems of records by adding a routine use subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: Comments must be received no later than November 2, 2007. The proposed alteration will be effective November 13, 2007 unless the Department receives comments which would result in a contrary determination.

ADDRESSES: Comments must be submitted to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Comments received will be available for inspection by appointment at the library, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, Room 1428, between the hours of 9 a.m. and 4 p.m. Monday through Friday. To make an appointment, please call the library at 202–622–0990 or contact the library by e-mail: *library.reference@do.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Deputy Director, Disclosure Services, phone: 202–622–0874, by fax: 202–622–3895, or by e-mail at *dale.underwoodd@do.treas.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974, 5 U.S.C. 552a, notice is given that the Department of the Treasury, proposes to modify all of its Privacy Act systems of records, as identified below, to include a new routine use permitting disclosure to appropriate persons and entities for purposes of response and remedial efforts in the event of a breach or compromise of data contained in the applicable system of records. The purpose and intent of publishing the routine use is to give individuals full and fair notice of the extent of potential disclosures, consistent with the Privacy Act's requirement that individuals be made aware of how their records may be disclosed, even if the Department anticipates that there may often be very limited or no disclosure of an individual's records to third parties as part of the agency's investigatory or remedial efforts.

The President's Identity Theft Task Force's Strategic Plan recommended that all federal agencies publish a routine use for their systems of records allowing for the disclosure of information in the course of responding to a breach of data maintained in a system of records. The term ''breach'' is used to include the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and/or for an other than authorized purpose have access or potential access to personally identifiable information (PII), whether physical or electronic.

On May 22, 2007, the Office of Management and Budget (OMB) issued M–07–16 ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' It requires agencies to develop and implement breach notification policies within 120 days. As part of that effort the Department is publishing the routine use recommended by the President's Identity Theft Task Force and set out in OMB M–07–16.

The routine use will facilitate an effective response to a confirmed or suspected breach by allowing for disclosure to those individuals affected by the breach, as well as to others who are in a position to assist in the Department's response efforts, either by assisting in notification to affected individuals or otherwise playing a role in preventing, minimizing, or remedying harms from the breach or compromise. When there is a clear need for a rapid response following a breach with a prompt and effective investigation and possible mitigation, waiting until a breach has occurred before adding or amending a routine use to accommodate disclosures in response to the breach is not a viable option.

Although a routine use may permit the disclosure of information from a system of records without the consent of the record subject, the information may also be subject to a statutory scheme that prohibits or otherwise restricts the disclosure information as a matter of law. The Department of the Treasury is required to protect information it receives from taxpayers or those required to file certain information under the Bank Secrecy Act. Accordingly, tax returns and return information may only be disclosed under this routine use as provided by 26 U.S.C. 6103. Bank Secrecy Act information may only be disclosed under this routine use as provided by 31 U.S.C. 5311 et seq.

The Privacy Act authorizes the agency to adopt routine uses that are consistent with the purpose for which information is collected. The Department believes that it is consistent with the collection of information pertaining to such individuals to disclose Privacy Act records when, in doing so, could help prevent, minimize or remedy a data breach or compromise that might affect such individuals. By contrast, it is believed that failure to take reasonable steps to help prevent or minimize the harm that may result from such a breach or compromise would jeopardize, rather than promote, the privacy of such individuals.

The report on the proposed routine use, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000.

For the reasons set forth above, the proposed routine use is added to the systems of records as follows:

The following Treasury-wide systems of records were last published in the **Federal Register** in their entirety on August 1, 2005, beginning at 70 FR 44178:

Treasury .001—Treasury Payroll and Personnel System
Treasury .002—Grievance Records
Treasury .003—Treasury Child Care Tuition Assistance Records
Treasury .004—Freedom of Information Act/Privacy Act Request Records
Treasury .005—Public Transportation Incentive Program Records
Treasury .006—Parking and Carpool Program Records
Treasury .007—Personnel Security System
Treasury .008—Treasury Emergency Management System
Treasury .009—Treasury Financial Management Systems
Treasury .010—Telephone Call Detail Records
Treasury .011—Treasury Safety Incident Management Information System (SIMIS)
Treasury .012—Fiscal Service Public Key Infrastructure (PKI) System

The following Departmental Offices (DO) systems of records were last published in the **Federal Register** in their entirety on August 9, 2005, beginning at 70 FR 46268:

DO .003—Law Enforcement Retirement Claims Records
DO .007—General Correspondence Files
DO .010—Office of Domestic Finance, Actuarial Valuation System

DO .015—Political Appointee Files
DO .060—Correspondence Files and Records on Dissatisfaction
DO .111—Office of Foreign Assets Control Census Records
DO .114—Foreign Assets Control Enforcement Records
DO .118—Foreign Assets Control Licensing Records
DO .144—General Counsel Litigation Referral and Reporting System
DO .149—Foreign Assets Control Legal Files
DO .190—Investigation Data Management System
DO .191—Human Resources and Administrative Records System
DO .193—Employee Locator and Automated Directory System
DO .194—Circulation System
DO .196—Security Information System
DO .202—Drug-Free Workplace Program Records
DO .207—Waco Administrative Review Group Investigation
DO .209—Personal Services Contracts (PSC)
DO .214—D.C. Pensions Retirement Records
DO .216—Treasury Security Access Control and Certificates Systems
DO .301—TIGTA—General Personnel and Payroll
DO .302—TIGTA—Medical Records
DO .303—TIGTA—General Correspondence
DO .304—TIGTA—General Training
DO .305—TIGTA—Personal Property Management Records
DO .306—TIGTA—Recruiting and Placement Records
DO .307—TIGTA—Employee Relations Matters, Appeals, Grievances, and Complaint Files
DO .308—TIGTA—Data Extracts
DO .309—TIGTA—Chief Counsel Case Files
DO .310—TIGTA—Chief Counsel Disclosure Section
DO .311—TIGTA—Office of Investigations Files

The following Alcohol and Tobacco Tax and Trade Bureau (TTB) systems of records were last published in the **Federal Register** in their entirety on August 30, 2001, beginning at 66 FR 45893:

ATF .001—Administrative Record System
ATF .002—Correspondence Record System
ATF .003—Criminal Investigation Report System
ATF .007—Personnel Record System
ATF .008—Regulatory Enforcement Record System
ATF .009—Technical and Scientific Services Record System

The following Comptroller of the Currency (CC) systems of records were last published in the **Federal Register** in their entirety on July 11, 2005, beginning at 70 FR 39853:

CC .100—Enforcement Action Report System
CC .110—Reports of Suspicious Activities
CC .120—Bank Fraud Information System
CC .200—Chain Banking Organizations System
CC .210—Bank Securities Dealers System
CC .220—Section 914 Tracking System
CC .340—Access Control System
CC .500—Chief Counsel's Management Information System
CC .510—Litigation Information System
CC .600—Consumer Complaint and Inquiry Information System
CC .700—Correspondence Tracking System

The following Bureau of Engraving and Printing (BEP) systems of records were last published in the **Federal Register** in their entirety on July 27, 2005, beginning at 70 FR 43508:

BEP .002—Personal Property Claim File
BEP .004—Counseling Records
BEP .005—Compensation Claims
BEP .006—Debt Files (Employees)
BEP .014—Employee's Production Record
BEP .016—Employee Suggestions
BEP .020—Industrial Truck Licensing Records
BEP .021—Investigative Files
BEP .027—Access Control and Alarm Monitoring Systems (ACAMS)
BEP .035—Tort Claims (Against the United States)
BEP .038—Unscheduled Absence Record
BEP .041—Record of Discrimination Complaints
BEP .045—Mail Order Sales Customer Files
BEP .046—Automated Mutilated Currency Tracking System
BEP .047—Employee Emergency Notification system

The following Financial Management Service (FMS) systems of records were last published in the **Federal Register** in their entirety on July 14, 2005, beginning at 70 FR 34522, unless otherwise indicated by a parenthetical:

FMS .001—Administrative Records
FMS .002—Payment Issue Records for Regular Recurring Benefit Payments
FMS .003—Claims and Inquiry Records on Treasury Checks, and International Claimants
FMS .004—Education and Training Records
FMS .005—FMS Personnel Records
FMS .006—Direct Deposit Enrollment Records (October 10, 2005, at 70 FR 59395)
FMS .007—Payroll and Pay Administration
FMS .010—Records of Accountable Officers' Authority With Treasury
FMS .012—Pre-complaint Counseling and Complaint Activities
FMS .013—Gifts to the United States
FMS .014—Debt Collection Operations System
FMS .016—Payment Records for Other Than Regular Recurring Benefit Payments
FMS .017—Collection Records

The following Internal Revenue Service (IRS) systems of records were last published in the **Federal Register** in their entirety on December 10, 2001, beginning at 66 FR 63784, unless otherwise indicated by a parenthetical:

IRS 00.001—Correspondence Files (including Stakeholder Relationship files) and Correspondence Control Files
IRS 00.002—Correspondence Files/ Inquiries About Enforcement Activities
IRS 00.003—Taxpayer Advocate Service and Customer Feedback and Survey Records
IRS 00.007—Employee Complaint and Allegation Referral Records (May 28, 2002, at 67 FR 36963)
IRS 00.008—Recorded Quality Review Records (November 11, 2003, at 68 FR 65996)
IRS 00.009—IRS Taxpayer Assistance Center Recorded Quality Review Records (February 24, 2005, at 70 FR 9132)
IRS 00.333—Third Party Contact Records
IRS 00.334—Third Party Contact Reprisal Records
IRS 10.001—Biographical Files, Chief, Communications and Liaison
IRS 10.004—Stakeholder Relationship Management and Subject Files, Chief, Communications and Liaison
IRS 10.007—SPEC Taxpayer Assistance Reporting System (STARS) (June 19, 2004, at 68 FR 43055)
IRS 10.555—Volunteer Records (February 10, 2006, at 71 FR 7115)
IRS 21.001—Tax Administration Resources File, Office of Tax Administration Advisory Services
IRS 22.003—Annual Listing of Undelivered Refund Checks
IRS 22.011—File of Erroneous Refunds
IRS 22.012—Health Coverage Tax Credit Program Records (June 4, 2003, at 68 FR 33577)
IRS 22.026—Form 1042S Index by Name of Recipient

IRS 22.027—Foreign Information System (FIS)
IRS 22.028—Disclosure Authorizations for U.S. Residency Certification Letters
IRS 22.032—Individual Microfilm Retention Register
IRS 22.034—Individual Returns Files, Adjustments and Miscellaneous Documents Files
IRS 22.043—Potential Refund Litigation Case Files
IRS 22.044—P.O.W.–M.I.A. Reference File
IRS 22.054—Subsidiary Accounting Files
IRS 22.059—Unidentified Remittance File
IRS 22.060—Automated Non-Master File (ANMF)
IRS 22.061—Individual Return Master File (IRMF)
IRS 22.062—Electronic Filing Records
IRS 24.013—Combined Account Number File, Taxpayer Services
IRS 24.029—Individual Account Number File (IANF)
IRS 24.030—CADE Individual Master File (IMF)
IRS 24.031—Medicare Prescription Drug Transitional Assistance Records (May 12, 2004, at 69 FR 26432)
IRS 24.046—CADE Business Master File (BMF)
IRS 24.047—Audit Underreporter Case File
IRS 24.070—Debtor Master File (DMF)
IRS 26.001—Acquired Property Records
IRS 26.006—Form 2209, Courtesy Investigations
IRS 26.008—IRS and Treasury Employee Delinquency
IRS 26.009—Lien Files (Open and Closed)
IRS 26.010—Lists of Prospective Bidders at Internal Revenue Sales of Seized Property
IRS 26.011—Litigation Case Files
IRS 26.012—Offer in Compromise (OIC) File
IRS 26.013—Trust Fund Recovery Cases/One Hundred Percent Penalty Cases
IRS 26.014—Record 21, Record of Seizure and Sale of Real Property
IRS 26.016—Returns Compliance Programs (RCP)
IRS 26.019—Taxpayer Delinquent Accounts (TDA) Files including subsystems: (a) Adjustments and Payment Tracers Files, (b) Collateral Files, (c) Seized Property Records, (d) Tax SB/SE, W&I, LMSB Waiver, Forms 900, Files, and (e) Accounts on Child Support Obligations
IRS 26.020—Taxpayer Delinquency Investigation (TDI) Files
IRS 26.021—Transferee Files
IRS 26.022—Delinquency Prevention Programs
IRS 26.055—Private Collection Agency (PCA) Quality Review Records (June 19, 2006, at 71 FR 41075)
IRS 30.003—Requests for Printed Tax Materials Including Lists
IRS 30.004—Security Violations
IRS 34.003—Assignment and Accountability of Personal Property Files
IRS 34.007—Record of Government Books of Transportation Requests
IRS 34.009—Safety Program Files
IRS 34.012—Emergency Preparedness Cadre Assignments and Alerting Rosters Files
IRS 34.013—Identification Media Files System for Employees and Others Issued IRS ID
IRS 34.014—Motor Vehicle Registration and Entry Pass Files
IRS 34.016—Security Clearance Files
IRS 34.020—IRS Audit Trail Lead Analysis System (ATLAS)
IRS 34.021—Personnel Security Investigations, National Background Investigations Center
IRS 34.022—National Background Investigations Center Management Information System (NBICMIS) (November 28, 2005, at 70 FR 71376)
IRS 34.037—IRS Audit Trail and Security Records System
IRS 35.001—Reasonable Accommodation Request Records (October 5, 2004, at 69 FR 59645)
IRS 36.001—Appeals, Grievances and Complaints Records
IRS 36.002—Employee Activity Records
IRS 36.003—General Personnel and Payroll Records
IRS 36.005—Medical Records
IRS 36.008—Recruiting, Examining and Placement Records
IRS 36.009—Retirement, Life Insurance and Health Benefits Records System
IRS 36.888—Employee Tax Compliance Records (ETC)
IRS 37.006—Correspondence, Miscellaneous Records and Information Management Records (December 1, 2006, at 71 FR 69615)
IRS 37.007—Practitioner Disciplinary Records (December 1, 2006, at 71 FR 69616)
IRS 37.009—Enrolled Agent Records (December 1, 2006, at 71 FR 69618)
IRS 38.001—General Training Records
IRS 42.001—Examination Administrative File
IRS 42.002—Excise Compliance Programs (November 8, 2006, at 71 FR 65570)
IRS 42.008—Audit Information Management System (AIMS)
IRS 42.013—Project Files for the Uniform Application of Laws as a Result of Technical Determinations and Court Decisions
IRS 42.014—Internal Revenue Service Employees' Returns Control Files
IRS 42.016—Classification/Centralized Files and Scheduling Files
IRS 42.017—International Enforcement Program Files
IRS 42.021—Compliance Programs and Projects Files
IRS 42.027—Data on Taxpayers Filing on Foreign Holdings
IRS 42.030—Discriminant Function File (DIF)
IRS 42.031—Anti-Money Laundering/Bank Secrecy Act (BSA) and Form 8300 Records (April 30, 2004, at 69 FR 23854)
IRS 44.001—Appeals Case Files
IRS 44.003—Appeals Centralized Data System
IRS 44.004—Art Case File
IRS 44.005—Expert Witness and Fee Appraiser Files
IRS 46.002—Criminal Investigation Management Information System (CIMIS)
IRS 46.003—Confidential Informants, Criminal Investigation Division
IRS 46.004—Controlled Accounts (Open and Closed)
IRS 46.005—Electronic Surveillance File, Criminal Investigation Division
IRS 46.009—Centralized Evaluation and Processing of Information Items (CEPIIs), Evaluation and Processing of Information (EOI), Criminal Investigation Division
IRS 46.011—Illinois Land Trust Files, Criminal Investigation Division
IRS 46.015—Relocated Witnesses, Criminal Investigation Division
IRS 46.016—Secret Service Details, Criminal Investigation Division
IRS 46.022—Treasury Enforcement Communications System (TECS), Criminal Investigation Division
IRS 46.050—Automated Information Analysis System
IRS 46.051—Criminal Investigation Audit Trail Records System
IRS 48.001—Disclosure Records
IRS 48.008—Defunct Special Service Staff File Being Retained Because of Congressional Directive
IRS 49.001—Collateral and Information Requests System
IRS 49.002—Tax Treaty Information Management System
IRS 49.003—Financial Statements File
IRS 49.007—Overseas Compliance Projects System
IRS 49.008—International Correspondence System
IRS 50.001—Employee Plans/Exempt Organizations Correspondence Control Records
IRS 50.003—Employee Plans/Exempt Organizations, Reports of Significant Matters in Technical
IRS 50.222—Tax Exempt/Government Entities (TE/GE) Case Management Records (December 7, 2005, at 70 FR 72876)

IRS 60.000—Employee Protection System Records (November 30, 2001, at 59839)
IRS 70.001—Individual Income Tax Returns, Statistics of Income
IRS 90.001—Chief Counsel Criminal Tax Case Files
IRS 90.002—Chief Counsel Disclosure Litigation Case Files
IRS 90.003—Chief Counsel General Administrative Systems
IRS 90.004—Chief Counsel General Legal Services Case Files
IRS 90.005—Chief Counsel General Litigation Case Files
IRS 90.007—Chief Counsel Legislation and Regulations Division, Employee Plans and Exempt Organizations Division, and Associate Chief Counsel (Technical and International) Correspondence and Private Bill File
IRS 90.009—Chief Counsel Field Services Case Files
IRS 90.010—Digest Room Files Containing Briefs, Legal Opinions, and Digests of Documents Generated Internally or by the Department of Justice Relating to the Administration of the Revenue Laws
IRS 90.011—Attorney Recruiting Files
IRS 90.013—Legal Case Files of the Chief Counsel, Deputy Chief Counsel and Associate Chief Counsels
IRS 90.015—Reference Records of the Library in the Office of Chief Counsel
IRS 90.016—Counsel Automated Tracking System (CATS) Records
IRS 90.017—Correspondence Control and Records, Associate Chief Counsel (Technical and International)
IRS 90.018—Expert Witness Library IRS

The following United States Mint (Mint) systems of records were last published in the **Federal Register** in their entirety on June 13, 2005, beginning at 70 FR 34178:

Mint .001—Cash Receivable Accounting Information System
Mint .003—Employee and Former Employee Travel & Training Accounting Information System
Mint .004—Occupational Safety and Health, Accident and Injury Records, and Claims for Injuries or Damage Compensation Records
Mint .005—Employee-Supervisor Performance Evaluation, Counseling, and Time and Attendance Records
Mint .007—General Correspondence
Mint .008—Employee Background Investigations Files
Mint .012—Grievances: Union/Agency Negotiated Grievances; Adverse Performance Based Personnel Actions; Discrimination Complaints; Third Party Actions United States Mint

The following Bureau of the Public Debt (BPD) systems of records were last published in the **Federal Register** in their entirety on June 10, 2005, beginning at 70 FR 33939:

BPD .001—Human Resources and Administrative Records
BPD .002—United States Savings-Type Securities
BPD .003—United States Securities (Other than Savings-Type Securities)
BPD .004—Controlled Access Security System
BPD .005—Employee Assistance Records
BPD .006—Health Service Program Records
BPD .007—Gifts to Reduce the Public Debt
BPD .008—Retail Treasury Securities Access Application
BPD .009—U.S. Treasury Securities Fraud Information System

The following Office of Thrift Supervision (OTS) systems of records were last published in the **Federal Register** in their entirety on July 15, 2005, beginning at 70 FR 41085, unless otherwise indicated by a parenthetical:

OTS .001—Confidential Individual Information System
OTS .002—Correspondence/Correspondence Tracking (April 18, 2007, at 72 FR 19580)
OTS .003—Consumer Complaint (April 18, 2007, at 72 FR 19581)
OTS .004—Criminal Referral Database
OTS .005—Employee Counseling Service
OTS .006—Employee Locator File (April 18, 2007, at 72 FR 19582)
OTS .008—Employee Training Database (April 18, 2007, at 72 FR 19582)
OTS .011—Positions/Budget (April 18, 2007, at 72 FR 19583)
OTS .012—Payroll/Personnel Systems & Payroll Records. (April 18, 2007, at 72 FR 19584)

The following Financial Crimes Enforcement Network (FinCEN) systems of records were last published in the **Federal Register** in their entirety on August 8, 2005:

FinCEN .001—FinCEN Data Base
FinCEN .002—Suspicious Activity Reporting System (SARS)
FinCEN .003—Bank Secrecy Act Reports System

* * * * *

Routine Uses of Records Maintained in the System, Including Categories of Users and the Purposes of Such Uses

* * * * *

Description of changes: Replace the period ''(.)'' at the end of the last routine use with a semicolon ''(;)'' and add the following routine use at the end thereof in numerical order:

''( ) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.''

* * * * *

Dated: September 20, 2007.

Peter B. McCarthy,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. E7–19529 Filed 10–2–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Individuals Pursuant to Executive Order 13310

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of fourteen newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 13310 of July 28, 2003, ''Blocking Property of the Government of Burma and Prohibiting Certain Transactions.''

DATES: The designation by the Director of OFAC of fourteen individuals identified in this notice, pursuant to Executive Orders 13310, is effective September 27, 2007.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue, NW., (Treasury Annex), Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

Information about this designation and additional information concerning

OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On July 28, 2003, the President issued Executive Order 13310 (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13047 of May 20, 1997, to address the Government of Burma's continued repression of the democratic opposition. The President identified four entities as subject to the economic sanctions in the Annex to the Order.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in, or hereafter come within, the United States or within the possession or control of United States persons of the persons listed in the Annex, as well as those persons determined by the Secretary of the Treasury, in consultation with the Secretary of State, to satisfy any of the criteria set forth in subparagraphs (b)(i) and b(ii) of Section 1. On September 27, 2007, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in Section 1, subparagraphs (b)(i) and (b)(ii) of the Order, the following fourteen individuals, whose names have been added to the list of Specially Designated Nationals and whose property and interests in property are blocked pursuant to Executive Order 13310:

1. AYE, Maung; DOB 25 Dec 1937; citizen Burma; nationality Burma; Vice Senior General; Vice-Chairman of the State Peace and Development Council; Deputy Commander-in-Chief, Myanmar Defense Services (Tatmadaw); Commander-in-Chief, Myanmar Army (individual) [BURMA].

2. BO, Maung; DOB 16 Feb 1945; citizen Burma; nationality Burma; Lieutenant-General; Chief of Bureau of Special Operation 4; Member, State Peace and Development Council (individual) [BURMA].

3. HTWE, Aung; DOB 1 Feb 1943; citizen Burma; nationality Burma; Lieutenant-General; Chief of Armed Forces Training; Member, State Peace and Development Council (individual) [BURMA].

4. MANN, Shwe (a.k.a. MANN, Thura Shwe); DOB 11 Jul 1947; citizen Burma; nationality Burma; Joint Chief of Staff; Member, State Peace and Development Council (individual) [BURMA].

5. MYINT, Ye; DOB 21 Oct 1943; citizen Burma; nationality Burma; Lieutenant-General; Chief, Military Affairs; Chief, Bureau of Special Operation 1; Member, State Peace and Development Council (individual) [BURMA].

6. OO, Maung; DOB 1952; citizen Burma; nationality Burma; Major General; Minister of Home Affairs (individual) [BURMA].

7. OO, Tin Aung Myint (a.k.a. OO, Thiha Thura Tin Aung Myint); DOB 27 May 1950; citizen Burma; nationality Burma; Lieutenant-General; Quartermaster General; Minister of Military Affairs; Member, State Peace and Development Council (individual) [BURMA].

8. SEIN, Thein; DOB 20 Apr 1945; POB Pathein, Irrawaddy Division; citizen Burma; nationality Burma; Adjutant General; First Secretary, State Peace and Development Council (individual) [BURMA].

9. SHWE, Than; DOB 2 Feb 1935; alt. DOB 2 Feb 1933; citizen Burma; nationality Burma; Senior General, Minister of Defense and Commander-in-Chief of Defense Services; Chairman, State Peace and Development Council (individual) [BURMA].

10. SWE, Myint; DOB 24 Jun 1951; citizen Burma; nationality Burma; Lieutenant-General; Chief of Military Affairs Security (individual) [BURMA].

11. THI, Lun; DOB 18 Jul 1940; citizen Burma; nationality Burma; Brigadier-General; Minister of Energy (individual) [BURMA].

12. WIN, Kyaw; DOB 3 Jan 1944; citizen Burma; nationality Burma; Lieutenant-General; Chief of Bureau of Special Operation 2; Member, State Peace and Development Council (individual) [BURMA].

13. WIN, Nyan; DOB 22 Jan 1953; citizen Burma; nationality Burma; Major General; Minister of Foreign Affairs (individual) [BURMA].

14. WIN, Soe; DOB 10 May 1947; citizen Burma; nationality Burma; Lieutenant-General; Prime Minister; Member, State Peace and Development Council (individual) [BURMA].

Dated: September 27, 2007.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E7–19556 Filed 10–2–07; 8:45 am]

BILLING CODE 4811–42–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3911

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3911, Taxpayer Statement Regarding Refund.

DATES: Written comments should be received on or before December 3, 2007 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Robert Black at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the internet at *Robert.G.Black@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Statement Regarding Refund.

OMB Number: 1545–1384.

Form Number: 3911.

Abstract: Form 3911 is used by taxpayers to notify the IRS that a tax refund previously claimed has not been received. The form is normally completed by the taxpayer as the result of an inquiry in which the taxpayer claims non-receipt, loss, theft or destruction of a tax refund, and IRS research shows that the refund has been issued. The information on the form is needed to clearly identify the refund to be traced.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 520,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 43,160.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 24, 2007.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. E7–19568 Filed 10–2–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Committee to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Information Reporting Program Advisory Committee (IRPAC) will hold a public meeting on Wednesday, October 24, 2007.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, CL:NPL:SRM, Rm. 7559, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: 202–927–3641 (not a toll-free number). E-mail address: **public_liaison@irs.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRPAC will be held on Wednesday, October 24, 2007 from 9 a.m. to 12:15 p.m. in Room 3313, 1111 Constitution Ave, NW., Washington, DC 20224. Issues to be discussed include: Data security concerns; Clean Renewable Energy Bonds and Gulf Tax Credit Bonds; taxation and reporting of excess inclusion income; reporting mortgage insurance premiums on Form 1098 in 2007; Form 1042–S Instructions—Reporting of Return of Capital; Form W–8 (BEN, ECI, IMY, EXP) and corresponding instructions for country abbreviations; Form W–8BEN Instructions—Reverse Hybrid Entities as Beneficial Owners; Form 1042 Instructions—Reporting Subsequently Determined Underreporting; Reporting of Undistributed Earnings to a Foreign Partner on Form 1042; substitute Form W–8 statement above signature line; TIN Masking; Legislative proposals; creation/modification of Schedule R (Form 941), Allocation Schedule for Aggregate Form 941 Filers; revised Form 2678, Employer/Payer Appointment of Agent; Barter Exchange backup withholding and ''B'' notice requirements for name-TIN mismatches; expansion of the definition of Broker under Section 3405; legislation that impacts the Form 990–T and the Form 990; the re-designed Form 990, Return of Organization Exempt from Income Tax; filing requirements regarding foreign corporations; reporting issues related to the Pension Protection Act (PPA); reporting issues not related to the pension protection Act (PPA); Form 5500; Form 944 regulations and impact; Form W–9; Form 1099A/Form 1099C.

Last minute agenda changes may preclude advance notice. Due to limited seating and security requirements, please call or email Caryl Grant to confirm your attendance. Ms. Grant can be reached at 202–927–3641 or **public _liaison@irs.gov*. Attendees are encouraged to arrive at least 30 minutes before the meeting begins to allow sufficient time for purposes of security clearance. Should you wish the IRPAC to consider a written statement, please call 202–927–3641, or write to: Internal Revenue Service, Office of National Public Liaison, CL:NPL:SRM, CP6 4–39, 1111 Constitution Avenue, NW., Washington, DC 20224 or e-mail: **public_liaison@irs.gov*.

Dated: September 26, 2007.

Cynthia Vanderpool,

Branch Chief, National Public Liaison.

[FR Doc. E7–19569 Filed 10–2–07; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of VA Property for the Development and Operation of an Assisted Living Facility in Viera, FL

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Intent to Enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) intends to enter into an enhanced-use lease of approximately 15 acres of undeveloped VA land adjacent to the existing Viera VA Outpatient Clinic in Viera, Florida. The selected lessee will finance, design, develop, construct, operate, and maintain an assisted living facility consisting of not less than 50 units on the property. The lessee will be required to provide VA with agreed-upon lease payments and in-kind consideration consisting of priority placement and a discount rental rate eligible veterans will pay to reside in the assisted living facility.

FOR FURTHER INFORMATION CONTACT: Jim Lavery, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9583.

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161, *et seq.* states that the Secretary may enter into an enhanced-use lease if he determines that the implementation of a business plan proposed by the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services would result in a demonstrable improvement of services to eligible veterans in the geographic service-delivery area within which the property is located. This project meets this requirement.

Approved: September 27, 2007.

R. James Nicholson,

Secretary of Veterans Affairs.

[FR Doc. E7–19486 Filed 10–2–07; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
October 3, 2007

Part II

Department of the Interior

Minerals Management Service

30 CFR Parts 250, 253, 254, and 256
Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Pipelines and Pipeline Rights-of-Way; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 253, 254, 256

RIN 1010–AD11

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Pipelines and Pipeline Rights-of-Way

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rulemaking completely revises the MMS Outer Continental Shelf pipeline and pipeline Rights-of-Way (ROW) regulations, and brings them up to date with current industry practices and technology. The proposed rule incorporates parts of several new and revised industry standards into the regulations. It also incorporates several conditions of approval for pipelines, plus guidance from various Notices to Lessees and Operators (NTLs) and one Letter to Lessees and Operators (LTL) into one set of comprehensive pipeline regulations. The proposed regulations would eliminate several NTLs and the LTL, and have been rewritten in plain language.

DATES: Submit comments by January 31, 2008. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by November 2, 2007.

ADDRESSES: You may submit comments on the proposed rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD11 as an identifier in your message. See also Public Availability of Comments under Procedural Matters.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions on the Web site for submitting comments.
- E-mail MMS at *rules.comments@mms.gov.* Use RIN 1010–AD11 in the subject line.
- Fax: 703–787–1546. Identify with the RIN, 1010–AD11.
- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference ''Pipelines and Pipeline Rights-of-way, 1010–AD11'' in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Interior Desk Officer 1010–0050, Office of Management and Budget, 202–395–6566 (fax); e-mail: *oira_docket@omb.eop.gov.* Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Richard Ensele, Regulations and Standards Branch, 703–787–1583. For questions on technical issues, contact Alex Alvarado, Pipeline Section, Gulf of Mexico Outer Continental Shelf Region, 504–736–2547.

SUPPLEMENTARY INFORMATION: The proposed rule is a complete revision of the regulations regarding pipelines and pipeline ROWs on the Outer Continental Shelf (OCS). The current regulations were originally published on April 1, 1988; various sections have been updated, and MMS has issued several NTLs and one LTL to clarify the regulations and to provide guidance. In addition, MMS often uses ''conditions of approval'' when approving pipeline applications to ensure that pipelines are installed, operated, maintained, and repaired in a safe and environmentally sound manner. The proposed rule incorporates some of those conditions of approval, and the guidance from the following NTLs and LTL (these documents are available on the MMS Web site at *http://www.mms.gov/ntls/*):

- NTL No. 2007–G09, Air Emissions Information for Applications for Accessory Platforms to Pipeline Rights-of-way (would be eliminated by the proposed rule);
- NTL No. 98–09, Proposed and As-Built Pipeline Location Data (would be eliminated by the proposed rule);
- NTL No. 2007–G01, Shallow Hazards Requirements;
- NTL No. 2000–G20, Deepwater Chemosynthetic Communities;
- NTL No. 2002–G03, Supervisory Control and Data Acquisition (SCADA) Systems;
- NTL No. 2007–G20, Coastal Zone Management Program Requirements for OCS ROW Pipeline Applications (would be eliminated by the proposed rule);
- NTL No. 2004–G05, Biologically Sensitive Areas of the Gulf of Mexico;
- NTL No. 2005–G07, Archaeological Resource Surveys and Reports;
- NTL No. 2007–G14, Pipeline Risers Subject to the Platform Verification Program (would be eliminated by the proposed rule); and
- LTL dated April 18, 1991, Provide Clarification, Description, and Interpretation with Regard to Pipeline Requirements (would be eliminated by the proposed rule).

One of the goals in the proposed rule is to minimize the use of conditions of approval and NTLs. By incorporating this information, we hope to eliminate most of the conditions of approval, the four NTLs as noted above, and the LTL listed above. The remaining five NTLs would remain in effect, since they apply to other operations in addition to pipelines. In most cases, the industry has complied with these conditions and followed the guidance in the NTLs for several years. Even though these requirements are new to the regulations, they are generally not new to the industry.

Another goal of the proposed rule is to update several industry standards already incorporated by reference into the regulations, and to incorporate new standards which would give the industry more options in designing new pipelines.

Review of Proposed Rule

The proposed revision of subpart J is much longer than the current regulations in subpart J. It is more comprehensive, clear, and detailed. Most of the changes are designed to enhance safety and protect the environment. Many of the changes are based on American Petroleum Institute (API), American National Standards Institute (ANSI), and American Society of Mechanical Engineers (ASME) recommended practices, as well as standard MMS and industry practices. MMS will discuss the more significant changes here.

The proposed rule revises several of the definitions in § 250.105. The definitions in § 250.105 that MMS proposes to revise appear in other subparts as well as subpart J. Terms used only in subpart J are defined in proposed § 250.1000 if the term is used in more than one place in subpart J. If a term is used in only one place in subpart J, it is defined in place.

The proposed rule uses standards incorporated by reference applicable to pipelines. In some cases, MMS decided to include only the applicable language from a standard in the rule, rather than incorporate the entire standard. In other instances, MMS incorporated the standard or updated the currently incorporated standard. MMS will address the specific standards as they appear in the proposed rule. Since all documents incorporated by reference are covered under 30 CFR 250 subpart A at § 250.198, MMS proposes to update this section to include any new or changed documents. This includes revising the citations listed for several currently incorporated documents to correspond to the proposed subpart J rulemaking. MMS also added and changed requirements that relate to OCS

pipelines contained in 30 CFR parts 253, Oil Spill Financial Responsibility; 254, Oil Spill Response Requirements for Facilities Located Seaward of the Coastline; and 256, Leasing of Sulphur or Oil or Gas in the Outer Continental Shelf.

MMS has divided the proposed rule into several broad subject categories as follows:

- General
- Applications for New Pipelines
- Pipeline Application Contents
- Pipeline Design
- Pipeline Fabrication
- Pipeline Construction
- Pipeline Risers Connected to Floating Platforms
- Pipeline Pressure Testing
- Pipeline Safety Equipment
- Pipeline Leak Detection
- Pipeline Internal Corrosion Control and Flow Assurance
- Pipeline Operations and Maintenance
- Pipeline Modifications and Repairs
- Pipeline Surveying, Monitoring, and Inspection
- Pipeline Decommissioning
- Pipeline Right-of-way (ROW) Grants
- Accessories to Right-of-way (ROW) Pipelines

The following is an overview of each category, and a discussion of the significant changes and requirements.

General

The General category covers definitions, general requirements, types of pipelines, jurisdiction, and a table that summarizes required applications, notifications, plans, and reports. The definitions used in this rulemaking have been discussed above. MMS considered adding a listing or table of acronyms after the definitions section, but decided against that due to the length of this proposed subpart. Would it be helpful to include such a listing or table?

The proposed rule provides the basic regulations for OCS pipelines. There are other laws, conditions, and stipulations that apply to pipelines on the OCS which are not mentioned in the current regulations, but are addressed in this proposed rule. They include:

- OCS Lands Act (OCSLA), as amended
- National Environmental Policy Act (NEPA)
- Coastal Zone Management Act (CZMA)
- Oil Pollution Act of 1990 (OPA 90)
- Federal Water Pollution Control Act (FWPCA)
- Applicable implementing regulations
- Approved applications
- Development Operations Coordination Documents (DOCD)
- Development and Production Plans (DPP)
- Lease provisions and stipulations

The Department of the Interior (DOI), through MMS, is one of two Federal agencies with jurisdiction over OCS oil and gas pipelines. The other is the U.S. Department of Transportation (DOT). Jurisdictional issues between the two agencies are addressed in this category. The jurisdictional criteria are based on the December 1996 Memorandum of Understanding (MOU) between DOI and DOT. According to the MOU, producer-operated pipelines are generally under DOI jurisdiction, and transporter-operated pipelines are generally under DOT jurisdiction. The MOU includes the flexibility to cover situations that do not correspond to its general definition of the jurisdictional boundary as ''the point at which operating responsibility transfers from a producing operator to a transporting operator.'' The MOU also provides that DOI and DOT may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to the MOU on a facility-by-facility or area-by-area basis. Operators may also petition DOI and DOT for exceptions to the MOU.

This category includes a table that summarizes the various applications, notifications, plans, and reports that a company must submit to MMS, including the timing of the submittal or notification and the number of copies required.

Applications for New Pipelines

MMS approval is required to install, maintain, and operate all new pipelines on the OCS. This category covers the responsibilities of the applicant and MMS in the pipeline application process. The conditions under which the Secretary of the Interior may cancel approval of a pipeline application are also addressed.

The proposed rule covers:

- When the Regional Supervisor (RS) may require additional information;
- When the RS may limit the information needed;
- When an application may be withdrawn;
- Requirements for informing impacted lessees, lease operators, and pipeline ROW holders; and
- Information submitted to affected States.

MMS added a section to allow the RS to require additional information for those situations where conditions or features may warrant further scrutiny. Additionally, MMS added a section to allow the RS to limit the information to be submitted, if that information was submitted previously or is otherwise available. MMS is also codifying the Coastal Zone Management information requirements for affected States for the first time in the pipeline regulations. Guidance on this subject is currently contained in an NTL which would be eliminated by this proposed rule.

The proposed rule documents the current process that MMS follows in its standard review of applications. That process is not addressed in the current regulations. Steps in the process include:

- Initial review
- Compliance review
- Environmental impact evaluation
- Amendments
- Approval restrictions
- Objections to coastal zone consistency certifications

Pipeline Application Contents

The information that the applicant must supply to MMS in a pipeline application is spelled out, in detail, in this category. The proposed rule consolidates current MMS application content and application process requirements, with related guidance from several NTLs and one LTL.

Activities for lease term pipelines must be covered in DOCDs in the western Gulf of Mexico (GOM), and in DPPs in the eastern GOM and in the Pacific and Alaska OCS Regions. The requirements for these OCS plans are covered in 30 CFR 250, subpart B, Plans and Information. The proposed rule imposes similar requirements for information on ROW pipeline applications that must be addressed in the DOCD and DPP required by subpart B for lease term pipelines. Current pipeline ROW regulations do not impose these requirements. They are contained as guidance in an NTL. As stated earlier, this proposed rulemaking would eliminate four NTLs and one LTL.

Proposed § 250.1016 lists other agencies and entities with which an applicant must coordinate, and the information required by MMS documenting that the coordination has taken place. Proposed §§ 250.1017 and 1018 provide a detailed description of the information required regarding the location of the proposed pipeline. In addition, proposed §§ 250.1019 and 1020 provide a detailed description of the information required in the application regarding horizontal components, risers, appurtenances, and schematic flow diagrams.

Applicants currently provide much of the information required in proposed §§ 250.1022, 1023, and 1025 regarding construction, support, and products under the guidance of the NTLs listed earlier. The information requirements in proposed § 250.1026 regarding

biological and archaeological resources are also currently submitted under the guidance of the NTLs. The proposed rule codifies current procedures.

The requirements in proposed § 250.1028 regarding oil spill response plans, and those in proposed § 250.1029 regarding oil spill financial responsibility for ROW pipelines, are both new to subpart J. However, the proposed regulations simply reference current requirements in 30 CFR parts 254 and 253, respectively.

The information requirements in proposed § 250.1030 regarding environmental impact analyses for ROW pipelines are new to the pipeline regulations, but are necessary for MMS to comply with NEPA.

Pipeline Design

Section 250.1002 of the current regulations contains pipeline design requirements. The proposed rule expands the design requirements into §§ 250.1031 through 250.1036. The proposed rule includes performance requirements for designing a pipeline to mitigate and withstand the detrimental effects of environmental factors such as currents, storm and ice scouring, mud slides, earthquakes, hurricanes, and load factors such as differential pressures, dynamic loads, expansion and contraction, corrosion, and hydrogen sulfide gas.

The proposed rule includes the formula for internal design pressure for steel horizontal components and risers that is in the current regulations. However, the proposed rule allows the use of equations from sections 4.3.1, 4.3.1.1, or 4.3.1.2 of API Recommended Practice 1111, Design, Construction, Operation, and Maintenance of Offshore Hydrocarbon Pipelines (Limit State Design) (API RP 1111), in lieu of the current formula. This may result in a cost savings to the pipeline company depending on the type of pipe required by the different equations. It gives the pipeline company a choice in designing the pipeline. In addition, the proposed rule incorporates the formulas in sections 4.3.2.1 and 4.3.2.2 of API RP 1111 for predicting the external design (collapse) pressure for steel pipe, and the formulas in sections 4.5.4 and 4.1.6.2 of API RP 1111 for designing a catenary riser for a fixed structure. The proposed rule would incorporate these seven sections of API RP 1111 into the regulations.

Pipeline Fabrication

MMS included new performance requirements for pipeline fabrication in the proposed rule. The requirements are general in nature, and cover quality control, design tolerances, recognized engineering practices, and compliance.

Pipeline Construction

Many of the proposed requirements in this category are new to the regulations. These include the performance requirements in the proposed § 250.1040, and the requirements for constructing a pipeline in or near a designated use area, and in or near a sensitive biological feature or archaeological resource. Also new in the proposed regulations are requirements for hazard mitigation and installing hot taps.

MMS included in this proposed rule a requirement to notify the military when crossing established military warning and water test areas, and a recommendation to notify the U.S. Coast Guard (USCG) for the preparation of a Notice to Mariners.

The proposed rule would require pipeline companies in the Alaska OCS Region (AKOCSR) and Pacific OCS Region (POCSR) to take cathodic protection readings on all pipelines during repairs and hot tap installations, not just on those pipelines that are over 20 years old. MMS added this requirement to ensure that the entire length of the pipeline remains protected from external corrosion. MMS also proposes requirements for protecting the coating on the horizontal component of the pipeline and the riser during construction, and we changed the requirements for protecting appurtenances and crossings so that all equipment must have protection or cover in water depths less than 500 feet. The separation for pipeline crossings is changed from 18 inches to 12 inches. The reduction still provides adequate protection, and is compatible with industry standards and DOT requirements. However, MMS invites your specific comments on this proposed change.

The U.S. Department of Defense (DOD) provided the requirements in proposed § 250.1047(a) regarding military test and water test areas. They are currently part of the lease agreement and stipulations. The requirements in proposed § 250.1048 regarding sensitive biological features and archaeological resources are taken from guidance contained in several of the previously listed NTLs. Pipeline companies have followed the guidance in these NTLs and their predecessors for several years.

The proposed rule would require companies to submit construction reports within 45 days after completion of pipeline construction, instead of the current 90 days. This is a reasonable requirement with today's technology, and will allow for faster updating of maps.

Pipeline Risers Connected to Floating Platforms

The proposed rule establishes a Pipeline Riser Verification Program for risers connected to floating platforms. The proposed rule at § 250.1052 requires that all such pipeline risers be subject to separate verification that necessitates the use of a Certified Verification Agent (CVA) specifically for the pipeline riser. This requirement would be in addition to the platform verification requirements in subpart I. MMS is proposing this requirement because pipeline risers from floating platforms are highly sophisticated and complicated components that require extensive specialized technical analysis and oversight. Also, riser failures could have high failure consequences, such as spills, explosions, fires and other major incidents. The proposed rulemaking would eliminate one NTL on this subject.

Pipeline Pressure Testing

This category covers hydrostatic pressure testing and leak testing. The proposed rule provides a definition of a successful hydrostatic pressure test, including when to conduct these tests and how to report the results. Most of the proposed requirements are the same as the current regulations. However, there are some new requirements for pressure testing after a repair using a spool piece.

The requirements for submitting test results are revised to include specific information in the report. The proposed rule lists the instances when a hydrostatic pressure test is required, and the pressure requirements for the test. MMS is also proposing specific requirements for leak tests. In addition, the proposed rule allows pretesting of a spool piece for a repair to conform to DOT regulations.

Pipeline Safety Equipment

This category covers the required safety equipment for pipelines. This includes departing, incoming, crossing, and bi-directional pipelines and pipeline pumps. The proposed rule describes the types, location, and operation of the required equipment. It also addresses requirements for providing redundant safety devices and for dealing with safety equipment failure.

This category begins with a general performance requirement. MMS proposes to expand the regulatory requirements for departing pipelines to include certain requirements currently

imposed as conditions of approval for various permits. These requirements include the settings of high/low pressure sensors (PSHLs), and methods to determine the settings. In addition, the RS may require the installation of a flow safety valve (FSV) or a shutdown valve (SDV) on departing pipelines. These requirements are currently common industry safety practices.

On new incoming, crossing, and bidirectional pipelines, the proposed rule requires that companies install SDVs no more than 10 feet from the boarding pipeline riser and in an unclassified area. On new crossing pipelines, the proposed rule requires installation of an FSV on unmanned and non-production platforms to prevent backflow. MMS currently imposes these requirements as conditions of approval to prevent spills and decrease the likelihood of explosions and fires.

If the safety equipment fails, the proposed rule requires that the company shut in all pipelines immediately to ensure safety and protect the environment. Pipeline companies may not resume operations until the equipment is repaired or replaced, unless an equivalent degree of protection is provided.

Pipeline Leak Detection

The proposed rule allows the RS to require leak detection systems if MMS determines that they are necessary. The proposed rule recommends the use of current technology. This includes, but is not limited to, computational pipeline monitoring (CPM), including supervisory control and data acquisition (SCADA) systems.

Pipeline Internal Corrosion Control and Flow Assurance

This category includes new requirements to prevent internal pipeline corrosion and to maintain adequate flow over the life of a pipeline. These proposed changes are based on current industry practices included in API RP 1111.

Pipeline Operations and Maintenance

Proposed § 250.1079 would require the preparation of an operations and maintenance manual, an integrity management program, an emergency plan, and a personnel qualification program. MMS is proposing these requirements to ensure that lessees, designated lease operators, and pipeline ROW holders maintain OCS pipelines in accordance with current industry practices, and that the personnel performing the maintenance are capable of that task. Recent pipeline leaks in onshore pipelines in the United States, and other integrity issues associated with those pipelines, have prompted MMS to address offshore pipeline integrity in this proposed rule. The new requirements in § 250.1079 are performance based. At a later time, MMS may propose more prescriptive regulations if research indicates the need for them.

Proposed § 250.1080 would require marking pipeline segment numbers on the pipeline at each platform. The proposed rule would require marking immediately for new pipelines, but allows 6 months to mark existing pipelines. The proposed rule allows for the use of the component identifier from API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms (incorporated by reference into the regulations at § 250.198) using the MMS-assigned pipeline segment number as the unique identifier. In API RP 14C, pipelines are identified by the codes KAA (bi-directional), KAH (departing), and KAQ (incoming). Under the proposed rule, the MMS-assigned pipeline segment number could be added to the API code (e.g., KAH–1425, where 1425 is the MMS-assigned pipeline segment number).

MMS included new requirements for the preparation of an H_2S Contingency Plan for pipelines that transport products containing H_2S in certain concentrations. Since such plans are required for all other OCS operations where H_2S is present, this proposed requirement makes the pipeline regulations consistent with the rest of our regulations.

Although the requirements in proposed § 250.1083 regarding remote operations are also new to the regulations, they are based on guidance from a current NTL covering operations during storms or other emergencies requiring evacuation.

The specific requirements in proposed § 250.1084 covering testing of safety equipment are new to the pipeline regulations. The current regulation at § 250.1004(a) is a performance based requirement for testing safety equipment. The proposed rule would require testing as outlined in API RP 14C. Pipeline safety equipment is currently tested in accordance with the requirements in subpart H, Oil and Gas Production Safety Systems. This revision places the requirements in subpart J. Prudent companies already follow these procedures in testing pipeline safety equipment.

The proposed rule includes notification and reporting requirements for safety equipment and pipelines removed from service. In addition, MMS proposes testing requirements for resuming operations on pipelines that have been shut in. Proposed § 250.1088 would require suspension of pipeline operations and notification to MMS if a pipeline leaks. The notification requirement is based on guidance in a current LTL (which would be eliminated by this proposed rule), and is also normally a condition of approval to reactivate a pipeline. We included the requirements in proposed § 250.1089, covering flaring gas from a pipeline, to be consistent with the regulations in subpart K, Oil and Gas Production Rates.

Pipeline Modifications and Repairs

MMS has completely revised the regulations covering pipeline modifications and pipeline repairs to more closely resemble the requirements covering new pipelines. The information required in a modification application is expanded to satisfy safety and environmental protection requirements. MMS incorporated guidance currently addressed in an NTL to satisfy Coastal Zone Management Act (CZMA) requirements if the modification affects any States. For those modifications that involve the installation of a hot tap, we proposed requirements covering the design, location, and description of the hot tap. In addition, the proposed rule would require the submission of a modification report within 30 days of completion.

The new information proposed for a repair application is necessary for safety and the protection of the environment. The proposed rule would require that the company submit a repair report within 30 days of the completion of the repair. The report must include location information, confirmation of the damage, confirmation that the repair was completed as approved, the results of pressure tests, and the cathodic protection measurements.

MMS revised the requirements (proposed § 250.1096) for repairing a pipeline with a clamp to differentiate those repairs below the splash zone from those in or above the splash zone. If you use a clamp to repair the pipeline on the horizontal component or on the pipeline riser below the splash zone, the proposed rule allows for the use of a welded clamp or a mechanical clamp. The proposed rule would require an application for a permanent repair in or above the splash zone, if you temporarily repaired the pipeline with a mechanical clamp. The permanent repair would require the use of a welded clamp, a spool piece, or other method approved by the RS.

Pipeline Surveying, Monitoring, and Inspection

The proposed rule would require visual surveys of all pipeline routes at least monthly, and gives several methods for conducting the surveys. In addition, the proposed rule would require annual inspections of each pipeline riser in and above the splash zone, and inspection of the underwater portions of the riser in conjunction with the platform inspection requirements in 30 CFR 250, subpart I, Platforms and Structures. MMS included proposed requirements, currently in effect as guidance in an NTL, for inspecting the pipeline after a storm or earthquake. These proposed requirements are considered critical to the safe operation of pipelines.

MMS proposes to change the deadline for reporting anode system inspections from March 1 to October 31 of each year, with the inspections to be conducted no later than September 30 of each year. This synchronizes MMS requirements for these reports with the timing of industry, since the inspections are normally conducted during the summer months. Pipeline companies currently either submit reports for inspections that they performed the previous summer, which are almost a year old, or they conduct the inspections when the weather is not ideal. By changing the reporting deadline to October 31 of each year, MMS ensures that the companies submit current information. The proposed regulation also allows the company to conduct tests at anytime and submit the reports within 60 days of the test, but no later than October 31 of each year. This provides more flexibility to the company in the timing of the tests.

The ultrasonic test inspections, in-line inspections, and trawling tests in proposed § 250.1103(d), (e), and (f) are new to the regulations. The RS may require these inspections and tests if specific conditions indicate the need for them.

Pipeline Decommissioning

The regulations for decommissioning a pipeline are mostly unchanged. MMS is proposing to relocate the pipeline decommissioning regulations from 30 CFR 250, subpart Q, Decommissioning Activities, to subpart J since these regulations are unique to pipeline operations. This would consolidate almost all pipeline specific regulations in one subpart. MMS requests your specific comments on this proposal, and comments on whether we should adopt this approach with other subparts within 30 CFR 250.

MMS added one section (proposed § 250.1113) covering the requirements for re-commissioning a decommissioned pipeline. This section refers the applicant to the pipeline application process in proposed § 250.1007.

Pipeline Right-of-Way (ROW) Grants

This category covers the terms and conditions for holding a pipeline ROW grant, including when a grant is needed, who may hold a grant, and how to apply for a grant. It also covers:

- Bonding
- Application submittal
- MMS review
- Compliance
- Environmental review
- State consistency review
- Modification
- Cessation of operations
- Assigning a grant
- Suspensions
- Relinquishing a grant
- Terminating a grant

Because of certain administrative similarities between pipeline ROW grants and OCS leases, many of the proposed changes are based on or derived from the regulations in 30 CFR 256, which address OCS leasing. Each separate ROW pipeline requires a separate ROW grant. The proposed financial security requirements are more detailed than in the current regulations. Currently, pipeline companies must furnish an area bond in the amount of $300,000 to hold pipeline ROW grants in an MMS OCS Region. The proposed rule would allow a pipeline ROW holder the option of choosing to cover the pipeline ROW with either a $300,000 pipeline ROW grant individual bond or a $1,000,000 pipeline ROW grant area bond. The $1,000,000 area bond will cover all pipeline ROW grants held by a company in one MMS OCS Region. These requirements represent an increase from the current bonding amount, and will more accurately reflect the actual liabilities in decommissioning pipelines. The new proposed amounts would apply to all existing and future grants. Companies would be required to cover existing pipeline ROW grants by these increased amounts within 6 months after the rule becomes effective. The Regional Director may also require additional security based on an evaluation of a company's ability to carry out present and future financial obligations under the pipeline ROW grant. Companies have the opportunity to provide MMS with written or oral arguments during the evaluation. These securities are required primarily to ensure that the U.S. Government has sufficient funds available to properly decommission a pipeline in the event that the pipeline company is unable or unwilling to do so. The proposed rule includes language giving MMS the ability to reduce the amount required by a bond, to deal with lapses in bonds, and to determine bond forfeiture.

The service fee for a pipeline ROW grant would remain unchanged. The proposed rule addresses pipeline ROW grant assignments. The conditions for when MMS will suspend a ROW grant are spelled out more clearly.

The MMS is proposing to increase the annual rental fees for pipeline ROW grants to reflect the current rates established for new rights-of-use and easement (see 30 CFR 250.160(f) and (g)) and pipeline accessory structures (see 30 CFR 250.1012(b)). The amount established by these regulations are $5.00 per acre per year for sites in water depths less than 200 meters and $7.50 per acre per year for sites in water depths 200 meters or greater. The current rental rate for pipeline ROW grants is $15 per mile. A pipeline ROW grant is 200 feet wide. Therefore, the area of a pipeline ROW grant is 24.24 acres per mile. At $5.00 per acre, the rental rate would be approximately $125 per mile (actually $121.20). Since raising the rental for pipeline ROW grants to $125 per mile from $15 per mile is a major increase, MMS is proposing to raise the rental in two steps. This proposed rule would increase the annual rental for pipeline ROW grants to $70 per mile. MMS will propose the second increase to $125 per mile in a future rulemaking. Although this is a large increase, MMS believes the higher fee is a fair and reasonable amount to pay for access to Federal lands.

The terms and conditions for holding a pipeline ROW grant remain unchanged with respect to the OCS Lands Act provisions requiring ROW pipelines to transport oil and natural gas produced in the vicinity of the pipeline without discrimination, and to provide open access.

The proposed rule (§ 250.1131(j)) would make compliance with Executive Order 11246, regarding non-discrimination in employment, a condition for holding a pipeline ROW grant. Therefore, the requirement (currently § 250.1015(d)) for pipeline ROW grant applicants to include the ''Non-discrimination in Employment'' form (YN 3341–1) with their applications is eliminated.

This category also covers relinquishing a pipeline ROW grant. It

addresses the application requirements, rental payments, delinquent payments, the effective date of relinquishment, and financial securities. Proposed § 250.1137 covers cancellation, forfeiture, and expiration of pipeline ROW grants. One of the grounds for forfeiture in this proposed rule (§ 250.1137(b)(2)) concerns open and nondiscriminatory access to shippers. The MMS recently published in the Federal Register a proposed rule (72 FR 17047, April 6, 2007) which would establish 30 CFR part 291, Open and Nondiscriminatory Movement of Oil and Gas as Required by the Outer Continental Shelf Lands Act. Part 291 will be referenced in this regulation when it (part 291) becomes final.

The proposed rule covers the obligations of the pipeline ROW holder after a pipeline ROW grant is terminated for any reason. The pipeline ROW holder has 1 year after the grant terminates to decommission the associated ROW pipeline. Current regulations require that the company remove the pipeline. However, the proposed rule allows for ROW pipelines to be decommissioned in place if the RS approves. The proposed rule also provides requirements for re-commissioning of decommissioned pipelines.

Accessories to Right-of-Way (ROW) Pipelines

The proposed rule expands the current subpart J regulations for accessories to ROW pipelines. However, there are very few new requirements. The proposed rule clarifies that accessories to ROW pipelines are subject to the requirements currently contained in 30 CFR 250, subpart H, Oil and Gas Production Safety Systems, and 30 CFR 250, subpart I, Platforms and Structures, just like all other OCS structures. It also clarifies that applications for new accessories are subject to Coastal Zone Management Act consistency requirements. The proposed rule documents the internal MMS process for approving an accessory application.

Appendix

The following appendix will not appear in the Code of Federal Regulations. Appendix A is included in this proposed rule so we may solicit your comments on a proposed new form for use in reporting some of the information required in subpart J.

Appendix A—Department of the Interior—Form MMS 153, ''Notification of Pipeline Installation/Relocation/Hydrotest''

BILLING CODE 4310–MR–P

U.S. Department of the Interior Appendix A OMB Control Number 1010-xxxx
Minerals Management Service OMB Approval Expires xx/xx/xxxx

Notification of Pipeline Installation/Relocation/Hydrotest

Segment Number: _____ Date: _____

Report Provided By:

Name: _____
Phone: _____
Company: _____

Pipeline Installation

Installation/Relocation Start Date: _____
Construction Vessel Name: _____
Telephone and/or Radio Frequency: _____
Heliport Location: _____

From: Structure: _____ To: Structure: _____
Area: _____ Area: _____
Block: _____ Block: _____

Initial Construction Location: _____

Estimated Time to Complete Activity: _____

For Internal Use Only

District Notified: _____ Time and Date: _____
Person Contacted: _____
Date of Inspection: _____ Date Inspection Report Received: _____

Pipeline Hydrostatic Pressure Test

Date of Test: _____
Location of Recorder: _____
Location of Heliport: _____

For Internal Use Only

District Notified: _____ Time and Date: _____
Person Contacted: _____
Date of Inspection: _____ Date Inspection Report Received: _____

Paperwork Reduction Act (PRA): The PRA (44 U.S.C. 3504 et seq.) requires us to inform you that MMS collects this information to carry out its responsibilities under the OCS Lands Act, as amended. MMS will use the information to evaluate the effectiveness of industry's continued improvement of safety and environmental management in the OCS. No proprietary data are collected. We estimate the public reporting burden, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information to average 1 hour per response. 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 Office of Management and Budget (OMB) control number. The OMB has approved this collection of information and assigned OMB Control Number 1010-xxxx. You may direct comments regarding the burden estimate or any other aspect of this collection of information to the Information Collection Clearance Officer, Mail Stop 4230, Minerals Management Service, Department of the Interior, 1849 C Street, NW, Washington, DC 20240

MMS Form MMS-153 (Mo/Year) Page 1 of 1

Procedural Matters

Public Availability of Comments

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

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB), and is not subject to review under E.O. 12866.

(1) The proposed rule would not have an annual effect of $100 million or more on the economy. It would not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. There will be an increase in administrative costs, mainly information submitted to MMS in applications, plans, requests, and reports. MMS estimates that this proposed rule would cost the industry approximately $11.8 million in administrative costs each year. For more detail about these costs, please see the Paperwork Reduction Act section in this preamble. We estimate that the current pipeline regulations cost the industry approximately $7 million in administrative costs each year. Therefore, this proposed rule increases the annual administrative cost to industry by $4.8 million. However, the industry is currently submitting most of the information which would be required by this proposed rule as a condition of approval for a pipeline or pipeline right-of-way, or as requested in the NTLs mentioned earlier in this preamble. In addition, we estimate that this proposed rule will add $10.2 million in one-time costs to industry to comply with the new requirements for pipeline integrity management plans and associated manuals. The increased rental rate for pipeline ROW grants would result in an additional annual cost of $1.2 million to the industry. See the Regulatory Flexibility Act section of this preamble for more information. The MMS estimates that increasing the area-wide pipeline ROW bond from $300,000 to $1,000,000 would result in an additional annual cost of $3.7 million to the industry. This estimate is based on 300 area-wide pipeline ROW bonds in the GOM. The increased amount per bond would be $700,000. The average annual cost per bond in the GOM is 1.75 percent of the bond amount. The average annual increase in pipeline ROW bonding costs would be: 300 × $700,000 × 1.75% = $3,675,000. In summary, there would be an annual increase in costs to the industry of approximately $9.7 million plus a one time cost of $10.2 million. The overall impact would be less than $100 million. Most of the changes in the proposed rule clarify existing requirements or incorporate standard practices. Most operations would continue without many changes. This proposed rule is designed to codify existing practices that MMS and industry have generally followed for many years.

(2) The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Both DOI and DOT have jurisdiction over OCS oil and natural gas pipelines. These jurisdictional boundaries are defined in the proposed rule.

The DOI and DOT have a MOU dated December 10, 1996. According to the MOU, producer-operated pipelines are generally under DOI jurisdiction and transporter-operated pipelines are generally under DOT jurisdiction. The MOU includes the flexibility to cover situations that do not correspond to the general definition of the jurisdictional boundary as ''the point at which operating responsibility transfers from a producing operator to a transporting operator.'' The DOI and DOT may, through their enforcement agencies and in consultation with the affected parties, agree to exceptions to this MOU on a facility-by-facility or area-by-area basis. Companies may also petition DOI and DOT for exceptions to this MOU.

(3) The proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs, or the rights or obligations of their recipients. The proposed rule does not address entitlements, grants, user fees, or loan programs; and therefore, can have no effects on such programs. The proposed rule does increase the rental fees paid for pipeline ROW grants by the pipeline companies.

(4) The proposed rule would not raise novel legal or policy issues. Most of the requirements in the proposed rule represent established MMS and industry practices, and are in accordance with the provisions of the DOT/DOI MOU dated December 10, 1996.

Regulatory Flexibility Act (RFA)

The Department certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required.

This proposed rule applies to all lessees, designated lease operators, and pipeline ROW holders operating on the OCS. Lessees/operators are classified under the Small Business Administration's North American Industry Classification System (NAICS) code 211111, Crude Petroleum and Natural Gas Extraction. Under this NAICS code, companies with fewer than 500 employees are considered small businesses. MMS estimates that 130 lessees/operators explore for and produce oil and gas on the OCS. Approximately 70 percent of them (91 companies) fall into the small business category.

A pipeline ROW holder (non-producer) is a small entity if it is a liquid pipeline company with fewer than 1,500 employees, or a natural gas pipeline company with gross annual receipts of $25 million or less. MMS's database indicates that there are 88 pipeline ROW holders who do not own an interest in any oil and gas leases on the OCS. Fifty-seven of these companies are either major energy companies (large oil and gas or pipeline transmission companies), or wholly owned subsidiaries of such companies. Another 13 entities were either formed by partnerships among major producers and transporters, or have ''arms-length'' contractual relationships with several major producers on the OCS for which they provide transportation services. It is our understanding that in such relationships, one of the major partners usually serves as the ''managing partner'' of the entity so that the entity (whether a partnership or a corporation) is not actually independent in the usual sense. The remaining 18 entities could be categorized as small independent pipeline companies in the sense that they provide transportation services for several non-major oil or gas producers. These companies are classified by NAICS code 213112, Support Activities for Oil and Gas Operations. Thus, there are 218 companies affected by this proposed rule, of which 109 would be considered small businesses.

The costs of installing, operating, and maintaining pipelines on the OCS are high due to the operating environment, i.e., marine environment, water depth, distance from shore. The costs imposed by this proposed rule are mainly due to recordkeeping and reporting, and are therefore minor in comparison to the overall operation.

The increase in annual rental fees for pipeline ROW grants appears to be substantial, going from $15 per mile to $70 per mile. The MMS initially intended on raising the rental to the same rate as paid by holders of rights-of-use and easement and operators of accessory structures on the OCS ($5.00 per acre per year). Increasing the rental to $5.00 per acre would result in an annual rental rate of approximately $125 per mile. This proposed rule would increase the annual rental for pipeline ROW grants to $70 per mile (½ of the increase). MMS will propose the second increase in a future rulemaking. This acreage is computed based on a pipeline ROW being 200 feet wide. Therefore, the area of a pipeline ROW grant is 24.24 acres per mile. At $5.00 per acre, the rental rate would be approximately $125 per mile (actually $121.20). The MMS estimates that there are currently 20,114 miles of active ROW pipelines in the Gulf of Mexico comprised of 2,512 pipeline segments. Since MMS collects rentals on fractions of a mile for each segment, we added a correction factor to more accurately represent the mileage for which pipeline ROW holders are charged for annual rentals. Assuming the average fraction is 0.5 mile, the additional mileage will be the number of segments times 0.5. Therefore, the total mileage for which MMS collects rental is 20,114 + 1,256 = 21,370. At $15 per mile, the total annual rental comes to $320,550. At $70 per mile, the total annual rental amounts to $1,495,900. However, this approximately $1.2 million annual increase is spread over the total number of pipeline ROW holders, and it is a minor cost when compared to the costs of installing, operating, and maintaining ROW pipelines.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the DOI.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more. The proposed rule deals with OCS pipeline operations. It would ensure that safe and environmentally sound pipeline operations continue. The impacts of this proposed rule would not be economic. This proposed rule would not have a large impact on the costs of OCS pipeline operations, and would not have an impact on oil or natural gas prices. Oil and natural gas prices are driven more by market factors than by the cost of production.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule would not significantly increase the cost of pipeline operations on the OCS since most of the requirements are established practices that industry has followed for years. In general, doing business on the OCS (of any kind) is expensive. Any new costs imposed by this proposed rule would be minor.

The proposed rule would not have a large impact on the costs of OCS pipeline operations, and will not have an impact on oil or natural gas prices. Oil and natural gas prices are driven more by market factors than by the cost of production.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Leasing on the OCS is limited to residents of the U.S. or companies incorporated in the U.S. This proposed rule would not change that requirement. The proposed rule would not interfere with competition and would not impact employment, investment, or productivity. The proposed rule encourages innovation since it allows for alternative methods of conducting pipeline operations.

Unfunded Mandate Reform Act (UMRA)

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local or tribal governments, or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. There are no mandates for State, local, or tribal governments. This proposed rule only impacts pipeline companies on the OCS; it does not affect State or local governments or tribal lands.

Takings Implication Assessment (Executive Order 12630)

The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. Thus, MMS did not need to prepare a Takings Implication Assessment according to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The proposed rule revises existing pipeline regulations. It would not prevent any lessee, designated lease operator, or pipeline ROW holder from performing operations on the OCS, as long as they complied with the regulations.

Federalism (Executive Order 13132)

With respect to E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role.

The OCS is under Federal jurisdiction seaward from the State's jurisdiction. There is no overlap between State and Federal jurisdiction. This proposed rule applies only to areas under Federal jurisdiction. None of the changes in this proposed rule would affect areas that are controlled by the States. It would not change the way that the States and the Federal government interact, or the way that States interact with private companies.

Civil Justice Reform (Executive Order 12988)

With respect to E.O. 12988, the Office of the Solicitor has determined that the proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act (PRA)

This proposed rule contains a collection of information that will be submitted to the Office of Management and Budget (OMB) for review and approval under § 3507(d) of the PRA. The title of the collection of information for this rule is 30 CFR 250, Subpart J Pipelines and Pipeline Rights-of-Way (Proposed Rulemaking) (OMB Control Number 1010–0050, expiration 3/31/09). Respondents primarily are an estimated 130 Federal OCS lessees and

designated lease operators and 88 pipeline ROW holders. Other potential respondents are companies that submit letters of no objection to, or comments on, pipeline applications; certified verification agents (CVAs), independent certification agents (IVAs), or other third-party reviewers; and surety or other third-party guarantors. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory or required to obtain or retain a benefit. MMS will protect proprietary information according to the Freedom of Information Act and 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.''

As discussed earlier in the preamble, the proposed rule is a complete revision of the current pipelines and pipeline rights-of-way regulations at 30 CFR 250, subpart J. It incorporates guidance from several NTLs and one LTL that respondents currently follow, and would codify various conditions that MMS imposes when approving pipeline applications to ensure that pipelines are installed and operated in a safe and environmentally sound manner. The OMB approved the information collection burden of the current 30 CFR 250, subpart J regulations under control number 1010–0050 (107,874 burden hours; and $2,369,400 non-hour burden cost service fees). When the final revised subpart J regulations take effect, the information collection burden approved for this rulemaking will replace the collection under 1010–0050 in its entirety.

A table at § 250.198 lists all of the 30 CFR 250 incorporated documents. That table would be revised to include the new 30 CFR 250, subpart J, incorporated documents added or updated under this proposed regulation. There are also several proposed changes to 30 CFR parts 253 and 254. However, these proposed changes do not affect the currently approved information collection burden of 30 CFR 250, subpart A (OMB Control Number 1010–0114) or 30 CFR parts 253 and 254 (OMB Control Numbers 1010–0106 and 1010–0091, respectively).

The current regulations on pipeline decommissioning and associated information collection are located in 30 CFR 250, subpart Q. The rule proposes to relocate the pipeline decommissioning requirements into the revised 30 CFR 250, subpart J regulations. The OMB approved the information collection burden of the current subpart Q regulations under control number 1010–0142. When the new 30 CFR 250, subpart J final regulations take effect, the pertinent 30 CFR 250, subpart Q pipeline decommissioning paperwork burden (3,000 burden hours) and their associated non-hour cost fees ($417,000) will be removed from the 1010–0142 collection of information.

There is a new paragraph (g) proposed for 30 CFR 256.62 which does impose a new information collection requirement. The paperwork burden for this proposed regulation is included in the submission to OMB for approval of the proposed 30 CFR 250 subpart J information collection. When this regulation becomes final, the 30 CFR 256 paperwork burden would be removed from this collection of information and consolidated with the information collection burden for 30 CFR 256 under OMB Control Number 1010–0006.

The following table provides a breakdown of the paperwork burden and fee estimates for this proposed rulemaking. For the current requirements retained in the proposed rule, we used the approved estimated hour burdens and the average number of annual responses where discernable. However, due to the vastly different structure of the proposed rule from current regulations, some adjustments (−4,874 hours) occurred. The proposed rule eliminates four currently approved information collection requirements in current regulations at §§ 250.1000(c)(2), (4), (8); and 250.1016 for a minimal burden reduction (−9 hours). However, there are several new requirements in the proposed rule as follows:

- Most are procedures and practices that are currently being followed by respondents. However, their hour burdens are not identifiable in the OMB approval of current information collection estimates, and are therefore considered ''new'' information collection burdens (+67,293 hours).
- Although a new Form MMS–153 is proposed for notifying MMS of pipeline installations or relocations and hydrostatic pressure tests, it should be noted that the information reported on the form is not a new burden (0 hours).
- A proposed new section, Pipeline Risers Connected to Floating Platforms (§§ 250.1053–1056) would add new burden requirements (+8,100 hours).
- When the rule takes effect, proposed § 250.1079 will require an initial one-time burden (+141,700 hours) on current respondents to develop the operating procedures. In future years, this burden will be drastically reduced as only new respondents will have to develop their initial operating procedures. There will be a substantially lower ongoing burden to maintain and update the procedures annually (+15,260 hours).
- Current subpart J regulations have 107,874 hours approved by OMB. This revision to the collection requests a total of 337,884 hours which is a burden hour net increase of 230,010 hours. The fee is unchanged.

L/T = lease term P/L = pipeline ROW = right-of-way

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
	General			
1000-1147; 1022(g); 1027; 1034(d)(2); 1044(c)(1); 1046(a); 1068(b); 1093(b)(5); 1101(a)	General departure and alternative compliance requests, including those not specifically covered elsewhere in subpart J regulations.	2	175 requests.	350
1001(b)	Unless otherwise specified, retain for the life of the P/L all records related to design, construction, operation, maintenance, testing, inspections, repairs, failures, and decommissioning. Make records available to MMS upon request. Retention of these general records is usual and customary business practice. Required burden is minimal to make available to MMS. Specific recordkeeping requirements are detailed separately.	10	130 lease term P/L operators.	1,300
		10	88 P/L ROW holders.	880
1004(c); 1014(d)	Petition to MMS to operate under DOT jurisdiction, or petition to MMS and DOT to operate under DOI jurisdiction.	40	2 petitions.	80
1005(a)	Identify specific point at which regulatory jurisdiction transfers from/to DOI from/to DOT by durably marking pipeline or identifying point on a schematic. Retain schematics and make available to MMS upon request. Note, the marking of the transfer point is part of the construction process with no additional burden.	1	218 provide schematics to MMS (130 L/T; 88 ROW).	218
1006	Submit applications, reports, and forms; make notifications. This section is a general table of reporting requirements—the specific burdens are included in the appropriate sections.			
	Subtotal	**613 responses**		**2,828**
	Forms			
1041(c); 1058(b); 1093(f)	Notify MMS using Form MMS-153 (Notification of Pipeline Installation/ Relocation/ Hydrotest): before construction activities commence;	1	350 notices/ forms.	350
	48 hours before conducting hydrostatic pressure test on P/L;	1	350 forms.	350
	before modification work begins to relocate P/L.	1	3 relocation notices/forms.	3
1118	Submit Form MMS-2030 (OCS P/L Right-of-Way Grant Bond) for financial	30 mins.	43 forms.	22

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
	security for pipeline ROW grants, area-wide, and additional financial security.	POCS 3 hrs.	4 forms.	12
1134(a), (b)	Submit request to assign P/L ROW grant - Form MMS-149-(Assignment of Federal OCS Pipeline Right-of-way Grant) form takes approximately 30 mins. to complete).	16	200 requests.	3,200
		$170 x 200 P/L ROW requests = $34,000		
Subtotal			**950 responses**	**3,937**
				$34,000
Applications for New Pipelines & Pipeline Application Contents				
1007 thru 1013; 1014 thru 1030; 1048(a)(1), (c)(1), (d)(1); 1049(a), (b); 1137(a)(1); 1141(a)	Submit application to install new P/L, including exceptions/departures, consents and notices, Federal/State permits, agreements, reports, attachments, all required information, etc. Provide copies of application to impacted lessees, designated lease operators, P/L ROW grant holders, and affected States.	140	505 new P/L applications (280 L/T; 225 ROW).	70,700
		$3,100 x 280 L/T P/L applications = $868,000		
		$2,350 x 225 ROW P/L applications = $528,750		
1007(c); 1011(b)(2)	**NEW** Notify MMS to withdraw application for new P/L.	1	10 withdrawals.	10
1009(c); 1011(a), (b)(2)	**NEW** Amend or change pending new P/L application.	2	5 amendments.	10
1010(a); 1015(b)	Reference to Development Operations Coordination Document or Development and Production Plan—burden covered under 1010-0151.			
1010(d)(1); 1016(h)	**NEW** Impacted lessees, designated lease operators, or P/L ROW grant holders submit return receipt/photocopy, letter of no objection to P/L applicant or comments to MMS.	2	770 letters of no objection, return receipts /photocopies, or comments.	1,540
1010(g); 1029	Reference to demonstrating oil spill financial responsibility—burden covered under 1010-0106.			
1010(h); 1025(d), (e); 1050; 1082	Reference to H_2S contingency plans/reports—burden covered under 1010-0141.			
1011(b)	Appeal State's objection to the Secretary of Commerce under 15 CFR 930, subpart H—burden covered by Commerce Department (OMB Control Number 0648-0411).			
1013	**NEW** Request the Secretary to cancel P/L application approval.	1	1 request.	1
1018(c)(5); 1019(d)(5); 1033(e)	Submit review by third-party verification agent under API Spec 17J.	150	12 submissions.	1,800
1028(a), (b)	Reference to oil spill response plan/reports—burden covered under 1010-0091.			
Subtotal			**1,303 responses**	**74,061**
				$1,396,750
Pipeline Design and Construction				

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1041(a); 1143(b)	Publish "Notice to Mariners" under USCG regulations—burden covered by USCG.			
1041(b); 1016(b)	**NEW** Notify commander of military installation in established military warning area before conducting construction operations.	1	200 notices.	200
1042(a), (c)	**NEW** Buoy hazards before P/L construction operations or other bottom-disturbing activities begin. Prepare location plat. Provide copies of plat to key personnel on all vessels associated with P/L construction operations.	2	350 markings/ plats.	700
1043(a)(1); 1046(c)	**NEW** Notify MMS if environmental or other factors have detrimentally affected existing P/L.	1	5 notices.	5
1043(a)(2); 1046(c); 1097(a), (b)	Prepare and submit corrective action plan for existing P/L.	8	4 corrective action plans.	32
1044(e);	**NEW** Consult with U.S. Army Corps of Engineers on burial in fairways and anchorage areas.	.5	60 consultations.	30
1047(a)(4)	**NEW** Enter into agreement with commander of individual command headquarters when operating or causing operations in military warning area.	2	200 agreements.	400
1047(b)	**NEW** Contact representatives of Industry Task Force on Offshore Lightering to discuss potential conflicts.	1	30 contacts.	30
1047(d)	**NEW** Contact appropriate State natural resource agency if activities could disturb State-established artificial reef.	1	15 contacts.	15
1049(b)(2)	**NEW** If required, conduct further archaeological investigation and submit report.	10	5 investiga-tions/reports.	50
1049(d)	Notify MMS within 72 hours of discovery of archaeological resource.	4	2 discovery notices.	8
1051; 1061(a); 1129	Submit P/L construction report to MMS, including pressure test results, etc. Submit as-built location plat to National Ocean Service.	16	173 new P/L reports/plats.	2,768
Subtotal			**1,044 responses**	**4,238**
Pipeline Risers Connected to Floating Platforms				
1053	**NEW** Submit riser design, fabrication, and installation verification plans, or modifications; include CVA nomination information and supporting data as well as changes in CVA or key personnel to Regional Supervisor for approval.	40	45 verification plans.	1,800

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1054(c), (d); 1055, 1055(d), (e); 1056, 1056(d), (e)	**NEW** CVA submits interim and final reports for the design, fabrication, and installation phases, including notice of procedure changes or modifications.	35	180 interim and final verification reports.	6,300
Subtotal			**225 responses**	**8,100**
Pipeline Testing, Safety Equipment, Leak Detection, Operations, and Maintenance				
1060(d); 1061	If required, conduct MMS directed pressure test, prepare report, and submit report to MMS.	4	1 test/report.	4
1061	Submit results of pressure tests—burden included with reporting requirements in §§ 250.1051, 250.1060, 250.1086, 250.1093, 250.1095, 250.1113.			
1063(b)(3)	**NEW** Keep most current pressure recorder charts and well test records at nearest OCS facility. Make available to MMS for inspection.	.25	24,000 pressure recorder charts.	6,000
1069(b), (c)(3)(ii), (d); 1085(a), (b)(2), (c)	Notify MMS if safety equipment remains out of service for more than 12 hours in GOMR, and immediately in the Pacific or Alaska OSC Regions (P/AK). Notify MMS when repaired or replaced and resume operations. Post warning sign (current requirement).	1	3 notices.	3
1079(a), (g)	**NEW** Prepare written Operations and Maintenance Manual. Make copy available to MMS at nearest OCS facility upon request.	200	218 manuals (130 L/T; 88 ROW).	43,600
1079(b), (g)	**NEW** Prepare written Integrity Management Program. Make copy available to MMS at nearest OCS facility upon request.	300	218 manuals (130 L/T; 88 ROW).	65,400
1079(c), (g)	**NEW** Prepare written Emergency Plan. Make copy available to MMS at nearest OCS facility upon request.	100	218 manuals (130 L/T; 88 ROW).	21,800
1079(d), (g)	**NEW** Prepare written Personnel Qualification Program. Make copy available to MMS at nearest OCS facility upon request.	50	218 manuals (130 L/T; 88 ROW).	10,900
1079(f)	**NEW** Review and amend as necessary – Operations and Maintenance Manual; Integrity Management Program, Emergency Plan, and Personnel Qualification Program.	70	218 (130 L/T; 88 ROW).	15,260
1080(a)	**NEW** Durably mark MMS-assigned P/L segment number on new P/L at each platform.	This will be part of the construction process involving no additional burdens.		

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1080(b)	**NEW** Durably mark MMS-assigned P/L segment number on existing P/Ls at each platform. Note: this will be a one-time requirement when rulemaking takes effect, after which will be part of construction process.	2	12,050 markings.	24,100
1083(b)(1)	**NEW** Request approval to conduct remote operations on P/L during evacuation.	3	7 requests.	21
1084(f); 1086(f)	**NEW** Test pipeline safety equipment; record results. Maintain records for 2 years. Make available to MMS upon request:	**Hours per Test/ Record**	**Number of P/L Safety Equipment Tests/ Records**	
	(a) Test flow safety valve annually.	0.1	3,050	305
	(b) Test pressure safety high and low sensors monthly.	0.1 x 12 = 1.2	12,050	14,460
	(c) Test pressure safety valve annually.	0.1	1,260	126
	(d)(1)Test shutdown valve monthly (operations).	0.1 x 12 = 1.2	3,550	4,260
	(d)(2)Test shutdown valve annually (full valve closure).	0.1	3,550	355
	(e) Test surface safety valve monthly.	0.1 x 12 = 1.2	1,800	2,160
1086(d)	Submit P/L out-of-service report to MMS.	1	120 out-of-service reports.	120
1086(e)	**NEW** Flush and fill out-of-service P/L. Record results and retain records at nearest OCS facility. Make available to MMS upon request.	1	80 flush/fills/ recordings.	80
1086(g); 1061(a)	**NEW** Submit P/L out-of-service reactivation report within 30 days to MMS, including pressure test results, etc.	6	40 reactivation reports.	240
1088(b); 1095(a)	**NEW** Notify MMS of P/L leaking.	1	200 leak notifications.	200
1089(a)	**NEW** Request flaring or venting approval.	.5	6 requests.	3
1089(b)	**NEW** Submit flaring or venting report within 72 hours.	1	6 reports.	6
Subtotal			**62,863 responses**	**209,403**
Pipeline Modifications and Repairs				
1010(e); 1093 (b), (c), (d), (e); 1097(b); 1132(c)	Submit application to modify existing P/L, including exceptions/departures, notices, reports, work plan, all required information, etc.	30	320 modifications.	9,600
		$1,800 x 185 L/T modifications = $333,000		
		$3,650 x 135 ROW modifications = $492,750		

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1093(g); 1061(a)	**NEW** Submit modification report within 30 days to MMS, including engineer certification, pressure test results, etc.	4	100 modification reports.	400
1095(a), (b); 1096(c)(1); 1097(b); 1069(e);	Submit application to repair a P/L, including exceptions/departures, notices, reports, work plan, all required information, etc; receive approval from MMS before performing work.	5	325 repair applications.	1,625
		$340 x 325 notifications = $110,500		
1095(e); 1061(a), (b); 1096(c)(2)	Submit repair report within 30 days to MMS, including pressure or leak test results, etc.	8	325 repair reports.	2,600
1095(f)	If required, analyze P/L failure and examine samples of failed pipe in lab; submit findings to MMS.	30	5 failure analysis findings reports.	150
1097(a), (b)	If required, submit corrective action plan if internal or external conditions could detrimentally affect a P/L.	Included with 1043 and 1046 above.		
1097(c)	If required, within 30 days submit report confirming completion of corrective action detailed in plan.	8	4 corrective action reports.	32
Subtotal			**1,079 responses**	**14,407**
				$936,250
Pipeline Surveying, Monitoring and Inspection				
1101(a)	Conduct monthly visual survey of P/L routes for indication of P/L leaks. Retain results for 2 years and make available to MMS upon request.	2 x 12 = 24	170 visual survey/ recordings.	4,080
1102(a)(1)	**NEW** Inspect P/L risers for indication of damage or corrosion in and above splash zone annually. Retain results for 2 years and make available to MMS upon request.	1	380 P/L risers above splash zone inspections/ recordings.	380
1102(a)(2)	**NEW** Inspect underwater portions of P/L risers in conjunction with platform inspections required by § 250.919. Retain results for 2 years and make available to MMS upon request.	4	90 P/L risers under water inspections/ recordings.	360
1102(b)	**NEW** Inspect flexible joints on each riser annually or every 6 months if required using diver or remotely operated vehicle. Submit results to MMS within 30 days.	8	60 flexible joint inspections/ reports.	480
1102(c)	**NEW** Inspect P/L impressed current sources 6 times/year. Retain results for 2 years and make available to MMS upon request.	2 x 6 = 12	8 impressed current sources inspections/ reports.	96

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1102(d)	**NEW** Inspect anode systems annually. Submit data to MMS.	4	175 anode system inspections/ reports.	700
1103(a)	**NEW** If required, conduct visual or remote inspection of horizontal component of P/L. Submit report to MMS.	10	35 horizontal component inspections/ reports.	350
1103(b)	**NEW** If required, inspect P/L after major storm. Submit report to MMS.	10	40 major storm inspections/ reports.	400
1103(c)	**NEW** If required, inspect P/L after earthquake. Submit report to MMS.	1.5	2 earthquake inspections/ reports.	3
1103(d)	**NEW** If required, conduct ultrasonic (UT) inspection of P/L. Submit results to MMS.	1.5	15 UT inspections/ reports.	23
1103(e)	**NEW** If required, conduct in-line inspection of P/L. Submit results to MMS.	12	35 in-line inspections/ reports.	420
1103(f)	**NEW** If required, conduct trawl test or other survey of P/L. Submit results to MMS.	2	5 trawls/ surveys/ reports.	10
Subtotal			**1,015 responses**	**7,302**
Pipeline Decommissioning				
1107(a); 1108(a); 1109(a), (b); 1110; 1133(d)(3); 1136(a)	Submit application to decommission a P/L in place or by removal, including notices and certifications (currently approved under 1010-0142).	8	300 decommissioning applications.	2,400
		$1,000 x 170 L/T decommissions = $170,000		
		$1,900 x 130 ROW decommissions = $247,000		
1107(d)	**NEW** Purge, flush, and fill pipeline decommissioned in place. Retain records and make available to MMS upon request for the life of the pipeline.	.25	300 in place decommissioned P/Ls.	75
1109(c)	**NEW** Notify MMS to withdraw decommissioning application.	1	1 withdrawal.	1
1110(d), (e)(2)	**NEW** Amend pending decommissioning application.	1	2 decommission application amendments.	2
1111	Submit decommissioning report within 30 days to MMS, including certifications (currently approved under 1010-0142).	2	300 decommissioning reports.	600
1113(a)(1); 1137(a)(1); 1141(a)	**NEW** Submit application to MMS to recommission decommissioned P/L.	8	15 reactivation applications.	120

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1113(b); 1061(a)	**NEW** Submit re-commissioning report within 30 days to MMS, including pressure test results, etc.	4	15 reactivation reports.	60
Subtotal			**933 responses**	**3,258**
				$417,000
Pipeline Right-of-way Grants				
1113(a)(2); 1117(b); 1125; 1126; 1127	**NEW** Submit application for P/L ROW grant to re-commission a decommissioned P/L; additional information if required.	120	25 ROW grant re-commission applications.	3,000
1117(b); 1125; 1126; 1127	Submit application for P/L ROW grant for new P/L; additional information if required (currently included with new P/L application).	4	106 new ROW grant applications.	424
1117(b); 1125; 1126; 1127	Submit application for P/L ROW grant to convert existing Lease Term P/L to ROW P/L; additional information if required.	25	12 ROW grant conversion applications.	300
		$200 x 12 conversions = $2,400		
1117(b); 1126(c)	**NEW** Submit information to establish qualification file and provide updates as necessary.	20	15 qualification file submissions.	300
1117(c); 1134(f)	Request for reconsideration for acquiring/holding P/L ROW grants.	Exempt as defined in 5 CFR 1320.3(h)(9).		0
1118(c)(2)	**NEW** Submit written or oral arguments for use in determining additional financial security.	8	25 submissions.	200
1119(a); 1134(g); 1136(e)	**NEW** Surety or pipeline ROW holder requests termination of the period of liability.	1	10 requests.	10
1120(a)	**NEW** Request bond or financial security cancellation.	1	1 cancellation.	1
1121(b)	**NEW** Notify MMS within 72 hours when financial security has lapsed.	1	1 notification.	1
1125(e)	**NEW** Notify MMS to withdraw application for P/L ROW grant.	1	3 withdrawal notices.	3
1127(b), (c)(2)	**NEW** Amend pending P/L ROW grant application.	2	2 ROW grant application amendments.	4
1129(a), (b)	**NEW** Notify affected parties if as-built location of ROW P/L deviates from approved ROW P/L grant, and provide MMS evidence of notifications.	1	15 notices/ submissions.	15
1129(c); 1132; 1133(c), (d); 1137(b)	Submit application to modify P/L ROW grant including exceptions/departures, notices, reports, all required information, etc. (currently included with P/L modification application).	4	60 ROW grant modification applications.	240

Citation 30 CFR 250 Subpart J	Reporting & Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
		Fees		
1131(b)	Submit address changes to update qualification file—exempt under 5 CFR 1320.3(h).			
1131(k)	**NEW** Notify MMS immediately of evidence of sabotage or subversive activity.	1	1 notice.	1
1133(d)(3); 1136	Submit request to relinquish P/L ROW grant.	8	160 requests.	1,280
Subtotal			**436 responses**	**5,779**
				$2,400
Accessories to Right-of-way Pipelines				
1140(c); 1141; 1142	**NEW** Submit the application to install, operate, and maintain an accessory to a ROW P/L, or convert existing OCS platform to an accessory.	18	2 ROW P/L accessory applications.	36
1141(c)	**NEW** Notify MMS to withdraw application for accessory.	1	1 accessory withdrawal.	1
1142(d), (e)(2)(i)	**NEW** Amend pending application for accessory.	2	1 accessory amendment.	2
1143(a), (c)	**NEW** Notify commander of military installation and National Geospatial-Intelligence Agency (NGA) before beginning accessory installation activities.	1	4 notices.	4
1144	**NEW** Submit accessory installation report within 45 days to MMS.	1	1 accessory installation report.	1
1145(a)	**NEW** Inspect accessory according to § 250.919. Submit annual report to MMS.	45	26 accessory inspection reports.	1,170
1145(b)	**NEW** Inspect accessory daily for pollution in accordance with § 250.301. Retain records for 2 years and make available to MMS upon request.	½ x 365 = 182.5	10 inspections/ recordings.	1,825
1146	**NEW** Submit application to modify approved accessory including exceptions/departures, notices, reports, all required information, etc.	4	8 accessory modification applications.	32
Subtotal			**53 responses**	**3,071**
30 CFR Part 256 Hour Burden				
256.62(g)	**NEW** After assignment of lease or new designation of operator, submit report to MMS listing remaining Lease Term P/Ls, including decommissioned P/Ls, on lease; indicate which P/Ls remain as Lease Term P/Ls.	1	1,500 L/T P/L listing reports.	1,500
TOTAL HOUR and FEE BURDEN			**72,014 Responses**	**337,884 Hours**
				$ 2,786,400 Fees

As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. You may submit

your comments directly to the Office of Information and Regulatory Affairs, OMB. You should provide MMS with a copy of your comments so that we can summarize all written comments and address them in the final rule preamble. Refer to the **ADDRESSEES** section for instructions on submitting comments. You may obtain a copy of our submission to OMB to revise and extend the OMB approval for 1010–0050 by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves this collection of information and assigns an OMB control number and the regulations become final, you are not required to respond. OMB is required to make a decision concerning the collection of information of this proposed regulation between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by November 2, 2007. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

MMS specifically solicits comments on the following questions:

(a) Is the collection of information necessary for MMS to properly perform its functions, and will it be useful?

(b) Are the estimates of the burden hours of the collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping ''non-hour cost'' burden resulting from the collection of information. Other than the cost recovery fees listed in the table above, we have not identified any other costs, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component, and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased:

(1) Before October 1, 1995;

(2) To comply with requirements not associated with the information collection;

(3) For reasons other than to provide information or keep records for the Government; or

(4) As part of customary and usual business or private practices.

National Environmental Policy Act (NEPA) of 1969

The MMS has determined that this proposed rule is categorically excluded under 516 Department Manual Chapter 2, Appendix 1, 1.10, which covers ''Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

This proposed rule would revise MMS's regulations at 30 CFR parts 250, 253, 254, and 256 and brings them up-to-date with current industry practices and technology. It also incorporates several conditions of approval for pipelines, plus guidance from various Notices to Lessees and Operators and one Letter to Lessees and Operators into one set of comprehensive pipeline regulations. The proposed regulations also have been written in plain language.

The changes to be implemented by this proposed rule are administrative, technical, and procedural in nature. The environmental effects of the proposed changes are either indirect (e.g., revised monitoring and reporting requirements), or too broad and speculative to lend themselves to a meaningful NEPA analysis. Individual pipelines and pipeline rights-of-way approved and regulated under this proposed rule will be subjected to the NEPA process. In addition, this proposed rule does not involve extraordinary circumstances as outlined in 516 DM 2, Appendix 2 that would trigger further NEPA analysis.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires the agency to prepare a Statement of Energy Effects when it takes a regulatory action that is identified as a significant energy action. This proposed rule is not a significant energy action, and therefore would not require a Statement of Energy Effects, because it:

a. Is not a significant regulatory action under E.O. 12866,

b. Is not likely to have a significant adverse effect on the supply, distribution, or use of energy, and

c. Has not been designated by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, as a significant energy action.

Consultation With Indian Tribes (Executive Order 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on federally recognized Indian tribes. There are no Indian or tribal lands on the OCS.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. MMS invites your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur.

30 CFR Part 253

Continental shelf, Environmental protection, Intergovernmental relations, Oil pollution, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 254

Continental shelf, Intergovernmental relations, Oil pollution, Pipelines, Public lands—mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Intergovernmental relations, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: August 3, 2007.

C. Stephen Allred,

Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, Minerals Management Service (MMS) proposes to amend 30 CFR parts 250, 253, 254, and 256 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*, 31 U.S.C. 9701.

2. Amend § 250.105 as follows:

A. Remove the definitions of ''Lease term pipelines,'' ''Pipelines,'' and ''Right-of-way pipelines.''

B. Amend the definition of the term ''Affected State'' by removing the word ''or'' at the end of paragraph (4), removing the period at the end of paragraph (5) and adding a semicolon in its place, and adding new paragraphs (6) and (7).

C. Add the definitions of ''Chemosynthetic communities,'' ''Lease term pipeline,'' ''Pipeline,'' ''Pipeline right-of-way (ROW),'' ''Pipeline ROW holder,'' and ''ROW pipeline'' in alphabetical order.

The additions read as follows:

§ 250.105 Definitions.

* * * * *

Affected State * * *

(6) Which is directly adjacent to the proposed route of a ROW pipeline; or

(7) Which contains the onshore base you will use to provide supply and service support for ROW pipeline operations.

* * * * *

Chemosynthetic communities means assemblages of tubeworms, clams, mussels, bacterial mats, and a variety of associated organisms that obtain their energy from the oxidation of various organic compounds rather than from light (photosynthesis) and the sun-dependent photosynthetic food chain that supports all other life on earth.

* * * * *

Lease term pipeline means a pipeline that is applied for by a lessee or designated lease operator, and that is completely contained within the boundaries of a single lease, unitized leases, or contiguous (not cornering) leases held by that lessee or operated by that designated lease operator.

* * * * *

Pipeline means the horizontal components, risers, and appurtenances installed for transporting oil, gas, sulphur, and produced water. Piping confined to a production platform or structure, commonly referred to as a flowline, is regulated under subpart H of this part, Oil and Gas Production Safety Systems, and is excluded from this subpart.

Pipeline right-of-way (ROW) means an authorization issued by MMS under the authority of section 5(e) of the OCSLA (43 U.S.C. 1334(e)) and section 8 of the OCSLA (43 U.S.C. 1337(p)(1)(B)) that allows for the construction and use of an associated ROW pipeline for the purpose of transporting oil, natural gas, or sulphur. The term also means the area covered by that authorization.

Pipeline ROW holder means a person, association, or corporation that has been granted a pipeline ROW on the OCS by MMS under the authority of section 5(e) of the OCSLA (43 U.S.C 1334(e)) and section 8 of the OCSLA (43 U.S.C. 1337(p)(1)(b)).

* * * * *

ROW pipeline means a pipeline that is within:

(1) An unleased OCS block(s), or which crosses any portion of an unleased OCS block;

(2) An OCS lease or unit, or which crosses any portion of an OCS lease or unit, and the applicant is not a lessee or the designated lease operator of that lease, or the unit operator of that unit.

* * * * *

3. Amend § 250.125(a) as follows:

A. Remove the paragraphs (a)(20) through (a)(26);

B. Remove paragraphs (a)(35) and (a)(36);

C. Redesignate paragraphs (a)(27) through (a)(34) as paragraphs (a)(29) through (a)(36), respectively; and

D. Add paragraphs (a)(20) through (a)(28) as set forth below.

§ 250.125 Service fees.

(a) * * *

Service—processing of the following:	Fee amount	30 CFR citation
* * * * *	*	*
(20) New Pipeline Application (Lease Term Pipeline)	$3,100	§ 250.1014(g).
(21) Pipeline Application-Modification (Lease Term Pipeline)	$1,800	§ 250.1093(b)(7).
(22) Pipeline Application-Modification (ROW Pipeline) (includes the application to modify the associated Pipeline ROW Grant, if applicable).	$3,650	§ 250.1093(b)(7); § 250.1132(a).
(23) Pipeline Repair Application	$340	§ 250.1095(a)(9).
(24) Application to Decommission a Pipeline (Lease Term Pipeline)	$1,000	§ 250.1109(a)(1)(vii); § 250.1109(a)(2)(xii).
(25) Application for a New Pipeline ROW Grant (includes the application for the associated ROW pipeline and any application to install or establish an associated accessory).	$2,350	§ 250.1125(b); § 250.1126(h).
(26) Application for a Pipeline ROW Grant (to convert a Lease Term Pipeline to an ROW Pipeline)	$200	§ 250.1125(b); § 250.1126(h).
(27) Request to Assign a Pipeline ROW Grant	$170	§ 250.1134(a)(5).
(28) Application to Relinquish a Pipeline ROW Grant (includes the decommissioning application for the associated ROW pipeline and any application to decommission an associated accessory).	$1,900	§ 250.1136(a)(6).
* * * * *	*	*

* * * * *

4. Amend § 250.198 as follows:

A. Redesignate paragraph (d)(7) as paragraph (a)(8) and add new paragraph (d)(7);

B. In the table in paragraph (e), add entries in alphanumerical order for the following new documents incorporated by reference: API RP 1111 and DNV RP B401; and

C. In the table in paragraph (e), revise the entries for the following documents incorporated by reference: ANSI/ASME B16.5, ANSI/ASME B31.8, API RP 2A–WSD, API RP 2RD, API RP 14C, API RP 500, API RP 505, API Spec 6A, API Spec 6D/ISO 14313, API Spec 17J, and NACE MR0175.

The additions and revisions read as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(d) * * *

For	Write to
* *	* * *
(7) DNV Recommended Practice.	Det Norske Veritas, 16340 Park Ten Place, Houston, TX 77084.
* *	* * *

(e) * * *

Title of documents	Incorporated by reference at
* * * *	* * *
ANSI/ASME B16.5–2003 (including Errata) and B16.5a–2003 Addenda, Pipe Flanges and Flanged Fittings.	§ 250.1034(b)(1).
ANSI/ASME B31.8–2003, Gas Transmission and Distribution Piping Systems.	§ 250.1033(a).
* * * *	* * *
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms-Working Stress Design; Twenty-first Edition, December 2002; Errata and Supplement 1, December 2002; Errata and Supplement 2, October 2005; API Stock No. G2AWSD.	§ 250.901(a)(4); § 250.908(a); § 250.920(a), (b), (c), (e); § 250.1033(k); § 250.1141(a)(1)(ii), (iii); § 250.1146(d).
* * * *	* * *
API RP 2RD, Design of Risers for Floating Production Systems (FPSs) and Tension-Leg Platforms (TLPs), First Edition, June 1998, API Stock No. G02RD1.	§ 250.800(b); § 250.901(a)(6); § 250.1033(d).
* * * *	* * *
API RP 14C, Recommended Practice for Analysis, Design, Installation, and Testing of Basic Surface Safety Systems for Offshore Production Platforms, Seventh Edition, March 2001, API Stock No. G14C07.	§ 250.802(b), (e)(2); § 250.803(a), (b)(2)(i), (b)(4), (b)(5)(i), (b)(7), (b)(9)(v), (c)(2); § 250.804(a), (a)(6); § 250.1068(a)(1); § 250.1080(c); § 250.1084(a)(1), (b)(1), (c)(1), (d)(1), (d)(2), (e)(1); § 250.1628(c), (d)(2); § 250.1629(b)(2), (b)(4)(v); § 250.1630(a).
* * * *	* * *
API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Division 1 and Division 2, Second Edition, November 1997, reaffirmed November 2002, API Stock No. C50002.	§ 250.114(a); § 250.459; § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1064(b)(2); § 250.1065(b)(2); § 250.1066(b)(2); § 250.1628(b)(3), (d)(4)(i); § 250.1629(b)(4)(i).
API RP 505, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, Classified as Class I, Zone 0, Zone 1, and Zone 2, First Edition, November 1997, reaffirmed November 2002, API Stock No. C50501.	§ 250.114(a); § 250.459; § 250.802(e)(4)(i); § 250.803(b)(9)(i); § 250.1064(b)(2); § 250.1065(b)(2); § 250.1066(b)(2); § 250.1628(b)(3), (d)(4)(i); § 250.1629(b)(4)(i).
API RP 1111, Design, Construction, Operation, and Maintenance of Offshore Hydrocarbon Pipelines (Limit State Design), Third Edition, July 1999, Sections 4.1.6.2, 4.3.1, 4.3.1.1, 4.3.1.2, 4.3.2.1, 4.3.2.2, and 4.5.4 only, API Stock No. D11113.	§ 250.1033(a), (b), (c).
* * * *	* * *
API Spec 6A, Specification for Wellhead and Christmas Tree Equipment, Nineteenth Edition, July 2004, API Stock No. GX06A19.	§ 250.806(a)(3); § 250.1034(a), (b)(1).

Title of documents	Incorporated by reference at
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API Spec 6D/ISO 14313, Specification for Pipeline Valves, Twenty-second Edition, January 2002, effective date July 1, 2002, API Stock No. G0X6D22.	§ 250.1034(a).
* * * * * * *	
API Spec 17J, Specification for Unbonded Flexible Pipe, Second Edition, November 1999, effective date July 1, 2000, API Stock No. G17J02.	§ 250.803(b)(2)(iii); § 250.1015(c)(5); § 250.1016(b)(5); § 250.1033(e).
* * * * * * *	
DNV RP B401, Recommended Practice for Cathodic Protection Design, 1993, Table 6.9.1 only.	§ 250.1034(d)(2).
* * * * * * *	
NACE Standard MR0175, Metals for Sulfide Stress Cracking and Stress Corrosion Cracking Resistance in Sour Oilfield Environments, January 17, 2003, NACE Item No. 21302.	§ 250.490(p)(2); § 250.901(a)(19); § 250.1035.
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5. In § 250.199, revise paragraph (e)(9) to read as follows:

§ 250.199 Paperwork Reduction Act statements—information collection.

(e) * * *

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(9) Subpart J, Pipelines and Pipeline Rights-of-Way (1010–0050), including Forms MMS–153, Notification of Pipeline Installation/Relocation/Hydrotest; MMS–2030, OCS Pipeline Right-of-Way Grant Bond; MMS–149, Assignment of Federal OCS Pipeline Right-of-Way Grant.	To provide MMS with information regarding the design, installation, and operation of pipelines on the OCS. To ensure that pipeline operations are safe and protect the human, marine, and coastal environment.
* * * * * * *	

§§ 250.1100–1107 [REDESIGNATED]

6. Redesignate §§ 250.1100–1107 as §§ 250.1150–1157.

7. Revise subpart J to read as follows.

Subpart J—Pipelines and Pipeline Rights-of-Way

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Subpart J—Pipelines and Pipeline Rights-of-Way

General

§ 250.1000 Definitions

Terms used in this subpart have the following meanings:

Accessory means a platform, a major subsea manifold, or similar subsea structures attached to a ROW pipeline to support pump stations, compressors, manifolds, etc. The site used for an accessory is part of the pipeline ROW grant.

Appurtenance means equipment, device, apparatus, or other object attached to or associated with a horizontal component or riser. Examples include anodes, valves, flanges, fittings, umbilicals, vortex-induced vibration (VIV) devices, subsea manifolds, templates, pipeline end modules (PLEM's), pipeline end terminals (PLET's), anode sleds, other sleds, and jumpers (other than jumpers connecting subsea wells to manifolds).

Failure, when applied to a pipeline or safety system, means any condition of the pipeline or a safety system component that prevents the complete performance of its design and function.

Horizontal component means a horizontal pipe that connects a pipeline riser, subsea wellhead or template, or pipeline to a pipeline riser, subsea wellhead or template, or pipeline (synonymous with the term ''linepipe'').

Leak means the release of product from a pipeline.

Live bottoms (low relief features) means sea grass communities; areas that contain biological assemblages consisting of sessile invertebrates and/or algae living upon and attached to naturally occurring hard or rocky formations with rough, broken, or smooth topography; and areas where a hard substrate and vertical relief may favor the accumulation of turtles, fishes, or other fauna. These features occur throughout the POCSR, in the Eastern Planning Area of the Gulf of Mexico, and in the Beaufort Sea in Alaska.

Live bottoms (pinnacle trend features or seamounts) means small, isolated, low to moderate relief carbonate reef features; outcrops of unknown origin; or hard substrates exposed by erosion that provide surface area for the growth of sessile invertebrates and/or algae, and attract large numbers of fish. These features occur in an area of topographic relief throughout the POCSR and AKOCSR, and in the northeastern portion of the western GOMR. In the POCSR and AKOCSR, these features include rocky reefs, rock outcrops, pinnacles or seamounts. In the GOMR, these features include pinnacle trend features.

Maximum allowable operating pressure (MAOP) means the highest operating pressure allowable at any point in a pipeline.

Military warning or water test area means an area on the OCS that is used by the U.S. Department of Defense for conducting various mission operations, including air-to-air gunnery, rocket and missile research and testing, sonar buoy operations, pilot training, and aircraft carrier operations.

New or unusual technology means equipment or procedures that have:

(1) Not been used previously or extensively in an MMS OCS Region;

(2) Not been used previously under the anticipated operating conditions; or

(3) Operating characteristics that are outside the performance parameters established by this subpart.

Potentially sensitive biological features means those features not protected by an MMS biological lease stipulation that are of moderate to high relief (about 8 feet or higher), provide surface area for the growth of sessile invertebrates, and attract large numbers of fish. These features would be located outside any ''No Activity Zone'' of any of the named topographic features and would not be located on any live-bottom (pinnacle trend) stipulated blocks.

Production platform means a platform on the OCS that receives hydrocarbon or sulphur production either directly from wells or from other platforms that produce hydrocarbons or sulphur from wells. It may include processing equipment for treating the production or separating it into its various liquid and gaseous components.

Riser means a vertical conducting pipe that connects a horizontal component of a pipeline to equipment on a platform.

Splash zone means that portion of a pipeline riser that is located between 20 feet above the maximum tide and 20 feet below the minimum tide.

Topographic features means identified isolated areas of moderate to high relief that provide habitat for hard-bottom communities and numerous plant and animal species, and support, either as shelter or food, large numbers of commercially and recreationally important fishes.

§ 250.1001 What general performance and recordkeeping requirements apply to OCS pipelines?

(a) *Performance.* You must design, construct, operate, maintain, inspect, and decommission all OCS pipelines, appurtenances, accessories, and safety system components in a manner that:

(1) Conforms to the OCSLA (43 U.S.C. 1331, *et seq.*), as amended, applicable implementing regulations, other applicable laws, approved applications, approved Development Operations Coordination Documents (DOCD) and Development and Production Plans (DPP), and lease provisions and stipulations;

(2) Is safe;

(3) Prevents unauthorized discharges;

(4) Does not unreasonably interfere with other uses of the OCS, including those involved with national security or defense; and

(5) Does not cause undue or serious harm or damage to the human, marine, or coastal environment.

(b) *Records.* You must retain all records related to the design, construction, operation, maintenance, testing, inspections, repairs, failures, and decommissioning of an OCS pipeline for as long as the pipeline remains in place, unless otherwise specified by the Regional Supervisor or in these regulations, and make them available to MMS upon request.

§ 250.1002 What are the types of OCS pipelines?

An OCS pipeline is either a lease term pipeline or an ROW pipeline.

§ 250.1003 Which departments have jurisdiction over OCS pipelines?

An OCS pipeline is under the jurisdiction of either the Department of the Interior (DOI) or the Department of Transportation (DOT).

§ 250.1004 What are the criteria for determining jurisdiction?

(a) *DOI jurisdiction criteria.* An OCS pipeline is under DOI jurisdiction if it is:

(1) A lease term pipeline that is not subject to regulation under 49 CFR, parts 192 and 195, and does not cross into State waters; or

(2) An ROW pipeline that is operated by an identified pipeline operator (the person or entity identified by the pipeline ROW holder as authorized to control or manage the pipeline's operations), and that is either:

(i) A producing pipeline operator (the identified pipeline operator of an ROW pipeline that is a lessee or designated lease operator of one or more OCS leases), unless it is subject to regulation under 49 CFR, parts 192 and 195, and crosses into State waters; or

(ii) A transporting pipeline operator (the identified pipeline operator of an ROW pipeline that is not a lessee or a designated lease operator of an OCS lease), and the pipeline is not subject to regulation under 49 CFR, parts 192 and 195.

(b) *DOT jurisdiction criteria.* An OCS pipeline that is not under DOI jurisdiction (see paragraph (a) of this section) is under DOT jurisdiction.

(c) *Jurisdiction transfer.* You may request that a pipeline under DOI jurisdiction be transferred to DOT jurisdiction, or that a pipeline under DOT jurisdiction be transferred to DOI jurisdiction, by submitting a written petition for approval to the Regional Supervisor and the DOT Office of Pipeline Safety (OPS) Regional Director. In the petition, you must provide sufficient justification for the transfer. The Regional Supervisor and the DOT OPS Regional Director will decide jointly whether to approve the petition.

§ 250.1005 What are the requirements regarding jurisdiction transfer points?

(a) *Jurisdiction transfer point.* For each applicable pipeline, you must meet the requirements of this paragraph (a).

(1) You must identify the specific point at which regulatory jurisdiction transfers from DOI to DOT, or from DOT to DOI, by:

(i) Durably marking an above-water jurisdiction transfer point or, if that is not practical, identifying the transfer point on a schematic; or

(ii) Identifying an underwater jurisdiction transfer point on a schematic.

(2) You must keep the schematics referenced in paragraph (a)(1) of this section at the nearest OCS facility and make them available to MMS upon request.

(b) *Jurisdiction transfer point disagreement.* If the lessee(s), designated lease operator(s), or pipeline ROW holder(s) of connecting pipelines cannot agree upon a transfer point, the Regional Supervisor and the DOT OPS Regional Director will jointly determine the jurisdiction transfer point.

§ 250.1006 When must I submit the applications, requests, plans and reports, and make the notifications required by this subpart?

(a) *Applications and requests.* For all OCS pipelines you must submit applications to MMS, and receive approvals, according to the following table:

Application or request	Required by	When to submit	Total number of copies
(1) Transfer jurisdiction	§ 250.1004(c)	Before jurisdiction can be transferred from DOI to DOT, or from DOT to DOI.	1 to MMS. 1 to OPS.
(2) New pipeline	§ 250.1007(a)	Before you install, maintain, or operate a new pipeline	3
(3) Modify a pipeline	§ 250.1093(a), (b)	Before you conduct operations to modify a pipeline	3
(4) Repair a pipeline	§ 250.1095(a)	Before you conduct any repair work on a pipeline	1
(5) Decommission a pipeline in place.	§ 250.1109(a)(1)	Before you conduct operations to decommission a pipeline in place.	3
(6) Decommission a pipeline by removal.	§ 250.1109(a)(2)	Before you conduct operations to decommission a pipeline by removal.	3
(7) Re-commission a decommissioned pipeline.	§ 250.1113(a)(1)	Before you re-commission a decommissioned pipeline	1
(8) Accessory	§ 250.1141(a)	Before you install, operate, and maintain an accessory to an ROW pipeline.	3
(9) Modify an accessory	§ 250.1146	Before you conduct operations to modify an accessory	3
(10) Decommission an accessory—Initial.	§ 250.1147 (see § 250.1726).	In the POCSR and AKOCSR, at least 2 years before you decommission an accessory.	1
(11) Decommission an accessory—Final.	§ 250.1147 (see § 250.1727).	Before you decommission an accessory	2

(b) *Pipeline ROW grant applications and requests.* For ROW pipelines, you must submit the following applications and requests to MMS, and receive approvals, in addition to those listed in paragraph (a) of this section:

Application or request	Required by	When to submit	Total number of copies
(1) Obtain a pipeline ROW grant.	§ 250.1125(a)	Before you install, maintain, or operate an ROW pipeline.	1 original and 2 copies.
(2) Modify a pipeline ROW grant.	§ 250.1132(a)	Before you can modify a pipeline ROW grant	1 original and 2 copies.
(3) Assign a pipeline ROW grant.	§ 250.1134(a)	Before you can assign a pipeline ROW grant	2 executed originals.
(4) Relinquish a pipeline ROW grant.	§ 250.1136(a)	Before you can relinquish a pipeline ROW grant	1 original and 2 copies.

(c) *Notifications.* You must make notifications to MMS according to the following table:

Notification	Under section	When to notify
(1) Pipeline construction	§ 250.1041(a), using Form MMS–153.	At least 48 hours before you commence pipeline construction.
(2) Discovery of archaeological resource.	§ 250.1049(d)	Immediately.
(3) Hydrostatic pressure test	§ 250.1058(b), using Form MMS–153.	At least 48 hours before you conduct a hydrostatic pressure test on a pipeline.

Notification	Under section	When to notify
(4) Safety equipment failure or removal.	§§ 250.1069(b) and 250.1085(a)	In the GOMR, when the safety equipment remains out of service for 12 hours. Immediately in the POCSR and AKOCSR.
(5) Corrective action	§ 250.1069(d)	Immediately when you repair or replace safety equipment and resume operating the pipeline, or when you have provided an equivalent degree of protection and resume operating the pipeline.
(6) Return safety equipment to service.	§ 250.1085(c)	Immediately when you return out-of-service safety equipment to service or when you provide an equivalent degree of protection.
(7) Pipeline leak	§ 250.1088(b)	Immediately or as soon as practicable after you discover that a pipeline has leaked.
(8) Pipeline relocation	§ 250.1093(e), using Form MMS–153.	At least 48 hours before you begin the work to relocate a pipeline.
(9) Lapse of financial security for a pipeline ROW grant.	§ 250.1121(b)	Within 72 hours after the security lapses.
(10) Sabotage or subversive activity	§ 250.1131(k)	Immediately upon discovery.

(d) *Plans and Reports.* You or the Certified Verification Agent (CVA), as appropriate, must submit plans and reports to MMS according to the following table:

Plan/Report	Under section	When to submit	Total number of copies
(1) Pipeline construction, including pressure test results.	§ 250.1051(a)	Within 45 calendar days after you complete pipeline construction.	3
(2) Design verification plans for pipeline risers connected to floating platforms.	§ 250.1053(a)	At least 30 calendar days before you submit the associated pipeline application.	1
(3) Fabrication verification plans for pipeline risers connected to floating platforms.	§ 250.1053(b)	At least 30 calendar days before you submit the associated pipeline application.	1
(4) Installation verification plans for pipeline risers connected to floating platforms.	§ 250.1053(c)	At least 30 calendar days before you submit the associated pipeline application.	1
(5) Interim CVA reports for pipeline risers connected to floating platforms.	§ 250.1054(c); § 250.1055(d); § 250.1056(d)	CVA submits during each verification phase	1
(6) Final CVA design reports for pipeline risers connected to floating platforms.	§ 250.1054(d)	CVA submits within 90 calendar days of receipt of the design data, or within 90 calendar days after MMS approval to act as a CVA, whichever is latest, and before fabrication begins.	1
(7) Final CVA fabrication reports for pipeline risers connected to floating platforms.	§ 250.1055(e)	CVA submits within 90 calendar days after completion of fabrication, and before installation.	1
(8) Final CVA installation reports for pipeline risers connected to floating platforms.	§ 250.1056(e)	CVA submits within 45 calendar days after pipeline installation.	1
(9) Directed pressure test	§ 250.1060(d)	As directed by the Regional Supervisor	As directed by the Regional Supervisor.
(10) Out-of-service pipeline	§ 250.1086(d)	Within 48 hours after a pipeline is deemed to be out of service.	1
(11) Out-of-service pipeline reactivation, including pressure test results.	§ 250.1086(g)	Within 30 calendar days after you reactivate a pipeline that has been out of service.	1
(12) Flaring/venting operations	§ 250.1089(b)	Within 72 hours after completing flaring or venting operations.	1
(13) Pipeline modification, including pressure test results.	§ 250.1093(f)	Within 30 calendar days after you complete the pipeline modification.	1
(14) Pipeline repair, including pressure test results.	§ 250.1095(e)	Within 30 calendar days after you complete a repair.	1
(15) Flexible joint inspections	§ 250.1102(b)	Within 30 calendar days after you complete the inspection.	1
(16) Pipe-to-electrolyte potential measurements.	§ 250.1102(d)	No later than October 31 of the same year, or within 60 calendar days of the measurements, whichever is earlier.	1
(17) Additional inspections and surveys	§ 250.1103(a) through (f).	As directed by the Regional Supervisor	1
(18) Pipeline decommissioning	§ 250.1111	Within 30 calendar days after you complete the decommissioning.	1
(19) Decommissioned pipeline re-commissioning, including pressure test results.	§ 250.1113(b)	Within 30 calendar days after you complete the re-commissioning.	1
(20) Accessory installation	§ 250.1144	Within 45 calendar days after you complete accessory installation.	3
(21) Accessory inspections	§ 250.1145(a)(2)	By November 1 of each year	1
(22) Accessory decommissioning	§ 250.1147 (see § 250.1729).	Within 30 calendar days after you decommission an accessory.	2

Plan/Report	Under section	When to submit	Total number of copies
(23) Accessory site clearance	§ 250.1147 (see § 250.1743(b)).	Within 30 calendar days after you conduct site clearance verification operations.	2

Applications for New Pipelines

§ 250.1007 How do I apply for approval for a new pipeline?

Before you install, maintain, or operate a new pipeline (including a jumper), or a pipeline you create with a combination of new pipe and existing pipe, you must submit three copies of a pipeline application to the Regional Supervisor for approval. If you prefer to submit all or part of your pipeline application electronically (see § 250.186(a)(3)), you should consult with the Regional Supervisor for further guidance.

(a) *Application contents.* (1) Your application must include the information described in §§ 250.1014 through 250.1030.

(2) The Regional Supervisor may require you to include additional information, if necessary, to assist in evaluating your pipeline application.

(3) The Regional Director may require less information or analysis than you otherwise must provide in your pipeline application when:

(i) Sufficient information or analysis is readily available to MMS;

(ii) Other coastal or marine resources are not present or affected; or

(iii) Other factors, such as technological advances, affect information needs.

(b) *Where to submit the application.* You must submit a pipeline application to one of the MMS Regional offices shown in the following table.

For OCS areas adjacent to the . . .	Submit your application to . . .
(1) State of Alaska	Minerals Management Service, Alaska OCS Region (AKOCSR), Regional Supervisor, Field Operations.
(2) Atlantic Coast States and in the Gulf of Mexico	Minerals Management Service, Gulf of Mexico OCS Region (GOMR), Regional Supervisor, Field Operations.
(3) States of California, Oregon, Washington, or Hawaii	Minerals Management Service, Pacific OCS Region (POCSR), Chief, Office of Facilities, Safety & Enforcement.

(c) *Withdrawal after submission.* You may withdraw your pipeline application at any time, and for any reason, by notifying the Regional Supervisor in writing.

§ 250.1008 Where must I send copies of my pipeline application?

(a) *Impacted leases and pipeline ROW grants.* When you submit a pipeline application to MMS, you must provide a copy of the pipeline application to each lessee or designated lease operator of an existing lease, and to each holder of a pipeline ROW grant (active or terminated) that could be impacted by your proposed pipeline construction or towing operations.

(b) *Affected States.* Unless the proposed operations described in your pipeline application are under a general concurrence from the affected State, when you submit a new ROW pipeline application to MMS you must provide each affected State with all of the following:

(1) A copy of the pipeline application. Pursuant to 43 CFR part 2, Appendix E, MMS has determined that none of the information included in an ROW pipeline application is proprietary. Therefore, you must not exclude any information from the copies of the application you submit to affected States.

(2) A consistency certification (see 15 CFR 930.57).

(3) All necessary data and information (see 15 CFR 930.58).

§ 250.1009 How does MMS process a pipeline application?

The Regional Supervisor determines whether the application is complete, accurate, and fulfills the requirements of this subpart. If the Regional Supervisor determines that your application does not meet these conditions, the Regional Supervisor will notify you of the problem or deficiency. The Regional Supervisor will not begin final review of your application until it is complete.

(a) *Compliance review.* The Regional Supervisor will ensure that your proposed operations conform to the OCSLA (43 U.S.C.1331, *et seq.*), as amended; other applicable laws; and applicable MMS regulations.

(b) *Environmental impact evaluation.* The Regional Supervisor will evaluate the environmental impacts of your proposed operations, and prepare environmental documentation under NEPA (42 U.S.C. 4321, *et seq.*) and its implementing regulations (40 CFR parts 1500 through 1508).

(c) *Amendments.* During the review of your pipeline application, the Regional Supervisor may require you, or you may elect, to change your pipeline application.

§ 250.1010 What conditions must my pipeline application meet?

The Regional Supervisor will approve your pipeline application only if you satisfy all of the criteria in this section.

(a) You must obtain the Regional Supervisor's approval of either a DOCD or DPP that covers the structure at the originating end of the pipeline (e.g., platform, well, subsea skid), if the proposed pipeline is a lease term pipeline (see § 250.1015(b)).

(b) You must provide the Regional Supervisor with a copy of your approved State permit (see § 250.1016(c)), if the proposed pipeline will enter or cross any State submerged lands.

(c) If the proposed pipeline will enter or cross any safety fairway or anchorage area, you must provide the Regional Supervisor with a copy of your approved U.S. Army Corps of Engineers permit (see § 250.1016(d)).

(d) If an OCS lease or pipeline ROW grant could be impacted by your proposed pipeline construction or towing operations (see § 250.1016(e) and (f)), you must:

(1) Provide the Regional Supervisor with a return receipt or letter of no objection from the lessee or designated lease operator of each impacted lease, or the holder of each impacted pipeline ROW grant (active or terminated); and

(2) Ensure that each entity you notified under paragraph (d)(1) of this section had at least 30 days from the

date they received the pipeline application from you to submit comments to the Regional Supervisor.

(e) If the proposed pipeline will terminate or originate at a new hot tap or other connection on the OCS, the lessee, designated lease operator, or pipeline ROW holder of the receiving or delivering pipeline must first obtain approval from the Regional Supervisor to modify their pipeline.

(f) For ROW pipeline and new accessory installation applications, either:

(1) All affected States with approved CZMA programs have concurred, or have been conclusively presumed to concur, with your coastal zone consistency certification in your pipeline application under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) (16 U.S.C. 1456(c)(3)(A)); or

(2) The Secretary of Commerce finds, under section 307(c)(3)(A) of the CZMA (16 U.S.C.1456(c)(3)(A)), that the proposed ROW pipeline operations or new accessory installation are consistent with the objectives of CZMA, or are otherwise necessary in the interest of national security.

(g) For ROW pipeline applications, you must demonstrate oil spill financial responsibility (OSFR) as required by 30 CFR 253.13, if applicable (see § 250.1029).

§ 250.1011 What can I do if an affected State objects to my ROW pipeline application?

For ROW pipeline and new accessory installation applications, if an affected State objects to the coastal zone consistency certification in your application, you may follow the procedures in either paragraph (a) or (b) of this section.

(a) You may amend your application to accommodate the State's objection, and submit the amendment to the Regional Supervisor for approval and to the affected State for its consistency determination. The amendment need only address information related to the State's objection.

(b) You may appeal the State's objection to the Secretary of Commerce using the procedures in 15 CFR part 930, subpart H. The Secretary of Commerce will either:

(1) Grant your appeal by finding, under section 307(c)(3)(B)(iii) of CZMA (16 U.S.C. 1456(c)(3)(B)(iii)) that the proposed operations are consistent with the objectives of CZMA, or are otherwise necessary in the interest of national security; or

(2) Deny your appeal, in which case you may either amend your application under paragraph (a) of this section or withdraw your application and not conduct the proposed operations.

§ 250.1012 How will the Regional Supervisor notify me of the decision on my pipeline application?

After review and evaluation, the Regional Supervisor will notify you in writing whether your pipeline application is approved or disapproved.

(a) The Regional Supervisor will approve your pipeline application if it complies with all applicable requirements; and will inform you of any conditions that you may be required to meet. In the approval letter, the Regional Supervisor will assign a unique MMS pipeline segment number that you must use in all subsequent correspondence regarding the pipeline.

(b) The Regional Supervisor will disapprove your pipeline application if the proposed operations would probably cause serious harm or damage (and you cannot amend the proposed pipeline operations to avoid such conditions) to life (including fish or other aquatic life), property, any mineral (in areas leased or not leased), the national security or defense, or the marine, coastal, or human environment. The Regional Supervisor will provide the reason(s) for disapproving your pipeline application in writing.

§ 250.1013 When may the Secretary cancel approval of a pipeline application?

The Secretary may cancel approval of your pipeline application upon your request, or if pipeline operations under the application are in suspension or temporary prohibition (see § 250.1091) for at least 5 years (see section 5(a)(2) of the OCSLA (43 U.S.C. 1334(a)(2)). To cancel approval under this section, the Secretary must determine after a hearing that all of the following conditions are met:

(a) Continued operation under the approved pipeline application would probably cause serious harm or damage to life (including fish and other aquatic life), property, mineral resources (in areas leased or not leased); the national security or defense, or the marine, coastal, or human environment;

(b) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

(c) The advantages of cancellation outweigh the advantages of continuing the pipeline application in force.

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§ 250.1014 General information.

You must provide the following general information:

You must provide a(n). . .	That includes. . .	and. . .
(a) Cover letter	(1) The name of the company and the name, title, and signature of the company representative filing the application; and. (2) A statement that you are applying for approval of the pipeline in accordance with § 250.1007.	
(b) List of contacts	The name and MMS operator number of the company filing the application, and the company's managerial, regulatory, and technical representatives who the Regional Supervisor can contact while processing the application.	For each contact, you must include the: (1) Company name; (2) Business and postal address; (3) Telephone number; (4) Telefax number; and (5) E-mail address.
(c) Indication of the pipeline type.	An indication whether the proposed pipeline will be a lease term pipeline type or an ROW pipeline.	
(d) Indication of the pipeline jurisdiction.	An indication whether the proposed pipeline will be under the jurisdiction of DOI or DOT.	If you wish petition to transfer jurisdiction from DOI to DOT or to transfer jurisdiction from DOT to DOI (see § 250.1004(b)), you may include the request in your pipeline application.
(e) Tentative schedule for conducting pipeline operations.	The date your installation operations will begin and end	The date you will place the pipeline into service.

You must provide a(n). . .	That includes. . .	and. . .
(f) New or unusual technology statement.	A statement whether you will or will not use a new or unusual technology to carry out your proposed pipeline operations.	If you will use new or unusual technology, provide a narrative description of the technology and the rationale for its selection.
(g) Payment	Payment of a nonrefundable service fee (see § 250.125 for amount).	If the application is for a lease term pipeline.

§ 250.1015 Other general information.

If your proposed pipeline operations meet any of the criteria in the following table, you must provide the indicated information:

If. . .	You must provide. . .
(a) You are applying for an ROW pipeline	A statement that certifies that you have an approved National Pollutant Discharge Elimination System (NPDES) permit, or that you have applied for an NPDES permit that covers your proposed pipeline operations.
(b) You are applying for lease term pipeline in the GOMR	The MMS assigned control number for the DOCD or DPP that a covers or will cover your proposed pipeline operations. If you have not submitted the DOCD or DPP, you must provide the date you intend to submit the document or plan to the GOMR.
(c) You are applying for an ROW pipeline and you propose to use measures beyond those required by this part to minimize or mitigate environmental impacts.	A description of the additional measures you will use.
(d) Your pipeline will operate in a sour environment	A certification that the pipeline is designed in accordance with the requirements in § 250.1035.
(e) You will install a supervisory control and data acquisition(SCADA) system.	A brief description of the system.

§ 250.1016 Information regarding other agencies and entities.

If your proposed pipeline operations meet any of the criteria in the following table, you must provide the indicated information:

For each . . .	You must provide . . .
(a) ROW pipeline and new accessory installation	(1) Coastal zone consistency certification according to 15 CFR 930.57 for each affected State; and (2) Evidence that you sent your pipeline or accessory application, consistency certification (see 15 CFR 930.57), and all necessary data and information (see 15 CFR 930.58) to each affected State for their CZMA consistency determination.
(b) ROW pipeline, if the routes of the vessels and aircraft you will use to support your proposed pipeline operations are located in or could traverse established military warning or water test areas.	(1) An identification of the warning and water test area(s); and (2) A certification that, before you begin pipeline construction operations, you will contact the military installation with jurisdiction over the area concerning the control of electromagnetic emissions and the use of vessels and aircraft in the area.
(c) Proposed pipeline that will enter into or cross State offshore waters	A copy of the approved permit from that State.[1]
(d) Proposed pipeline that will enter into or cross any safety fairway or anchorage area.	A copy of the approved U.S. Army Corps of Engineers permit.[1]
(e) Proposed pipeline that will enter into an existing OCS lease, or whose construction operations could impact lease operations (e.g., placing anchors on the lease).	OCS area and block designations, OCS lease number, and name of the lessee or designated lease operator for each impacted lease.
(f) Proposed pipeline that will cross, or whose construction operations could impact an existing ROW pipeline or a decommissioned pipeline (i.e., placing anchors or routing the pipeline across or within 500 feet of an existing ROW pipeline).	OCS area and block designations of the crossing or impact point, and name of the pipeline ROW holder.
(g) Proposed pipeline that will originate or terminate at an existing valve or hot tap assembly.	(1) OCS area and block designations of the tie-in point(s); and (2) Name of the lessee or designated lease operator if a connecting pipeline is a lease term pipeline; or the name of the pipeline ROW holder if a connecting pipeline is an ROW pipeline.
(h) Proposed pipeline you identified pursuant to paragraphs (e), (f), and (g) of this section.	A photocopy of a return receipt or a letter of no objection that indicates the date that the lessee, designated lease operator, or pipeline ROW holder received a copy of your pipeline application by registered or certified mail (or equivalent).[1]

[1] If this document is not available when you submit your application, you may submit the document later.

§ 250.1017 Location information.

(a) You must provide the following location information:

You must provide . . .	That must . . .
(1) A location plat based on the North American Datum of 1927 (NAD 27) for the GOMR (Gulf) and POCSR, and the North American Datum of 1983 (NAD 83) for the AKOCSR and GOMR (Atlantic), with a minimum scale of 1 inch = 2,000 feet.	Include the information listed in paragraph (b) of this section.
(2) An Electronic file of the digital coordinates of a sufficient number of points to provide an accurate representation of the entire route of the proposed pipeline, including turns and umbilicals.	Be in decimal degree latitude and longitude and based on NAD 27 for the GOMR (Gulf) and POCSR, and NAD 83 for the AKOCSR and GOMR (Atlantic). The Regional Supervisor will specify the file format for providing this information.
(3) Information on the proposed locations of the origin, termination, and inclusive OCS blocks traversed by the pipeline route.	Include, if applicable, the OCS area, block number, and lease number.
(4) The total length (feet) of the proposed pipeline excluding risers, the length in Federal waters (feet), and the length in State waters (feet), if applicable.	

(b) The location plat required by paragraph (a)(1) of this section must do all of the following:

(1) Identify the lessee, designated lease operator, or pipeline ROW holder.

(2) Show OCS area, block, and lease designations.

(3) Show the pipeline route from origination to termination, including the plant or refinery, if applicable. It must also show flow direction and, if an ROW pipeline, the 200-foot pipeline ROW and any site for an accessory.

(4) Show the routes and flow directions of all umbilicals.

(5) Identify all platforms (including accessories) and pipelines (MMS-assigned segment numbers) that your proposed pipeline will connect to, cross, or otherwise impact.

(6) Identify all safety fairways, anchorage areas, and military warning or water test areas that are within 500 feet of the center line of the proposed pipeline.

(7) Show the burial depth (feet) of the pipeline along its entire length.

(8) Show the water depth (feet) along the entire length of the pipeline.

(9) Depict the water depth (feet), X–Y coordinates, and decimal degree latitude and longitude of each of the following key points:

(i) Locations of the originating and terminating structures;

(ii) Points where the proposed pipeline crosses a fairway, an anchorage area, or a lease or block boundary;

(iii) Locations of subsea valves, flanges, hot taps, tie-ins, anode sleds, connecting sleds (including PLEM's and PLET's), manifolds (including those that are accessories), and other appurtenances;

(iv) Locations of pipeline crossings;

(v) Points throughout the curvature of a turn; and

(vi) Point where the pipeline enters into State jurisdiction, if applicable.

(10) Include a certification by a registered engineer or land surveyor that the information on the plat is accurately represented.

(c) For each ROW pipeline, you must provide a map at an appropriate scale that shows the:

(1) Proposed pipeline route relative to the shoreline, the onshore support base you will use, and the proposed primary transportation routes for your support vessels and aircraft; and

(2) Distance to shore (miles) of the pipeline route origination and termination points.

§ 250.1018 Origination and termination information.

You must provide origination and termination information as indicated in the following table:

Type of information	When required	Contents
(a) General information on the facilities where the proposed pipeline will originate and terminate.	In all cases	(1) The type of structure (i.e., platform, well jacket or caisson, subsea well, manifold, tie-in, or blind flange); (2) MMS-assigned name of the structure (if applicable); (3) OCS area and block designations; (4) OCS lease number (if applicable); (5) Distance to shore (miles); (6) Water depth (feet); (7) Whether the structure is manned or unmanned; and (8) If the facility is equipped with a pig launcher/receiver, a description of its major features and rating.
(b) Riser design information for each pipe diameter.	If the pipeline will connect at a platform, well jacket, or caisson.	(1) Design life (years); (2) Outside diameter (inches); (3) Wall thickness (inches); (4) Pipe grade; (5) Hydrostatic test pressure (psi) and duration (hours); (6) Type and thickness (mils) of the external corrosion coating; (7) Type and thickness (mils) of the external corrosion coating in the splash zone; (8) Type and thickness (mils) of the internal corrosion coating; (9) Type of riser, e.g., fixed, catenary, top tension, flexible; (10) Type, pressure rating (psi), and, if applicable, the de-rated pressure rating (psi) of the insulating flange; and (11) Whether the riser can be inspected using in-line inspection tools (e.g., smart pigs).

Type of information	When required	Contents
(c) Non-traditional pipe	If you plan to use any non-traditional pipe (e.g., flexible pipe) to construct the riser.	(1) The name and a description of the non-traditional pipe; (2) The manufacturer's design specification sheet; (3) The design pressure (psi); (4) An identification of the design standards you used; and (5) A review by a third-party verification agent (specified in API Spec 17J (incorporated by reference as specified in § 250.198), where applicable) if you intend to use any unbonded flexible pipe.
(d) Riser guard design	In all cases	A drawing that shows how you will protect the riser(s) from physical damage that could result from contact with floating vessels.
(e) Catenary and other non-traditional riser.	If the riser will be a catenary or other non-traditional design.	(1) Design fatigue life (years) of the riser and the fatigue point at which you would replace the riser; (2) Identification of the design standards you used; and (3) Type and rating of the connecting device you will use;
(f) Subsea manifold	If the proposed pipeline will originate or terminate at a subsea manifold.	A diagram of the facility showing its major features including: (1) Pressure rating (psi) of the pressure limiting component; (2) Type of exterior protective coating; and (3) Description of the cathodic protection system.
(g) Subsea tie-in	If the proposed pipeline will originate or terminate at a subsea tie-in.	Information about the tie-in that includes: (1) Type of tie-in assembly (existing valve or new hot tap); (2) MMS-assigned pipeline segment number of the delivering or receiving pipeline; (3) MAOP (psi) of the delivering or receiving pipeline; and (4) Schematic drawing of the tie- in assembly.
(h) Subsea blind flange	If the pipeline will originate or terminate at a subsea blind flange.	Information about the blind flange that includes the: (1) Type; (2) Pressure rating (psi); and (3) If applicable, the de-rated pressure rating (psi).
(i) Other appurtenances and other accessories.	If the pipeline will include any equipment, device, apparatus, or other object not described in paragraphs (e) through (h) of this section.	Information about the appurtenance that includes: (1) Description of the appurtenance; (2) Schematic drawings showing the arrangement and orientation of the appurtenances; and (3) For subsea manifolds, pipeline end modules (PLEM's), and pipeline end terminals (PLET's), a diagram of the appurtenance showing its major features and dimensions, pressure rating (psi), and type of exterior protective coating, and a description of the cathodic protection system.

§ 250.1019 Horizontal component and appurtenances information.

You must provide horizontal component and appurtenances information as indicated in the following table:

Type of information	When required	Required data elements
(a) Pipeline internal design pressure.	For all pipelines	(1) Internal design pressure (psi) you calculated; (2) Formula you used to calculate the internal design pressure; (3) Design factors you used in calculating the internal design pressure; and (4) Calculations you performed to derive the internal design pressure for each pipe diameter and wall thickness.
(b) Pipeline collapse design pressure.	For all pipelines to be installed in water depths greater than 1000 feet.	(1) External pressure on the pipe in (psi); (2) Collapse design pressure (psi) you calculated; (3) Formula you used to calculate the external design pressure; (4) Collapse factor you used in calculating the external design pressure; (5) Calculations you performed to derive the external design pressure for each pipe diameter and wall thickness; and (6) Description of any collapse arrestors you intend to install or other mitigation you intend to use.

Type of information	When required	Required data elements
(c) Horizontal component design	For all pipelines, for each pipe diameter incorporated in the horizontal component of the pipeline.	(1) Design life (years); (2) Pipe outside diameter (inches); (3) Pipe wall thickness (inches); (4) Pipe grade; (5) Bare pipe and weighted pipe specific gravities, and a statement (based on stability analysis) that the pipeline will remain stable following installation; (6) Type of welds (e.g., longitudinal, electrical resistance welded (ERW), submerged arc welded (SAW), seamless); (7) Hydrostatic test pressure (psi) and test duration (hours); (8) Type and thickness (mils) of the external corrosion coating; (9) Type and thickness (mils) of the internal corrosion coating; (10) Density (pounds/cubic foot) and thickness (inches) of the concrete weight coating; and (11) Statement indicating whether or not the pipe can be inspected using in-line inspection tools (e.g., smart pigs).
(d) Non-traditional pipe	If you plan to use any non-traditional pipe (e.g., coiled tubing, flexible pipe, unbonded flexible pipe) to construct the horizontal component.	(1) Name and a description of the non-traditional pipe; (2) Manufacturer's design specification sheet; (3) Design pressure (psi); (4) Identification of the design standards you used; and (5) Review by a third-party independent verification agent (specified in API Spec 17J (incorporated by reference as specified in § 250.198), where applicable) if you intend to use any unbonded flexible pipe.
(e) Pipeline cathodic protection system.	If you plan to install a cathodic protection system that uses bracelet anodes.	(1) Anode composition; (2) Design anode life expectancy (years); (3) Formula and calculations you used to determine the design life of your anodes; (4) Anode consumption rate (pounds/amp/year); (5) Net weight per anode (pounds); (6) Anode interval (feet); and (7) Number of anodes.
(f) Non-traditional cathodic protection system.	If you plan to install a cathodic protection system that does not use bracelet anodes.	(1) Specify and describe the system; and (2) Provide the applicable information from paragraph (e) of this section, and the information and calculations you used to show that your pipeline is cathodically protected.
(g) Pipeline valves and flanges	If you plan to install a valve or flange on the horizontal component (not at the originating or terminating points) as an appurtenance to the pipeline.	Information about each valve or flange that includes the: (1) Type; (2) Pressure rating (psi); and (3) If applicable, the de-rated pressure rating (psi).
(h) Umbilicals	If you plan to install umbilicals as appurtenances to the pipeline.	A drawing that shows: (1) Types of umbilicals (e.g., electrical, hydraulic, chemical) you plan to install; (2) Configuration of the umbilicals in the bundle; (3) Length (feet) and outside diameter (inches) of the bundle; and (4) Any associated umbilical termination assemblies.
(i) Other appurtenances	If you plan to install any equipment, device, apparatus, or other object not described in paragraphs (e) through (h) of section.	Information about each appurtenance that includes: (1) Description of the appurtenance; (2) Schematic drawings showing the arrangement and orientation of the appurtenances; and (3) For subsea manifolds, pipeline end modules (PLEM's), and pipeline end terminals (PLET's), a diagram of the appurtenance showing its major features and dimensions, pressure rating (psi), type of exterior protective coating, and a description of the cathodic protection system.
(j) Pipeline crossings	If the pipeline will cross any existing pipeline, umbilical, power or communication cable, or other structure or object.	(1) MMS-assigned segment number of the pipeline or umbilical (if applicable) to be crossed; (2) OCS area and block designations of the crossing location; (3) Description of the method you will use to separate the pipeline from the existing structure or object and the separation distance (inches); (4) Water depth (feet) at the pipeline crossing; (5) Indication of the presence or absence of H_2S in the crossed pipeline; and (6) Diagram that shows a profile of the crossing that includes the depth of cover (feet).

§ 250.1020 Schematic flow diagram.

You must provide a schematic flow diagram of the proposed pipeline that is consistent with the diagram(s) required by § 250.802(e)(1) through (3), as appropriate, and that shows:

(a) All pressure sensing devices and associated control lines;

(b) All pressure safety valves (PSVs) and settings;

(c) All shutdown valves (SDVs), flow safety valves (FSVs), and block valves;

(d) All pressure-regulating devices (including back-pressure regulators);

(e) Any subsea manifolds, PLEMs and PLETs, and other appurtenances;

(f) Input source(s) (e.g., wells, pumps, compressors, and vessels) and the maximum source pressure (MSP) (psi) of each;

(g) Flow direction (or predominate direction for bi-directional flow);

(h) Safety equipment for the input source;

(i) Rated working pressure (psi) of all valves and flanges;

(j) Any specification (spec) breaks;

(k) Initial receiving equipment, vessel, or pipeline, and its rated working pressure (psi) or MAOP (psi);

(l) Pig launchers and receivers;

(m) Calculated MAOP (psi) of the proposed pipeline;

(n) MMS-assigned segment number and approved MAOP (psi) of any connecting pipeline; and

(o) The transfer point where jurisdiction changes between DOI and DOT, if applicable.

§ 250.1021 Shallow hazards information.

You must provide information on shallow hazards as indicated in the following table:

Type of information	When required	Contents
(a) Shallow hazards survey report ..	For ROW pipelines in the GOMR, and for all pipelines in the POCSR and AKOCSR.	Shallow hazards survey report of the proposed pipeline route based on information obtained from the shallow hazards survey (see § 250.1032(a)). The Regional Supervisor will specify requirements for preparing the report.
(b) Shallow hazards analysis of any seafloor and subsurface geologic features, and any manmade features or conditions, which may have an adverse effect on the proposed pipeline.	In all cases	(1) Description of the hazards along the pipeline route; (2) Discussion of any special safety measures you will take to minimize the adverse effects of shallow hazards on the proposed pipeline; and (3) Discussion of how you will comply with the hazard mitigation requirements specified in § 250.1042.

§ 250.1022 Construction information.

You must provide pipeline construction information as indicated in the following table:

Type of information	When required	Contents
(a) Installation method	In all cases	A brief description of the method you will use to install the proposed pipeline (e.g., S-lay, J-lay, reeled lay, towed lay).
(b) General information on the vessel/equipment you will use to construct the proposed pipeline.	In all cases	(1) Type of vessel (e.g., anchor supported, dynamic positioning) or equipment (e.g., trucks, bulldozers); (2) Name of the vessel (if known); (3) Maximum anchor radius (feet); (4) Capacity of fuel tanks (barrels); and (5) Proposed anchor location for operations in the POCSR.
(c) Tow route	If you plan to install the pipeline by towing or dragging it to the installation site.	(1) Plat that depicts the entire tow route and indicates where the pipeline will be dragged on the seafloor, if applicable. (2) Electronic file containing the the digital coordinates of sufficient points to provide an accurate representation of the proposed tow route. In preparing this file, you must: (i) Use the file format specified by the Regional Supervisor; (ii) Include the data for the entire tow route; and (iii) Present the data in decimal degree latitude and longitude, based on NAD 27 for the GOMR (Gulf) and the POCSR, and NAD 83 for AKOCSR and GOMR (Atlantic). (3) Shallow hazards survey report for the tow route (see § 250.1032(a)). (4) Analysis of any seafloor and subsurface geologic features, and any manmade features or conditions, which may have an adverse effect on the pipeline if towed or dragged. The analysis must include a: (i) Discussion of the hazards along the pipeline tow route; (ii) Description of any special safety measures you will take to minimize the adverse effects of shallow hazards on the towing operations; and (iii) Discussion of how you will comply with the hazard mitigation requirements specified in § 250.1042.

Type of information	When required	Contents
(d) Air emissions	For ROW pipelines in the GOMR, and for all pipelines in the POCSR and AKOCSR, you must provide air emissions information for all combustion sources used in pipeline construction operations.	(1) Total rated output (horsepower) of each vessel/equipment; (2) Rated output (horsepower) of each combustion emission source on the vessel(s) and a description of its use (e.g., crane, compressor, generator, dehydrator); (3) Run time (hours/day and days/year) for each emission source; (4) Documentation of any emission control technologies you will employ; and (5) Maximum hourly, daily, and total projected emissions for all pipeline installation-related emission sources.
(e) Vessel discharges	For ROW pipelines in the GOMR, and for all pipelines in the POCSR and AKOCSR, you must provide information on discharges for all vessels associated with your pipeline installation.	(1) Types and general characteristics of the wastes that will be generated and discharged into the ocean during construction operations; (2) Volume (gallons) of waste that will be discharged; (3) Average and maximum discharge rates (gallons/hour); (4) Description of any treatment or storage; and (5) Discharge location and method for each type of discharge.
(f) Pipeline burial	If you plan to bury the pipeline (see § 250.1044(c)).	(1) Method you will use to bury the pipeline (e.g., jet, plow); and (2) Depth of burial (feet), including the depths in safety fairways and anchorage areas.
(g) Pipeline self burial	If you expect that the pipeline will bury itself naturally in the sediment, you must provide a request to use an alternative procedure under § 250.141.	(1) Appropriate site-specific geotechnical data (e.g., sediment compaction, shear strength) and other information to verify sediment conditions; and (2) Information specified in § 250.1027(a).
(h) Obstruction protection	In all cases	Information concerning any covering (e.g., dome, cage, sandbags, concrete mats) you will use to protect a manifold, tie-in, or blind flange at the pipeline origination and termination points, and all valves, flanges, other appurtenances, and pipeline crossings along the horizontal component of the pipeline (see § 250.1046(a)). The information you provide must include: (1) A drawing that shows the specifications of the protective covering and the equipment it will protect; (2) A drawing and a description of the relationship of the protective covering to the seafloor (e.g., mat edges buried); (3) A discussion of any anchor pins or sandbags you will use to hold the protective covering in place, if applicable; (4) A description of the cathodic protection system for the protective covering, if appropriate; and (5) A discussion of your plans for maintaining the protective covering.
(i) Underwater vent pipelines	If you plan to install an underwater vent pipeline.	A description of the provisions you will make for anchoring the end of the underwater vent pipeline.

§ 250.1023 Onshore support base, terminal, support vessels, and aircraft information.

You must provide information on each onshore base you will use to provide supply and service support for your proposed pipeline operations as indicated in the following table:

Type of information	When required	Contents
(a) Onshore support base	In all cases	(1) Name and location of the onshore support base, and whether it will be a new or existing facility; (2) Description of the necessary work, if you plan to construct a new onshore support base or make major additions to an existing one; and (3) Timetable for land acquisition (including rights-of-way and easements) and construction or expansion if you plan to acquire land to construct a new facility or expand an existing one.
(b) Onshore terminal	For pipelines that will transport product to shore.	The name, description, and location of the primary onshore terminal (including any refinery, gas plant, or compressor station) that will be built or undergo expansion or major modification as the result of your proposed pipeline operations.
(c) Support vessels and aircraft (general).	For ROW pipelines in the GOMR, and all pipelines in the POCSR and AKOCSR.	Information for each type of vessel/equipment (e.g., anchor-handling boats, tug boats, supply boats, service boats, crew boats) and aircraft you will use to support your proposed pipeline operations that includes: (1) Fuel tank storage capacity (barrels); (2) Maximum number of vessels/equipment that will be in the area of operations at any one time; and (3) Trip frequency or duration.

Type of information	When required	Contents
(d) Diesel oil supply vessel/equipment.	For ROW pipelines in the GOMR, and all pipelines in the POCSR and AKOCSR.	Information on the vessels you will use to supply diesel oil to your pipeline installation vessels/equipment that includes: (1) Vessel length (feet); (2) Diesel oil storage capacity (barrels); and (3) Frequency of fuel transfers.

§ 250.1024 Operation information.

You must provide the following pipeline operation information:

(a) *Pipeline operating temperature.* The anticipated maximum and minimum operating temperatures (°F) of the proposed pipeline.

(b) *Proposed MAOP.* Your proposed MAOP (psi) for the pipeline, and the method you used to determine the MAOP (see § 250.1081).

§ 250.1025 Service and products information.

You must indicate the primary service and, if applicable, the secondary service of the proposed pipeline (e.g., oil, bulk oil, natural gas, bulk gas, condensate, gas and condensate, gas lift, instrument, flare/vent, water, methanol, glycol, sulphur, or other chemicals). If the pipeline will be bidirectional, you must provide the service for each direction and indicate which one will predominate.

If you will be primarily transporting . . .	Then you must provide . . .	The Regional Supervisor may also require . . .
(a) Natural gas	(1) The anticipated maximum flow rate (MMCFD); (2) The maximum design flow rate (MMCFD); (3) The specific gravity of the gas; (4) The carbon dioxide (CO_2) and hydrogen sulfide (H_2S) concentrations (ppm); (5) Your provisions for controlling internal corrosion; and (6) Your provisions for flow assurance	The chemical and physical characteristics of the gas.
(b) Liquid hydrocarbons	(1) The anticipated maximum flow rate (BPD); and (2) The maximum design flow rate (BPD); (3) The API° gravity of the liquid; (4) The anticipated CO_2 and H_2S concentrations (ppm); (5) Your provisions for controlling internal corrosion; and (6) Your provisions for flow assurance	The chemical and physical characteristics of the oils (see definition under 30 CFR 254.6).
(c) Chemicals	(1) The anticipated maximum flow rate (BPD); (2) The maximum design flow rate (BPD); (3) Your provisions for controlling internal corrosion	The chemical and physical characteristics of each chemical.
(d) A product with an H_2S concentration greater than 20 ppm, or will cross a pipeline that transports a product with an H_2S concentration greater than 20 ppm.	(1) An H_2S Contingency Plan prepared according to § 250.490(f); (2) A reference to an approved or submitted H_2S Contingency Plan that covers the operation of the proposed pipeline and/or the construction operations at the pipeline crossing; or (3) A statement that you will submit for approval to the appropriate District Manager either an H_2S Contingency Plan(s) or an amendment to an approved H_2S Contingency Plan(s) before you install the proposed pipeline.	
(e) A product with an H_2S concentration greater than 500 ppm.	Two (2) copies of an H_2S dispersion modeling report or the modeling results (see § 250.1082(b)), or a reference to such report or results if already submitted to the Regional Supervisor.	

§ 250.1026 Biological and archaeological information.

You must provide the biological and archaeological information indicated in the following table:

Type of information	When required	Contents
(a) Chemosynthetic communities report.	If the proposed pipeline, or the associated anchors or chains of the pipeline construction vessel (or a proposed accessory, or the associated anchors or chains of the construction barge) will be placed in water depths 1,312 feet or greater.	Three copies of a high-density chemosynthetic communities report. The Regional Supervisor will specify the contents of this report.
(b) Sensitive biological features reports or documentation.	If the proposed pipeline, or the associated anchors or chains of the pipeline construction vessel (or a proposed accessory platform, or the associated anchors or chains of the construction barge) will be placed in the vicinity of any biologically-sensitive features, including but not limited to topographic features, live bottoms (low-relief features), live bottoms (pinnacle trend features or seamounts), and potentially sensitive biological features.	Plats, a photo documentation survey report, and/or a high-resolution geophysical data survey report to identify and locate the features. The Regional Supervisor will specify when you must provide these plats and reports, and their contents.
(c) Archaeological report	If you propose bottom-disturbing operations in areas that are identified as high probability shipwreck blocks or prehistoric areas.	Three copies of an archaeological report, or a reference to such a report if it was already provided to the Regional Supervisor. The Regional Supervisor will specify the contents of the archaeological report.

§ 250.1027 Requests for alternative compliance or departure.

You must provide any request for alternative compliance or departure as indicated in the following table:

Type of request	When required	What your request must do
(a) Alternative compliance ...	You must request approval from the Regional Supervisor if you plan to use any alternate procedures or equipment (see § 250.141).	(1) Identify the MMS regulation for which you are seeking alternative compliance; (2) Describe the procedure, method, or equipment you plan to use; (3) Explain the reason you want to use the procedure, method, or equipment; and (4) Explain how you will achieve a level of safety and environmental protection that is equal to or greater than that prescribed by the MMS regulation.
(b) Departure	You must request approval from the Regional Supervisor if you plan to depart from any current MMS regulatory requirements (see § 250.142) concerning the proposed pipeline.	(1) Identify the MMS regulation for which you are seeking to forego or delay compliance; (2) Describe the procedure, method, or equipment you plan to use, if applicable; and (3) Explain the reason you wish to forego or delay compliance with the identified MMS regulation.

§ 250.1028 Oil and hazardous substance spill response information.

You must provide the following oil and hazardous substance spill response information:

(a) *Oil spill response planning.* For ROW pipelines, you must provide either:

(1) An Oil Spill Response Plan (OSRP) for the pipeline prepared according to the requirements of 30 CFR part 254; or

(2) A reference to your approved regional or subregional OSRP (see 30 CFR 254.3) that includes:

(i) A discussion of your regional or subregional OSRP, and a statement that your proposed ROW pipeline operations will be covered by that OSRP;

(ii) The locations of your primary oil spill equipment base and any preplanned equipment staging areas;

(iii) The names of your oil spill removal organizations for both spill response equipment and personnel;

(iv) The calculated volume (barrels) of your worst case discharge scenario (see 30 CFR 254.26(a)) for your proposed ROW pipeline;

(v) A comparison of the above worst case discharge scenario with the applicable worst case discharge scenario in your approved regional or subregional OSRP; and

(vi) A discussion of your worst case discharge scenario and your response in adverse weather conditions for your proposed operations (see 30 CFR 254.26(b), (c), (d) and (e)).

(b) *Modeling report.* If you model a potential oil or hazardous substance spill, a modeling report, the modeling results, or a reference to such report or results if you already submitted it to the Regional Supervisor.

(c) *Flower Garden Banks National Marine Sanctuary (FGBNMS).* If you propose to conduct operations within the protective zones of the FGBNMS, a description of your provisions for monitoring the impacts of an oil spill on the environmentally sensitive resources at the FGBNMS.

§ 250.1029 Oil Spill Financial Responsibility (OSFR) demonstration information.

For ROW pipelines that will transport oil (see definition at 30 CFR 253.3), you must provide a statement that you have demonstrated or will demonstrate OSFR coverage in the amount specified in 30 CFR 253.13(b) unless the static volume of the pipeline is 1,000 barrels, or less, or the calculated volume of your worst case discharge scenario is 1,000 barrels or less.

§ 250.1030 Environmental Impact Analysis (EIA) information.

For ROW pipelines, you must provide a project-specific EIA that identifies and analyzes the potential direct and indirect environmental impacts of your proposed ROW pipeline operations (including the installation and operation of any accessory) to assist the Regional Supervisor in complying with NEPA (42 U.S.C. 4321, *et seq.*) and other relevant Federal laws. Your EIA must include:

Type of information	What must be included
(a) Resources, conditions, and activities that could affect or be affected by your proposed ROW pipeline operations.	(1) Meteorology, oceanography, geology, and geological and/or manmade hazards; (2) Air and water quality; (3) Benthic communities, marine mammals, sea turtles, coastal and marine birds, fish and shellfish, and algal or plant life; (4) Threatened or endangered species, and their critical habitat, as defined by the Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531, *et seq.*); (5) Sensitive biological resources or habitats such as essential fish habitat, refuges, preserves, special management areas identified in coastal management programs, sanctuaries, coastal monuments, national natural landmarks, rookeries, and calving grounds; (6) Archaeological resources; (7) Socio-economic resources, as specified in paragraph (b) of this section; (8) Coastal and marine uses, such as military or commercial operations, shipping, and mineral exploration or development; and (9) Other resources, conditions, and operations identified by the Regional Supervisor.
(b) Socio-economic resources	(1) The approximate number, timing, and duration of employment of persons engaged in onshore support and construction operations; (2) Population (including the approximate number of people and families added to local onshore areas); (3) Existing offshore and onshore infrastructure (including major sources of supplies, services, energy, and water); (4) Types of contractors or vendors that may place a demand on local goods and services; (5) Land use; (6) Subsistence resources and harvest practices; (7) Recreation and recreational and commercial fishing (including seasons, location, and type); (8) Minority and lower income groups; (9) Federally-recognized tribes in the AKOCSR; and (10) Coastal zone management programs.
(c) Impact producing factors (IPF) that can cause impacts to the environmental resources you identified in paragraph (a) of this section.	(1) Air emissions; (2) Seafloor disturbance from anchoring and structure emplacement; (3) Discharges; (4) Emissions of light and noise; (5) Water intakes and discharges; (6) Use of service vessels and helicopters; (7) Construction or expansion of onshore support facilities; (8) Onshore waste disposal; and (9) Accidental events, including oil or chemical spills and hydrogen sulfide (H_2S) releases.
(d) Environmental impact analysis (EIA)	(1) Analysis of the direct and indirect impacts (including those from accidents) of the IPFs you identified in paragraph (c) of this section on the environmental resources, conditions, and activities you identified in paragraph (a) of this section; (2) Analysis of the potential cumulative impacts from other activities to those environmental resources, conditions, and activities you identified in paragraph (a) of this section; (3) Description of the type, severity, and duration of the potential impacts, and their biological, physical, and other consequences and implications; (4) Description of the potential measures to minimize or mitigate the potential impacts; and (5) Description of the alternatives to your proposed ROW pipeline operations that you considered while developing your pipeline application, and a comparison of the potential environmental impacts.
(e) Consultation	A list of agencies and persons that you consulted or you will consult, regarding potential impacts associated with your proposed pipeline operations.
(f) References cited	A list of the references that you cite in the EIA.

Pipeline Design

§ 250.1031 What are the general requirements for designing a pipeline?

You must design a pipeline, including the horizontal component, risers, valves, flanges, fittings, umbilicals, and all other appurtenances to do all of the following:

(a) Mitigate any reasonably anticipated detrimental effects of water currents, storm or ice scouring, soft or hard bottoms, mud slides, earthquakes, hurricanes, subfreezing temperatures, and other environmental factors;

(b) Withstand the anticipated maximum differential pressure to prevent both burst and collapse;

(c) Withstand the static and dynamic loads that will be imposed on the pipe during construction and under operating conditions;

(d) Mitigate the effects of thermal expansion and contraction; and

(e) Mitigate the effects of internal and external corrosion.

§ 250.1032 What must I do to avoid or mitigate hazards?

(a) *Shallow hazards survey.* You must conduct a shallow hazards survey using appropriate high-resolution geophysical survey techniques and other tools to locate potential hazards. The Regional Supervisor will specify the survey area, instrumentation, and methodology.

(b) *Route selection.* You must use the results of the shallow hazards survey required by paragraph (a) of this section, charts, maps, and other sources of relevant information to:

(1) Select a route that avoids surface and subsurface hazards as much as possible (e.g., in anchorage areas, existing pipelines, other manmade objects, active faults, rock outcrops, mudslide areas); and

(2) Identify hazards that you cannot avoid, and design the pipeline to mitigate the effects of these hazards.

§ 250.1033 What are the design requirements for horizontal components and risers?

(a) *Internal design pressure.* (1) You must determine the internal design pressure for steel horizontal components and risers using the following formula or the equations in section 4.3.1 of API RP 1111 and, if applicable, sections 4.3.1.1 and 4.3.1.2 of API RP 1111 (incorporated by reference as specified in § 250.198):

$$P = \frac{2 \times S \times t}{D}(F \times E \times T)$$

Variable	Description
P	Internal design pressure (psi).
S	Specified minimum yield strength (psi), stipulated in the specification under which the pipe was purchased from the manufacturer or determined in accordance with section 811.253(h) of ANSI/ASME B31.8 (incorporated by reference as specified in § 250.198).
T	Nominal wall thickness (inches).
D	Nominal outside diameter of pipe (inches).
F	Construction design factor (0.72 for the horizontal component and 0.60 for risers).
E	Longitudinal joint factor from Table 841.1B of ANSI/ASME B31.8 (incorporated by reference as specified in § 250.198) (See also section 811.253(d) of this standard).
T	Temperature derating factor obtained from Table 841.1C of ANSI/ASME B31.8 (incorporated by reference as specified in § 250.198).

(2) For limitations, see section 841.121 of ANSI/ASME B.31.8 (incorporated by reference as specified in § 250.198). When calculating the internal design pressure for steel pipe, you may account for the effects of external hydrostatic pressure as shown in ANSI/ASME B.31.8, Chapter 8 (incorporated by reference as specified in § 250.198).

(b) *External design pressure.* You must predict the external (collapse) design pressure for steel pipe for pipelines to be installed in water depths greater than 1000 feet using the equations in sections 4.3.2.1 and 4.3.2.2 of API RP 1111 (incorporated by reference as specified in § 250.198).

(c) *Catenary riser for a fixed structure.* You must design a catenary riser for a fixed structure according to sections 4.5.4 and 4.1.6.2 of API RP 1111 (incorporated by reference as specified in § 250.198).

(d) *Riser for tension leg platform or a floating system.* You must design a pipeline riser for a tension leg platform or a floating system according to API RP 2RD (incorporated by reference as specified in § 250.198).

(e) *Unbonded flexible pipe.* If you plan to install a pipeline using unbonded flexible pipe, you must design the pipeline according to the specifications and the review standards for a third-party independent verification agent specified in API Spec 17J (incorporated by reference as specified in § 250.198).

(f) *External protective coating.* You must design a pipeline to provide the:

(1) Horizontal component and appurtenances with an external protective coating to minimize external corrosion;

(2) Risers with an additional external coating to resist the detrimental effects of corrosion, sunlight, and wave action in the splash zone; and

(3) Pipe and appurtenances exposed to the atmosphere with a suitable coating.

(g) *Internal corrosion control.* You must design a pipeline to mitigate internal corrosion (e.g., the use of internal coatings, corrosion-resistant alloys) over its design life.

(h) *Flow assurance.* You must design a pipeline to ensure that adequate flow can be sustained throughout its design life (e.g., using pipe-in-pipe, insulated pipe, electrically heated pipe, piggable pipe).

(i) *Pipeline on-bottom stability.* You must design a pipeline so that it will be stable in the geologic and weather conditions for the area.

(1) Your pipeline must remain stable during a storm. The stability must be determined using appropriate backfill rates and storm data for the area. If the pipeline is in a water depth less than 200 feet and is jetted at least 3 feet below the natural seabed, it must be stable during a 2-year storm (minimum). If you expect that the pipeline will bury itself naturally in the sediment in a water depth less than 200 feet, it must remain stable during a 100-year storm (minimum). If the pipeline is in a water depth 200 feet or greater and is not buried, it must be stable during a 100-year storm (minimum).

(2) The Regional Supervisor may require additional stability design measures based on the geologic or weather conditions for the area.

(j) *Underwater vent pipeline.* You must design an underwater vent pipeline (any pipeline that transports natural gas that has been vented during upset or abnormal conditions or bleed

down operations to a location where the gas is discharged underwater or flared at a flare pile) to ensure that the discharge point is:

(1) A minimum of 250 feet from the delivering structure; and

(2) Anchored to the sea floor, unless the gas is flared at a flare pile.

(k) *Riser supports.* When designing riser supports, you must consider the:

(1) Loads induced by riser operations;

(2) Environmental loads, taking into account 100-year return period storm criteria as set out in API RP 2A–WSD (incorporated by reference as specified in § 250.198); and

(3) Installation loads on risers that are pre-installed.

§ 250.1034 What are the design requirements for appurtenances?

You must design pipeline appurtenances as set forth below:

(a) *Pipeline valve.* You must design a pipeline valve to meet the minimum design requirements of API Spec 6A (incorporated by reference as specified in § 250.198), API Spec 6D/ISO 14313 (incorporated by reference as specified in § 250.198), or the equivalent. You may not use a valve under any operating conditions that exceed the applicable pressure or temperature ratings in those standards. The material of the valve must be compatible with the product being transported.

(b) *Pipeline flange.* You must design a pipeline flange:

(1) To meet the minimum design requirements of ANSI B16.5 (incorporated by reference as specified in § 250.198), API Spec 6A (incorporated by reference as specified in § 250.198), or the equivalent;

(2) To withstand the MAOP of the pipeline;

(3) To maintain its physical and chemical properties at the maximum and minimum anticipated operating temperatures; and

(4) Using material that is compatible with the product being transported.

(c) *Pipeline fittings.* You must use pipeline fittings (couplings, elbows, unions, tees, swage nipples, buckle arrestors, gaskets, etc.) that:

(1) Have pressure-temperature ratings based on stresses for pipe of the same or equivalent material;

(2) Have a bursting strength greater than the computed bursting strength of the pipe; and

(3) Use material that is compatible with the product being transported.

(d) *Anode cathodic protection system.* You must:

(1) Design your anode cathodic protection system to have a life expectancy of 30 years or for the design life of the pipeline, whichever is longer; and

(2) Use the following equation, or another equation and/or method acceptable to the Regional Supervisor in accordance with the provisions of § 250.141, to calculate anode design life:

$$T = \frac{M \times U \times v}{(I \times 8760)}$$

Variable	Description
T	Time (years).
M	Total net anode mass (pounds).
U	Utilization factor.
v	Electrochemical efficiency (amp × hour/pound).
I	Current demand (amp).

(3) You can obtain values for the utilization factor (U) from DNV RP B401, Table 6.9.1 (incorporated by reference as specified in § 250.198). You can obtain values for electrochemical efficiency (v) from the anode manufacturer.

§ 250.1035 What are the design requirements for sour service?

If your pipeline will operate in a sour environment (fluids containing water as liquid and H_2S exceeding the limits defined in paragraphs 1.3.1.1 and 1.3.1.2 of NACE Standard MR0175 (incorporated by reference as specified in § 250.198)), you must design your pipeline in accordance with section 10.5 of NACE Standard MR0175.

§ 250.1036 When must I sectionalize a pipeline?

The Regional Supervisor may require you to design your pipeline in sections to reduce the volume of your worst case discharge (see 30 CFR 254.47).

Pipeline Fabrication

§ 250.1038 What are the general requirements for fabricating a pipeline?

You must fabricate each pipeline in a manner that:

(a) Adheres to a suitable quality control program that includes inspection, testing, spot checks, and evaluation by qualified personnel;

(b) Adheres to the specified design tolerances;

(c) Conforms to recognized engineering practices; and

(d) Complies with applicable regulations, codes, guides, standards, and recommended practices.

Pipeline Construction

§ 250.1040 What are the general requirements for constructing a pipeline?

You must construct each pipeline in accordance with your approved application, and in a manner that:

(a) Minimizes construction stresses and strains;

(b) Ensures that the pipeline is constructed on the approved route;

(c) Avoids or mitigates geologic and manmade hazards, artificial reefs, archaeological resources, and biologically sensitive features;

(d) Minimizes the length of unsupported spans; and

(e) Protects the pipeline from damage.

§ 250.1041 Who must I notify before I begin construction?

Before you begin pipeline construction, you must make the notifications in the following table:

Who you must notify	When you must make notification	Other requirements
(a) U.S. Coast Guard (USCG)	At least 30 calendar days before you conduct pipeline construction operations.	You are encouraged to notify the applicable USCG Marine Safety Office so that a Notice to Mariners can be prepared.
(b) Military installations	Before you conduct pipeline construction operations in an established military warning or water test area.	You must notify the commander of the military installation that exercises jurisdiction of the area concerning the control of electromagnetic emissions and the use of vessels, equipment, and aircraft in the area.
(c) MMS, Regional Supervisor	At least 48 hours before you commence construction operations.	You must make this notification by telefax or email, using Form MMS–153 (Notification of Pipeline Installation/Relocation/Hydrotest).

§ 250.1042 What must I do to avoid or mitigate hazards during construction?

To avoid or mitigate hazards during pipeline construction, you must comply with the requirements in the following table:

Requirement	What you must do	Details
(a) Buoying hazards	Before you perform pipeline construction operations or other bottom-disturbing activities. (2) In areas congested with pipelines or debris, use buoys to outline a safe working area large enough to accommodate your proposed pipeline construction operations..	You must: (1) Buoy all existing pipelines and other potential hazards located within 500 feet of the operation (including anchor patterns); or
(b) Navigation system	In lieu of complying with paragraph (a) of this section.	You may use a state-of-the-art, real-time primary navigational positioning equipment (e.g., DGPS) on all vessels (e.g., pipeline construction vessels, derrick barges, anchor-handling vessels) associated with your pipeline construction operations to depict existing pipelines and other potential hazards.
(c) Location plat	Before you perform pipeline construction operations.	You must: (1) Prepare a plat with a minimum scale of 1:12,000 oriented to true north depicting the location of proposed pipeline construction operations, all associated anchor patterns, existing pipelines (both active and inactive), debris fields, or other potential hazards in the area. The plat must be dated, accurate, and indicative of current conditions (including post-hurricane conditions and recent construction or modification activities0; and (2) Provide copies of the plat to key personnel on all vessels (e.g., pipeline construction vessels, derrick barges, and anchor-handling vessels) associated with your pipeline construction operations.

§ 250.1043 What must I do to install a hot tap?

To install a hot tap, you must comply with the requirements in the following table:

Requirement	What you must do	Details
(a) Area inspection	If you plan to install a hot tap on an existing pipeline located in a water depth less than 200 feet, you must first determine whether proper cover is being maintained on the portion of the pipeline in the vicinity of the proposed work. If you determine that environmental or other factors have detrimentally affected the burial depth of the pipeline.	(1) Notify the Regional Supervisor within 48 hours after you first observe the problem; and (2) Submit a plan of corrective action under § 250.1097 to the Regional Supervisor within 30 calendar days after you first observe the problem.
(b) Cathodic protection system measurements.	If your pipeline is located in: (1) The AKOCSR; or (2) The GOMR or POCSR, and (i) The pipeline is composed of any pipe that is more than 20 years old; or. (ii) The life expectancy of the cathodic protection system cannot be calculated.	Take measurements of the pipe-to-electrolyte potential at locations along submerged sections of a pipeline when you conduct hot tap operations on a pipeline.

§ 250.1044 What must I do to protect a horizontal component?

To protect the horizontal component during construction, you must comply with the requirements in the following table:

Component or activity	Requirement
(a) External coating	You must protect the external coating of the horizontal component during construction.
(b) Cathodic protection system	You must locate and install the components of the cathodic protection system in a manner that will minimize the possibility of damage.
(c) Burial	You must bury each pipeline you install in water depths less than 200 feet to a depth of at least three feet below the mud line. On a case-by-case basis, the Regional Supervisor may: (1) Grant you approval to allow a pipeline to self bury, or allow you to use an alternative method of compliance in accordance with the provisions of § 250.141; or

Component or activity	Requirement
	(2) Require you to increase the burial depth of a pipeline that will transport a product containing H_2S in highly congested or active areas.
(d) Other protective measures	The Regional Supervisor may require burial or other protection of the pipeline in any water depth if the Regional Supervisor determines that such measures will reduce the likelihood of environmental degradation, or mitigate a potential hazard to trawling operations or other uses of the OCS.
(e) Burial in fairways and anchorage areas.	You must consult with the U.S. Army Corps of Engineers as they may have more stringent burial requirements for pipelines that enter or cross safety fairways or anchorage areas.
(f) Spanning	You must provide sufficient supports, or use other mitigation measures (e.g., installing strakes), to avoid excessive loads or deformations and fatigue damage that could result from spanning.

§ 250.1045 What must I do to protect a riser?

To protect a riser during construction, you must comply with the requirements in the following table:

You must have . . .	and you must . . .
(a) External coating	Protect the external coating of the riser during construction.
(b) Cathodic protection system	Locate and install the components of the cathodic protection system in a manner that will minimize the possibility of damage.
(c) Vortex induced vibration (VIV) suppression devices.	Protect any preinstalled VIV suppression devices during construction.
(d) Impact protection	(1) Protect a pipeline riser from physical damage that could result from contact with floating vessels by using riser guards or other protection measures that are capable of transferring impact loads to the platform structure; and (2) Not use pipe-in-pipe configurations as riser impact protection.

§ 250.1046 What must I do to protect an appurtenance and crossing?

(a) *Protection methods.* You must protect all pipeline valves, taps, tie-in assemblies, capped pipelines, flanges, crossings, and repaired sections installed in water depths less than 500 feet with at least 3 feet of cover or with a protective device (e.g., cement mats, cages) unless an alternate procedure is otherwise approved by the Regional Supervisor in accordance with the provisions of § 250.141.

If you . . .	You must . . .
(1) Bury the appurtenance or crossing.	Maintain the three-foot burial depth throughout the life of the pipeline, including after the pipeline has been decommissioned in place.
(2) Use a protective device	Design it to be compatible with other uses of the OCS. The height and the slope of the device must allow for a smooth transition over the appurtenance or crossing.

(b) *Separation.* You must install the pipeline in a manner that:

(1) Provides for a separation of at least 12 inches for the life of the pipeline at pipeline crossings, power cable crossings, etc.; and

(2) Prevents physical contact with existing umbilicals and communication cables.

(c) *Existing pipelines.* If you plan to install a pipeline that will tie into or cross an existing pipeline, you must examine the portion of the existing pipeline in the vicinity of the proposed tie-in or crossing. If you determine that environmental or other factors have detrimentally affected the burial depth of the pipe or any appurtenance, any protective cover of the pipe (in water depths less than 200 feet), or any protective cover for any appurtenance (in water depths less than 500 feet), you must notify the Regional Supervisor. The Regional Supervisor may require the responsible party to submit a plan of corrective action (under § 250.1097) to remedy the problem.

(d) *Atmospheric zone.* You must protect valves and fittings exposed to the atmosphere with a suitable coating.

§ 250.1047 What must I do to construct a pipeline in or near a designated use area?

If you construct a pipeline in or near a designated use area, you must follow the requirements in the following table. Pipeline construction operations include the use of anchors, chains, and wire ropes.

If your pipeline construction operations . . .	Then . . .
(a) Are conducted in or near a designated military warning or water test area.	You must: (1) Assume all risks of damage to property, or injury to persons you employ or who are otherwise connected with your pipeline construction operations, that is caused by any act or omission, regardless of negligence or fault, resulting from the programs or activities of the military installation exercising jurisdiction over the military warning or water test area;

If your pipeline construction operations . . .	Then . . .
	(2) Indemnify and hold harmless the United States against all claims for loss, damage, or injury sustained by persons you employ, or who are otherwise connected with your pipeline construction operations, that are caused by any act or omission, regardless of negligence or fault, resulting from the programs or activities of the military installation exercising jurisdiction over the military warning or water test area; (3) Control your electromagnetic emissions in accordance with the requirements specified by the commander of the military installation that has jurisdiction over the military warning or water test area to the degree necessary to prevent damage to, or interference with, Department of Defense flight, testing, or operations; and (4) Enter into an agreement with the commander of the individual command headquarters when you operate, or cause to be operated on your behalf, a boat, ship, or aircraft in a military warning or water test area. Such an agreement must provide for the positive control of boats, ships, and aircraft operating in the military warning or water test area at all times.
(b) Will be in a designated lightering zone (see 33 CFR 156.300) or traditional lightering area in the Gulf of Mexico.	You must contact representatives of the Industry Taskforce on Offshore Lightering to discuss potential conflicts between your pipeline construction operations and the lightering activities in these zones and areas.
(c) Could be in a designated safety fairway or anchorage area, in a safety or security zone, or near a deepwater port.	The operations are subject to the prohibitions, restrictions, procedures, and other requirements contained in applicable U.S. Coast Guard regulations (see 33 CFR part 166 for fairways and anchorage areas, 33 CFR part 165 for safety and security zones, and 33 CFR part 150 for deepwater ports).
(d) Are in the vicinity of a State-established artificial reef.	You must: (1) Contact the appropriate State natural resource agency or artificial reef coordinator; and (2) Ensure that the pipeline route is not within 1000 feet, or other distance specified by the Regional Supervisor, from the perimeter of the artificial reef area.
(e) Could disturb the sea floor in or near an area that was used until 1970 by the Department of Defense as an ordnance dumping area.	You must consider the area as potentially hazardous and take appropriate and necessary precautions.
(f) Are in the vicinity of any U.S. Air Force communication towers in the Gulf of Mexico.	You must ensure that: (1) The construction vessel and any support vessels do not move within: (i) A 500-foot radius of the center of a tower site; and (ii) 100 feet of the centerline of a line of sight between a master tower and a remote tower; and (2) Your electromagnetic transmissions do not interfere with the operation of the towers.

§ 250.1048 What must I do to construct a pipeline in or near a sensitive biological feature or area?

If you construct a pipeline in or near a biological feature or area, you must follow the requirements in the following table. Pipeline construction operations include the use of anchors, chains, and wire ropes.

If your pipeline construction operations could . . .	Then . . .
(a) Disturb seafloor areas in water depths greater than 1,312 feet.	You must: (1) If required by the Regional Supervisor, obtain appropriate high-resolution geophysical data of chemosynthetic communities in the area of pipeline construction operations to accurately identify and locate the features to prepare the required submittals (e.g., bathymetry map, survey report); (2) Locate all seafloor disturbances (including those caused by anchors, anchor chains, wire ropes, appurtenance installation, and the pipeline) at least 250 feet from any identified features or areas that could support high-density chemosynthetic communities; and (3) Use a state-of-the-art primary navigation system (e.g., DGPS) on your pipeline construction vessel and anchor-handling vessels to ensure that any seafloor disturbances do not occur within 250 feet of such features of areas.
(b) Disturb the sensitive biological habitats (e.g., coral reefs) associated with an identified topographic feature.	You must: (1) Locate all seafloor disturbances (including those caused by anchors, anchor chains, wire ropes, appurtenance installation, and the pipeline) at least 500 feet outside the boundary of the designated ''No Activity Zone'' of such a feature; and (2) Use a state-of-the-art primary navigation system (e.g., DGPS) on your pipeline construction vessel and anchor-handling vessels to ensure that any seafloor disturbances do not occur within 500 feet of the boundary of the designated ''No Activity Zone'' of such a feature.
(c) Disturb live bottoms (pinnacle trend features or seamounts) that likely provide habitat for high-density biological assemblages.	You must: (1) If required by the Regional Supervisor, obtain appropriate high-resolution geophysical data or photo-documentation of live bottoms (pinnacle trend features or seamounts) in the area of pipeline construction operations to accurately identify and locate the features and to prepare the required submittals (e.g., bathymetry map, survey report); (2) Locate all seafloor disturbances (including those caused by anchors, anchor chains, wire ropes, appurtenance installation, and the pipeline) at least 100 feet from the identified live bottoms; and

If your pipeline construction operations could . . .	Then . . .
	(3) Use a state-of-the-art primary navigation system (e.g., DGPS) on your pipeline construction vessel and anchor-handling vessels to ensure that any seafloor disturbances do not occur within 100 feet of the live bottoms.
(d) Disturb live bottoms (low relief features) that likely provides habitat for sea grasses; aggregated fishes, turtles, or other fauna; or coral community organisms.	You must: (1) If required by the Regional Supervisor, obtain appropriate high-resolution geophysical data or photo documentation of live bottoms (low relief features) in the area of operations to accurately identify and locate the features to prepare the required submittals (e.g., bathymetry map, survey report); (2) Locate all seafloor disturbances (including those caused by anchors, anchor chains, wire ropes, appurtenance installation, and the pipeline) to avoid impacting the identified live bottoms; and (3) Use a state-of-the-art primary navigation system (e.g., DGPS) on your pipeline construction vessel and anchor-handling vessels to ensure that you do not adversely impact the live bottoms.
(e) Disturb potentially sensitive biological features, as determined from your analysis or review of survey information.	You must: (1) Locate all seafloor disturbances (including those caused by anchors, anchor chains, wire ropes, appurtenance installation, and the pipeline) to avoid impacting the potentially biological sensitive features; and (2) Use a state-of-the-art primary navigation system (e.g., DGPS) on your pipeline construction vessel and anchor-handling vessels to ensure that you do not adversely impact the potentially sensitive biological features.
(f) Adversely affect a marine sanctuary established by the Secretary of Commerce under the authority of section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1432).	Marine sanctuaries are subject to the prohibitions, restrictions, procedures, and other requirements contained in 15 CFR part 922.

§ 250.1049 What must I do to construct a pipeline in or near an archaeological resource?

If you construct a pipeline in or near an archaeological resource, you must follow the requirements in the following table. Pipeline construction operations include the use of anchors, chains, and wire ropes.

If . . .	You must . . .
(a) An archaeological resource is known to exist, or the Regional Director has reason to believe that an archaeological resource may exist, in the area of the proposed pipeline construction operations.	Obtain appropriate high-resolution geophysical data in the area of operations to accurately identity and locate the existing or potential archaeological resources to prepare a survey report. The Regional Supervisor will specify the survey area, instrumentation, and methodology.
(b) The review by the Regional Supervisor of the archaeological report included with your pipeline application (see § 250.1026(c)) concludes that an archaeological resource may be present.	Either: (1) Locate the site of your pipeline construction operations to avoid the potential archaeological resource by at least the distance specified by the Regional Supervisor; or (2) Establish to the satisfaction of the Regional Director that an archaeological resource either does not exist or will not be adversely affected by your pipeline construction operations. In making this determination, the Regional Director may require you to conduct further archaeological investigations, using personnel, equipment, and techniques the Regional Director considers appropriate. You must submit the investigation report to the Regional Director for review.
(c) Based on further archaeological investigations, the Regional Director will notify you immediately if it's determined that the archaeological resource exists and may be adversely affected by your pipeline construction operations.	Not take any action that may adversely affect the archaeological resource until the Regional Director has told you how to protect it.
(d) You discover a potential archaeological resource while conducting your pipeline surveys, pipeline construction operations, or any other activity related to the pipeline.	Immediately halt all seafloor disturbing operations within the area of the discovery and notify the Regional Director of the discovery within 72 hours. If the site was impacted by your operations, or if impacts to the site or to the area cannot be avoided, the Regional Director will specify the additional investigations you must conduct to determine if the resource is potentially eligible for listing to the National Register of Historic Places under criteria established by 36 CFR 60.4. If these investigations determine that the resource is potentially eligible for listing in the National Register of Historic Places, the Regional Director will tell you how to protect the resource, or how to mitigate adverse impacts to the site.

§ 250.1050 When must I prepare and implement an H_2S contingency plan for construction?

You must prepare an H_2S Contingency Plan before you construct a pipeline (using an anchor-supported construction vessel) that crosses a pipeline which transports a product with an H_2S concentration that, if released, could result in atmospheric concentrations of 20 ppm or more. The H_2S Contingency Plan must be in accordance with § 250.490(f) and cover your pipeline construction operations. You must:

(a) Implement this H_2S Contingency Plan before the leading construction vessel anchors are placed within 3,000 feet of the crossed pipeline, and maintain it in effect until no trailing construction vessel anchors are within 3,000 feet of the crossed pipeline; and

(b) Keep a copy of the H_2S Contingency Plan on the pipeline construction vessel.

§ 250.1051 What information must I submit after construction is completed?

(a) *Construction report.* You must submit three copies of a pipeline construction report to the Regional Supervisor within 45 calendar days after you complete pipeline construction. The construction report must include:

(1) The MMS-assigned pipeline segment number.

(2) The dates you started and concluded pipeline construction operations.

(3) An ''as built'' location plat, based on NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for the AKOCSR and GOMR (Atlantic), drawn at a minimum scale of 1 inch = 2,000 feet that:

(i) Depicts the same information you included with your pipeline application (see § 250.1017(a) and (b));

(ii) Includes a list of the latitude and longitude coordinates in both NAD 27 and NAD 83, and the X–Y coordinates in NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for AKOCSR and GOMR (Atlantic), of all key points;

(iii) Depicts the boundaries of the pipeline ROW, as granted, if applicable; and

(iv) Includes a certification by a registered engineer or land surveyor that attests to the accuracy of the ''as-built'' locations of the pipeline and appurtenances.

(4) An electronic file containing the digital coordinates of the key points of the ''as-built'' pipeline and umbilical routes, including turns, and, if required by the Regional Supervisor, the position of lay barge anchors, chains, and cables. The digital data must be in decimal degrees latitude and longitude and based on NAD 83.

(5) Discussion of the reasons for deviation if the pipeline route deviates from the route in your approved application by more than 200 feet.

(6) The type, size, weight, number, and spacing of any anodes that were installed on the pipeline, if the information differs substantially from the information you provided in your approved pipeline application.

(7) A description of the protective covering, anchor pins, or sand bags you used to install or protect a valve, tap, subsea tie-in, capped line, or other appurtenance, if the installation differs substantially from the design you provided in your approved pipeline application.

(8) The pipe-to-electrolyte potential readings for hot taps required by § 250.1043(b).

(9) A report of the hydrostatic pressure test (see § 250.1061) required by § 250.1060(a)(1).

(10) A plat at a scale of 1 inch = 1,000 feet (or other scale required by the Regional Supervisor) that depicts bathymetry, any biologically-sensitive or archaeological feature (if applicable), and the position of all anchors, chains, and cables, if the pipeline or the associated anchors, chains, or cables are:

(i) Located in the POCSR or AKOCSR; or

(ii) Located in the GOMR, and if they are within:

(A) 500 feet of the ''No Activity Zone'' of an identified topographic feature or other biologically-sensitive feature;

(B) 100 feet of any live bottom (pinnacle trend feature or seamount) with a vertical relief of eight feet or more;

(C) 100 feet of any live bottom (low relief feature); or

(D) A distance specified by the Regional Supervisor of any potential archaeological resource.

(b) *MMS actions.* The Regional Supervisor will review your pipeline construction report and inform you in writing of any deficiencies if the report is unacceptable.

(c) *National Ocean Service (NOS).* You must submit a copy of the ''as-built'' location plat required by paragraph (a)(3) of this section to the NOS within 45 calendar days after you complete pipeline construction.

Pipeline Risers Connected To Floating Platforms

§ 250.1052 What are the requirements for pipeline risers connected to floating platforms?

(a) *General.* New pipeline risers and major modifications of, or repairs to, existing risers connected to floating platforms are subject to the Pipeline Riser Verification Program. A major modification or major repair to a pipeline riser means:

(1) The replacement, removal, or repair of any material, component, or appurtenance;

(2) Any reconfiguration or external event that could affect the design life of the riser; or

(3) Any operation on the riser that involves welding.

(b) *Verification requirements.* All pipeline risers subject to the Pipeline Riser Verification Program must undergo design verification, fabrication verification, and installation verification.

(c) *Certified Verification Agent (CVA).* All pipeline risers subject to the Pipeline Riser Verification Program require separate verification that necessitates the use of a CVA specifically for the pipeline riser.

(d) *CVA qualifications.* (1) Your design verification must be conducted by, or be under the direct supervision of, a registered professional civil or structural engineer or equivalent with previous experience in directing the design of similar risers.

(2) Your fabrication verification must be conducted by qualified personnel with previous experience in third-party fabrication verification or experience in the fabrication of similar risers.

(3) Your installation verification must be conducted by qualified personnel with previous experience in third-party installation verification or experience in the installation of similar risers.

(e) *CVA responsibilities.* (1) The CVA must conduct the activities specified in §§ 250.1054, 250.1055, and 250.1056.

(2) The CVA must consider the provisions of applicable regulations, codes, guides, standards, recommended practices, approved plans, and the requirements of this subpart when performing riser verification.

(3) Individuals or organizations acting as CVA's must not function in any capacity that would create a conflict of interest, or the appearance of a conflict of interest.

(4) The CVA is the contact with the Regional Supervisor regarding all riser verification and reporting. The CVA is directly responsible for providing immediate reports to the Regional Supervisor of all incidents that affect the design, fabrication, and installation of pipeline risers.

§ 250.1053 What are the requirements for pipeline riser verification plans?

(a) *Design verification plan.* You must submit a design verification plan to the Regional Supervisor for approval before

the design work is completed, before you start fabrication and installation, and at least 30 calendar days before you submit the associated pipeline application. You must submit a separate design verification plan for each pipeline riser. Your design verification plan must include:

(1) Riser diameter, service, type, and designer(s);

(2) A project management timeline (Gantt Chart) that depicts key design activities and when the CVA will submit the interim and final reports required by § 250.1054(c) and (d);

(3) Abstracts of the computer programs that will be used in design verification;

(4) A summary of major design considerations and the approach that will be used to verify the validity of these design considerations; and

(5) The CVA nomination information specified in paragraph (d) of this section.

(b) *Fabrication verification plan.* You must submit a fabrication verification plan to the Regional Supervisor for approval before you start fabrication and at least 30 days before you submit the associated pipeline application. You must submit a separate fabrication verification plan for each pipeline riser. Your fabrication verification plan must include the following:

(1) Riser diameter, service, and type;

(2) A project management timeline (Gantt Chart) that depicts key fabrication activities and when the CVA will submit the interim and final reports required by § 250.1055(d) and (e);

(3) A summary of major fabrication considerations and the approach that will be used to verify the validity of these fabrication considerations; and

(4) The CVA nomination information specified in paragraph (d) of this section.

(c) *Installation verification plan.* You must submit an installation verification plan to the Regional Supervisor at least 30 days before you submit the associated pipeline application. You must submit a separate installation verification plan for each pipeline riser. Your installation verification plan must include the following:

(1) Riser diameter, service, and type;

(2) A project management timeline (Gantt Chart) that depicts key installation activities and when the CVA will submit the interim and final reports required by § 250.1056(d) and (e);

(3) Abstracts of the computer programs that will be used in installation verification;

(4) A summary of major installation considerations and the approach to be used to verify the validity of these installation considerations; and

(5) The CVA nomination information specified in paragraph (d) of this section.

(d) *CVA nomination information.* (1) As part of your design verification, fabrication verification, and installation verification plans, you must include nominations for your proposed CVA's for the Regional Supervisor's approval.

(2) For each nomination, you must provide a qualifications statement that includes the following information:

(i) Whether the nomination is for the design, fabrication, or installation phase of verification, or for any combination of these phases;

(ii) Experience in the design, fabrication, or installation of similar risers;

(iii) Experience in third-party verification, inspection, or auditing of similar risers;

(iv) Resumes of key personnel and their responsibilities;

(v) Size and type of organization or corporation;

(vi) In-house availability of, or access to, appropriate technology, including computer programs, hardware, and testing materials and equipment;

(vii) Ability to perform the CVA functions for the specific project considering current commitments; and

(viii) Previous experience with MMS requirements and procedures.

(e) *Modifications.* Submit modifications to your verification plans, including changes in the CVA and key personnel, to the Regional Supervisor for approval.

§ 250.1054 What must the CVA do to verify pipeline riser design?

The riser design CVA must use good engineering judgment and practices while conducting an independent verification of the design of the riser. The CVA must ensure that the riser is designed to withstand the environmental and functional load conditions appropriate for the intended design life of the riser at the proposed location. The pipeline riser design CVA must verify information, conduct analyses, and submit design reports as required by paragraphs (a) through (d) of this section.

(a) The CVA must verify the following:

(1) Planning criteria, including the design basis;

(2) Operational requirements;

(3) Environmental loading data;

(4) Soil conditions;

(5) Safety factors;

(6) Material and component specifications;

(7) Cathodic protection design and riser coating;

(8) Interference analysis;

(9) Input for the design of vendor components, such as specialty joints and connectors;

(10) Vortex-induced vibration (VIV) suppression system to ensure that specifications for installation and design meet required suppression efficiency;

(11) Welding specifications to ensure that they are appropriate and adequate for the design and inspection of the riser;

(12) Preliminary installation analysis;

(13) Provisions to account for marine growth and associated cleaning recommendations;

(14) Recommendations on in-service inspection frequency; and

(15) Other pertinent parameters of the proposed design.

(b) The CVA must perform independent analyses of the following:

(1) Riser design cases with appropriate load conditions, as specified in API RP 2RD (incorporated by reference as specified in § 250.198), including, but not limited to, operation, shut-in, and extreme;

(2) Riser stresses, including extreme storm response for critical design conditions; and

(3) Riser fatigue of selected cases that consider VIV, wave frequency fatigue analysis, vortex-induced motion (VIM), thermal and pressure cycles, riser interaction with seabed (touchdown zone), fatigue due to internal corrosion (if sour service), and other applicable concerns and issues.

(c) The CVA must submit interim design reports to the Regional Supervisor at intervals approved in your design verification plan. The CVA must include the following in each interim design report:

(1) Details of how, by whom, and when the design verification activities were conducted to date;

(2) Description of the CVA's activities during design verification to date;

(3) Summary of the CVA's findings to date;

(4) Description of any outstanding or notable issues found on the riser design to date; and

(5) A Gantt chart showing project progress.

(d) The CVA must submit a final design report to the Regional Supervisor before fabrication begins and either within 90 calendar days after receipt of the design data, or within 90 calendar days after MMS approves the design verification plan, whichever is later. The CVA must submit a separate final design report for each pipeline riser. The CVA must include the following in the final design report:

(1) Riser diameter, service, type, and designer(s);

(2) Details of how, by whom, and when the design verification activities;

(3) Description of the CVA's activities during design verification;

(4) Summary of the CVA's findings;

(5) Confirmation of compliance with the design specifications;

(6) Recommendation to accept or reject the riser design; and

(7) Any additional information and comments that the CVA deems necessary including, but not limited to:

(i) Design basis;

(ii) Summary of design CVA scope;

(iii) Key drawings;

(iv) Summary of input and output from the independent analyses performed;

(v) Comparison between results of the original design analyses and the CVA design analyses;

(vi) In-service inspection frequency and inspection method recommendations; and

(vii) Cleaning recommendations.

§ 250.1055 What must the CVA do to verify pipeline riser fabrication?

The riser fabrication CVA must use good engineering judgment and practices while conducting an independent verification of the fabrication activities. The CVA must monitor the fabrication of the riser to ensure that it has been built according to the approved design and fabrication plans. If the CVA finds that fabrication procedures are changed or design specifications are modified, the CVA must inform you. If you accept the modifications, then the CVA must notify the Regional Supervisor. The pipeline riser fabrication CVA must make inspections, witness activities, perform spot checks and submit fabrication reports as required by paragraphs (a) through (e) of this section.

(a) The CVA must make periodic onsite inspections while fabrication is in progress and verify the following fabrication items, as appropriate:

(1) Quality assurance and quality control programs;

(2) Adequacy of fabrication site facilities;

(3) Material quality and identification methods;

(4) Fabrication procedures specified in the approved plan, and adherence to such procedures;

(5) Welder and welding procedures qualification and identification;

(6) Dimensional tolerances specified, and adherence to those tolerances;

(7) Nondestructive examination (NDE) requirements, and evaluation results of the specific examinations;

(8) Destructive testing requirements and results;

(9) Repair procedures;

(10) Installation of corrosion protection systems and splash-zone protection; and

(11) Status of quality assurance and quality control records at various stages of fabrication.

(b) The CVA must witness:

(1) Factory Acceptance Testing (FAT) of vendor components; and

(2) Welding of specialty joint to riser material.

(c) The CVA must perform spot checks as necessary to determine compliance with applicable regulations, codes, guides, standards, recommended practices, and approved plans.

(d) The CVA must submit interim fabrication reports to the Regional Supervisor at intervals approved in your verification plan. The CVA must include the following in each interim fabrication report:

(1) Details of how, by whom, when, and where the fabrication verification activities were conducted to date;

(2) Description of the CVA's activities during fabrication verification to date;

(3) Summary of the CVA's findings to date;

(4) Description of any outstanding or notable riser design issues found to date; and

(5) A Gantt chart showing project progress.

(e) The CVA must submit a final fabrication report to the Regional Supervisor within 90 calendar days after completion fabrication, but before the beginning of pipeline installation. The CVA must submit a separate final fabrication report for each pipeline riser. The CVA must include the following in the final fabrication report;

(1) Riser diameter, service, and type;

(2) Details of how, by whom, when, and where the fabrication verification activities were conducted;

(3) A description of the CVA's activities during fabrication verification;

(4) A summary of the CVA's findings;

(5) Confirmation of compliance with the design specifications and the approved fabrication plan;

(6) Recommendations to accept or reject the fabrication; and

(7) Any additional information and comments that the CVA deems necessary, including:

(i) Summary of fabrication scope;

(ii) Welding program details;

(iii) NDE program details, including acceptance criteria and evaluation results;

(i) Dimensional control adherence;

(v) The inspection report of the FAT of vendor components; and

(vi) Quality assurance and quality control program details.

§ 250.1056 What must the CVA do to verify pipeline riser installation?

The pipeline riser CVA must use good engineering judgment and practice in conducting an independent verification of the installation activities. The CVA must monitor the installation of the riser to ensure that it has been built according to the approved design and installation plans. If the CVA finds that installation procedures are changed or design specifications are modified, the CVA must inform you. If you accept the modifications, the CVA must notify the Regional Supervisor. The pipeline riser installation CVA must verify compliance, perform spot checks, and submit fabrication reports as required by paragraphs (a) through (e) of this section.

(a) The CVA must verify the:

(1) Quality assurance and quality control program;

(2) Adequacy of installation vessel(s) and equipment;

(3) Material quality and identification methods;

(4) Installation procedures specified in the approved installation plan, and adherence to such procedures;

(5) Welder and welding procedures qualification and identification;

(6) Dimensional tolerances specified, and adherence to those tolerances;

(7) NDE requirements, and evaluation results of the specified examinations;

(8) Repair procedures;

(9) Installation test data;

(10) Installation of corrosion protection systems and splash-zone protection;

(11) Installation of VIV suppression devices as specified in the approved design, and adherence to such design; and

(12) Status of quality assurance and quality control records at various stages of installation.

(b) The CVA must perform spot checks as necessary to determine compliance with applicable regulations, codes, guides, standards, recommended practices, and approved plans.

(c) The CVA must witness the:

(1) Pipe load-out at the shore base; and

(2) Riser installation operations.

(d) The CVA must submit interim installation reports to the Regional Supervisor at intervals approved in your verification plan. The CVA must include the following in each interim installation report:

(1) Details of how, by whom, when, and where the installation verification activities were conducted to date;

(2) Description of the CVA's activities during installation verification to date;

(3) Summary of the CVA's findings to date;

(4) Description of any outstanding or notable riser design issues found to date; and

(5) A Gantt chart showing project progress.

(e) The CVA must submit a final installation report to the Regional Supervisor within 45 calendar days after installation of the pipeline. The CVA must submit a separate installation report for each pipeline riser. The CVA must include the following in the final installation report:

(1) Riser diameter, service, and type;

(2) Details of how, by whom, when, and where the installation verification activities were conducted;

(3) A description of the CVA's activities during installation verification;

(4) Summary of the CVA's findings;

(5) Confirmation of compliance with the design specifications and the approved installation plan;

(6) A recommendation to accept or reject the installation; and

(7) Any additional information and comments that the CVA deems necessary, including:

(i) Summary of installation scope;

(ii) Welding program details, including weld maps;

(iii) NDE program details, including acceptance criteria and evaluation results;

(iv) Dimensional control adherence;

(v) Quality assurance and quality control program details;

(vi) Incidents that occurred during installation; and

(vii) As-built drawings.

Pipeline Pressure Testing

§ 250.1057 What are the general requirements for pressure testing a pipeline?

You must pressure test a pipeline in a manner that:

(a) Verifies that the pipeline has the requisite structural integrity to withstand normal and maximum operating pressures, and is capable of product containment;

(b) Ensures that the test equipment is properly selected and in good working order; and

(c) Uses work practices and procedures that reduce hazards to personnel and equipment, and protect the environment.

§ 250.1058 What are the requirements for conducting a hydrostatic pressure test for a pipeline?

(a) *Purpose.* A hydrostatic pressure test must test the tensile strength of a pipeline by pressuring up the pipeline with water.

(b) *Notification.* You must notify the Regional Supervisor, using Form MMS–153 (Notification of Pipeline Installation/Relocation/Hydrotest), at least 48 hours before you conduct a hydrostatic pressure test on a pipeline.

(c) *Equipment.* During a hydrostatic pressure test, you must:

(1) Measure the test fluid temperature and the test fluid pressure using synchronized temperature and pressure recorders; and

(2) Use pressure gauges and recorders that are sufficiently accurate to determine whether the pipeline is leaking during the test.

(d) *Procedures.* When you conduct a hydrostatic pressure test, you must:

(1) Test the pipeline (including the riser(s)) at a minimum stabilized pressure of at least 125 percent of the MAOP for the length of time specified in § 250.1060(a), (b), or (c);

(2) Take deadweight test readings and record the reading, time, and reason for any pressure fluctuations at intervals no greater than 30 minutes; and

(3) Use a test pressure that will not produce a stress in the pipeline in excess of 95 percent of the specified minimum-yield strength of the pipe.

(e) *Successful test.* A successful hydrostatic pressure test means that there was no observable leakage, and a stabilized pressure was maintained for the last 2 hours of the test.

(f) *Discharging test medium.* You must dispose of the test medium in accordance with applicable laws and regulations.

§ 250.1059 What are the requirements for leak testing a pipeline?

(a) *Conducting a leak test.* When you conduct a leak test, you must:

(1) Use a stabilized pressure that is capable of detecting all leaks;

(2) Use pressure gauges and recorders that are sufficiently accurate to determine whether the pipeline is leaking during the test; and

(3) Conduct the test for at least two hours during daylight.

(b) *Successful leak test.* A leak test must successfully test the integrity of a pipeline. A successful leak test means no observable leakage during the test period.

§ 250.1060 When must I perform a pressure test on a pipeline?

(a) *Hydrostatic pressure test.* After you install the pipeline, you must successfully perform an 8-hour hydrostatic pressure test of a pipeline (including the riser(s)) before you:

(1) Put a new pipeline into service;

(2) Put a relocated pipeline into service;

(3) Put a pipeline with an increased MAOP into service;

(4) Reactivate a pipeline that was out of service for more than one year;

(5) Re-commission a pipeline that was decommissioned; or

(6) Re-activate a pipeline that was modified by adding new pipe (except in the case of a pipeline repair using a spool piece that complies with paragraph (c) of this section).

(b) *Pressure test after repair using a clamp.* Before you return a pipeline to service following a repair using a clamp:

If you completed the repair using a . . .	You must successfully perform . . .
(1) Mechanical clamp	A leak-test of the pipeline (including riser(s)) or, if required by the Regional Supervisor, an 8-hour hydrostatic pressure test of the pipeline (including riser(s)).
(2) Welded clamp	An 8-hour hydrostatic pressure test of the pipeline (including riser(s)).

(c) *Pressure test after repair using a spool piece.* Before you return a pipeline to service following a repair using a spool piece you must meet the requirements in the following table:

After you install the spool piece, if . . .	You must successfully perform . . .
(1) You connected the spool piece using flanges.	A 4-hour hydrostatic pressure bench test of the spool piece, and a leak test of the pipeline (including riser(s)).

After you install the spool piece, if . . .	You must successfully perform . . .
(2) The spool piece is visible during the test and is not connected using flanges.	A 4-hour hydrostatic pressure test of the pipeline (including riser(s)), and a non-destructive test (i.e., x-rays) of the connections.
(3) The spool piece is not visible during the test	An 8-hour hydrostatic pressure test of the pipeline (including riser(s)).

(d) *Directed pressure test.* The Regional Supervisor may require you to pressure test a pipeline to verify its integrity whenever the Regional Supervisor determines that there is a reasonable likelihood that the pipeline was damaged or weakened by external or internal conditions. When so directed, you must submit the results of these tests to the Regional Supervisor (see § 250.1061).

§ 250.1061 What information must I include in a pressure test report?

(a) *Hydrostatic pressure test.* You must submit the results of the hydrostatic pressure test in conjunction with the reports required by §§ 250.1051(a)(9), 250.1060(d), 250.1086(g)(5), 250.1093(g)(5), 250.1095(e)(6), and 250.1113(b)(5). The pressure test report must include:

(1) Test description;

(2) Pressure and temperature charts;

(3) Instrument calibration data;

(4) Minimum and maximum pressure calculations;

(5) Deadweight pressure test readings and temperature log;

(6) Record of problems encountered during the test including their causes and corrective actions taken; and

(7) Documentation of any factors that affected pressures or temperatures.

(b) *Leak test.* You must submit the pressure and temperature charts of any required leak test in conjunction with the report required by § 250.1095(e)(7).

Pipeline Safety Equipment

§ 250.1062 What are the general requirements for pipeline safety equipment?

You must provide each pipeline with safety equipment that:

(a) Prevents or minimizes the consequences of overpressure, leaks, and failures;

(b) Protects personnel and the environment;

(c) Considers the need to limit surge pressures and other deviations from normal operations; and

(d) Is properly installed, operated, and maintained.

§ 250.1063 What are the safety equipment requirements for a departing pipeline?

(a) Departing pipeline means a pipeline that receives:

(1) Production from a production, boosting, compressor, or manifold platform; a subsea well, manifold, or other facility; or an incoming pipeline;

(2) Gas-lift gas;

(3) Supply gas; or

(4) Water, fuel, or chemicals.

(b) You must comply with the safety requirements for a departing pipeline in the following table:

Safety equipment	Requirements
(1) Pressure safety high and low (PSHL) sensors.	You must protect a departing pipeline with PSHL sensors that directly or indirectly shut in all delivering sources.
(2) PSHL sensor settings	(i) You must set the PSHL sensors required by paragraph (a) of this section to activate at pressures that are no more than 15 percent above and below the limits of the normal operating pressure range of the pipeline. (ii) For pipelines that transport a product containing H_2S, you must set the pressure safety low (PSL) sensor to activate at a pressure that is no more than 10 percent below the lower limit of the normal operating pressure range of the pipeline. (iii) For a departing pipeline that receives production from a subsea well, you may set the pressure safety high (PSH) sensor to activate at a pressure that is up to 5 percent above the latest recorded wellhead shut-in tubing pressure. (iv) You must not set the PSH sensor to activate at a pressure greater than the MAOP of the pipeline. (v) You must not set the PSH sensor to activate at a pressure within 5 percent of the pressure safety valve (PSV) set point.
(3) PSHL sensor settings determination.	(i) You must determine the sensor settings required by paragraph (b) of this section by using a pressure recorder to establish the current normal operating pressure range. You must keep the most current pressure recorder charts at the nearest OCS facility, and make them available for inspection by MMS upon request. (ii) For a departing pipeline that receives production from a subsea well, you must use well test records to determine the sensor settings. You must keep the most recent well test records at the nearest OCS facility, and make them available for inspection by MMS upon request.
(4) Flow safety valve (FSV) and shutdown valve (SDV).	The Regional Supervisor may require you to equip or otherwise protect a departing pipeline with an FSV and/or an automatic SDV.
(5) Subsea tie-in	You must equip the originating end of all departing pipelines that receive production from a connecting pipeline at a subsea tie-in with a block valve and an FSV.

§ 250.1064 What are the safety equipment requirements for an incoming pipeline?

(a) Incoming pipeline means a pipeline that delivers:

(1) Production to a production, booster, or compressor platform;

(2) Gas-lift gas to a well, manifold platform, or to another pipeline at a subsea tie-in;

(3) Supply gas; or

(4) Water, fuel, or chemicals.

(b) You must comply with the safety equipment requirements for an incoming pipeline in the following table:

Safety equipment	Requirements
(1) FSV	You must protect an incoming pipeline with an FSV to prevent backflow.

Safety equipment	Requirements
(2) SDV	You must equip an incoming pipeline, except a water pipeline, that boards a production platform or manned platform (a platform that has personnel on board 24 hours per day, or on which personnel are quartered overnight) with an automatic SDV that: (i) Is actuated by the platform's automatic- and remote-emergency shut-in systems; (ii) Is located immediately upon boarding the platform. If the SDV is on a horizontal section, you must locate it in an unclassified area (classified area is defined in API RP 500 and API RP 505; both documents are incorporated by reference in § 250.198) and no more than 10 feet from the boarding pipeline riser. This requirement applies only to pipelines installed or modified after [INSERT THE EFFECTIVE DATE OF THE RULE]; and (iii) Closes within 45 seconds after it is actuated.
(3) Gas-lift pipeline	This paragraph applies to an existing incoming gas-lift pipeline installed before [INSERT THE DATE SIX MONTHS AFTER THE EFFECTIVE DATE OF THE RULE] to an unmanned minor platform. (A minor platform is one that contains fewer than six well completions or fewer than two pieces of production equipment). In lieu of complying with paragraphs (b)(1) and (b)(2) of this section, you may protect the pipeline with an FSV located either: (i) Immediately upstream of each casing annulus; or (ii) Immediately upstream of the first inlet valve on the wellhead.
(4) Subsea tie-in	You must equip the terminating end of an incoming pipeline that delivers production to a connecting pipeline at a subsea tie-in with a block valve and an FSV.

§ 250.1065 What are the safety equipment requirements for a crossing pipeline?

(a) A crossing pipeline means a pipeline that crosses a platform but does not receive or deliver production to that platform. A crossing pipeline includes both the incoming and departing pipeline segments.

(b) You must comply with the safety requirements for a crossing pipeline in the following table:

Safety equipment	Requirements
(1) FSV	You must protect a crossing pipeline installed after [INSERT THE EFFECTIVE DATE OF THE RULE] that crosses an unmanned or non-production platform with an FSV to prevent backflow.
(2) SDV	You must equip the terminating end of the incoming segment(s) of a crossing pipeline (except a water pipeline) that crosses a production platform or manned platform (a platform that has personnel on board 24 hours per day, or on which personnel are quartered overnight) with an automatic SDV that: (i) Is operated by a PSHL sensor to protect the departing segment(s) of the crossing pipeline; (ii) Is actuated by the platform's automatic- and remote-emergency shut-in systems; (iii) Is located immediately upon boarding the platform. If the SDV is on a horizontal section, you must locate it in an unclassified area (a classified area is defined in API RP 500 and API RP 505; both documents are incorporated by reference in § 250.198) and no more than 10 feet from the boarding pipeline riser. This requirement applies only to pipelines installed or modified after [INSERT THE EFFECTIVE DATE OF THE RULE]; and (iv) Closes within 45 seconds after it is actuated.

§ 250.1066 What are the safety equipment requirements for a bi-directional pipeline?

(a) Bidirectional pipeline means a pipeline designed and configured to transport fluids in either direction.

(b) You must comply with the safety equipment requirements for a bi-directional pipeline in the following table:

Safety equipment	Requirements
(1) PSHL sensors	You must protect both ends of a bi-directional pipeline with PSHL sensors that directly or indirectly shut in all delivering sources. Requirements for the setting levels of the PSHL sensors are specified at §§ 250.1063(b)(2) and (3).
(2) Automatic SDV	You must equip both ends of a bi-directional pipeline with an automatic SDV that: (i) Is actuated by the platform's automatic- and remote-emergency shut-in systems; (ii) Is located immediately upon boarding the platform. If the SDV is on a horizontal section, you must locate it in an unclassified area (a classified area is defined in API RP 500 and API RP 505, both documents incorporated by reference as specified in § 250.198) and no more than 10 feet from the boarding pipeline riser. This requirement applies only to pipelines installed or modified after [INSERT THE EFFECTIVE DATE OF THE RULE]; and (iii) Closes within 45 seconds after it is actuated.
(3) Block valve	You must equip a bi-directional pipeline that connects to a pipeline at a subsea tie-in with a block valve at the tie-in assembly.

§ 250.1067 When must I provide redundant safety equipment?

(a) If the maximum source pressure (MSP) is from a well, and it exceeds the MAOP of the pipeline, you must protect the pipeline by using either:

(1) One surface safety valve (SSV) controlled by a PSH sensor, and a PSV that relieves in a safe and pollution-free manner; or

(2) Two SSV's controlled by independent PSH sensors connected to separate relays and sensing points.

(b) For pipelines installed after [INSERT THE EFFECTIVE DATE OF THE RULE], if the MSP is from a well, and it is more than 1½ times the MAOP of the pipeline, you must protect the pipeline by using two SSV's controlled by independent PSH sensors connected

to separate relays and sensing points, and one PSV that relieves in a safe and pollution-free manner.

(c) If the maximum source pressure (MSP) is not from a well, and it exceeds the MAOP of the pipeline, you must protect the pipeline by using either:

(1) One shutdown valve (SDV) controlled by a PSH sensor, and a PSV that relieves in a safe and pollution-free manner; or

(2) Two SDV's controlled by independent PSH sensors connected to separate relays and sensing points.

(d) If you use the configuration specified in paragraph (c)(1) above, you must set the PSV to activate at a pressure between 5 and 10 percent above the MAOP.

§ 250.1068 What are the safety equipment requirements for a pipeline pump?

(a) *General*. You must do both of the following:

(1) Protect a pipeline pump according to section A7 of API RP 14C (incorporated by reference as specified in § 250.198). Requirements for setting the levels of the PSHL sensors are specified at § 250.1063(b)(2) and (3).

(2) Set any PSV you installed on the pipeline to protect the pump to activate at a pressure less than the MAOP of the pipeline.

(b) *Time delays for pumps*. During startup and idle operations, you may apply industry standard Class B, Class C, and Class B/C logic to all PSL sensors installed on pipeline pumps. You do not need a departure approval to use these types of time delay circuitry if the time delay does not exceed 45 seconds. You must obtain a departure approval under the provisions of § 250.142 from the appropriate District Manager before you use a time delay greater than 45 seconds.

(1) *Class B logic* allows for a PSL sensor on pipeline pumps to be bypassed for a fixed time period (typically less than 15 seconds, but not more than 45 seconds).

(2) *Class C logic* allows for a PSL sensor to be bypassed until the component comes into full service.

(3) *Class B/C logic* allows for a PSL sensor to incorporate a combination of Class B and Class C circuitry. This device is used to ensure that a PSL sensor is not unnecessarily bypassed during start-up and idle operations (e.g., Class B/C bypass circuitry activates when a pump is shut down during normal operations). The PSL sensor remains bypassed until the pump start circuitry is activated and either:

(i) The Class B timer expires after 45 seconds from start activation; or

(ii) The Class C bypass is initiated until the pump builds up pressure above the PSL set point and the PSL comes into full service.

(c) *PSL Sensors and bypass circuits*. When the PSL sensor comes into full service, the PSL sensor is fully active. If the PSL sensor should trip while the pump is running, the pump will shut down and the Class B/C bypass circuit will remain inactive until the safety system devices are cleared and reset.

§ 250.1069 What must I do if safety equipment fails to operate as intended?

If any safety equipment required by this subpart experiences a failure you must follow the requirements of paragraphs (a) through (e) of this section.

(a) *Suspending operations*. You must shut in the pipeline immediately.

(b) *Out-of-service notification*. You must notify the Regional Supervisor:

(1) If the safety equipment remains out of service for more than 12 hours in the GOMR; and

(2) Immediately after the safety equipment is out of service in the POCSR and AKOCSR.

(c) *Resuming operations*. You may resume operation of the pipeline after you:

(1) Repair the failed safety equipment (see §§ 250.1094 through 1096);

(2) Replace the failed safety equipment (see § 250.1093); or

(3) Provide an equivalent degree of protection and place an appropriate warning sign on the failed safety equipment.

(d) *Corrective action notification*. If you shut in your pipeline because of a safety equipment failure and were required by paragraph (b) of this section to notify the Regional Supervisor, you must also notify the Regional Supervisor immediately when you repair the safety equipment and resume operating the pipeline, or when you have provided an equivalent degree of protection and resume operating the pipeline.

(e) *Repair application*. If the corrective action you take to address a safety equipment failure necessitates a repair (see § 250.1094), you must submit a repair application in accordance with § 250.1095(a) and receive approval from the Regional Supervisor before you perform the work.

Pipeline Leak Detection

§ 250.1071 When do I need to use a leak detection system?

If your pipeline transports liquid hydrocarbons to shore, or if the Regional Supervisor otherwise requires it, you must use a computational pipeline monitoring (CPM) system or equivalent methodology to detect leaks by continuously determining or calculating the imbalance between the incoming (receipt) and outgoing (delivery) volumes of a pipeline. A CPM system means an algorithmic monitoring tool that allows you to respond to a pipeline operating anomaly that may indicate a release of liquid hydrocarbons. You must:

(a) Equip your CPM system with an alarm that signals when the imbalance exceeds a predetermined threshold for a selected time interval; and

(b) Use SCADA technology to gather, process, and display the data you use in your CPM system. SCADA is an acronym for supervisory control and data acquisition, the technology that makes it possible to monitor and control pipelines remotely.

Pipeline Internal Corrosion Control and Flow Assurance

§ 250.1074 What are the general requirements for internal corrosion control?

You must establish and implement internal corrosion control measures (e.g., running pipeline scrapers; dehydrating; using corrosion inhibitors, bactericides, or oxygen scavengers) to protect the pipeline over its service life.

§ 250.1075 What are the general requirements for flow assurance?

You must establish and implement measures (e.g., chemical additives, routine pigging) to ensure that adequate flow can be sustained throughout the service life of a pipeline under all expected flow conditions for the range of pressures, temperatures, fluid properties, and phase conditions expected during start up, normal, shut down, and emergency operations.

Pipeline Operations and Maintenance

§ 250.1078 What are the general requirements for operating and maintaining a pipeline?

You must operate and maintain a pipeline in a manner that:

(a) Protects life, property, and the environment for the service life of the pipeline;

(b) Ensures that all pipelines, appurtenances, and safety equipment are not subjected to operating conditions that exceed applicable design parameters and the MAOP;

(c) Anticipates the detrimental effects of corrosion; product composition; thermal cycling; pressure fluctuations; hydrate, asphaltene, or paraffin formation; sediment transfer or scour (due to wave action and currents); storm or ice scouring; gross seafloor movement (such as mudslides, faults, and subsidence); hurricanes; earthquakes; subfreezing temperatures; and other natural or manmade phenomena;

(d) Maintains the approved burial depth throughout the life of the pipeline including after the pipeline is decommissioned in place; and

(e) Does not interfere with other uses of the OCS.

§ 250.1079 What written procedures must I establish before I operate an OCS pipeline?

(a) *Operations and maintenance manual.* You must prepare a written operations and maintenance manual for your OCS pipelines that complies with the regulations in this subpart and includes provisions for all of the following:

(1) Conducting normal operations;

(2) Conducting periodic surveillance and inspections;

(3) Performing systematic and routine preventive maintenance;

(4) Ensuring that safety system components are functioning properly;

(5) Resuming operations after a storm;

(6) Monitoring and mitigating the effects of internal and external corrosion and erosion;

(7) Monitoring and mitigating the effects of paraffin, wax, and hydrate formation;

(8) Responding to foreseeable abnormal operating conditions, malfunctions, failures, or personnel error; and

(9) Identifying and responding to conditions that could affect safe operations.

(b) *Integrity management program.* You must have a written pipeline integrity management program for your OCS pipelines that includes the seven elements listed in this paragraph.

(1) *Baseline integrity assessment.* A plan and a risk-based schedule for obtaining baseline information on the integrity of each pipeline by either:

(i) Using an in-line inspection tool (e.g., smart pig) to detect corrosion or deformation anomalies;

(ii) Performing hydrostatic pressure tests (see § 250.1058) to test tensile strength; or

(iii) Using other technology that can provide an equivalent understanding of the condition of your pipelines.

(2) *Information analysis.* An analysis that integrates all other available information (e.g., inspections, tests, surveys, and monitoring results) about pipeline integrity.

(3) *Review.* Provisions to review the integrity assessment results and information analysis by a qualified person.

(4) *Remedial actions.* Criteria for performing prompt remedial actions to address anomalous conditions you discover through integrity assessment or information analysis.

(5) *Periodic assessment and evaluation.* Provisions for periodically reassessing and re-evaluating the integrity of the pipeline at a frequency based on specific risk factors such as proximity to environmentally sensitive areas, product being transported, previous failure history, and water depth.

(6) *Preventive and mitigation measures.* Provisions for identifying and taking preventive and mitigation measures to enhance safety and environmental protection such as SCADA systems, cathodic protection monitoring, and shorter inspection intervals.

(7) *Program effectiveness.* Provisions for measuring the effectiveness of your integrity management program.

(c) *Emergency plan.* You must prepare a written emergency plan that you will immediately implement in the event of a pipeline failure, accident, or other emergency that includes provisions for:

(1) Training personnel responsible for executing emergency actions;

(2) Establishing an effective communication system;

(3) Conducting periodic drills;

(4) Ensuring personnel safety;

(5) Evacuating platforms;

(6) Limiting property damage;

(7) Minimizing pollution and protecting the environment;

(8) Conducting remote operations, if applicable;

(9) Making construction information and operating history available to appropriate personnel;

(10) Notifying appropriate government agencies;

(11) Investigating failures; and

(12) Reviewing performance during drills and actual emergencies.

(d) *Personnel qualification program.* You must have a written qualification program for individuals who perform pipeline operation, maintenance, and repair duties for you that may affect the safe operation or integrity of a pipeline. This program must include provisions for:

(1) Identifying covered tasks;

(2) Ensuring through periodic evaluation that the individuals who perform covered tasks are qualified;

(3) Evaluating an individual if you have reason to believe that the individual's performance of a covered task contributed to an incident;

(4) Evaluating an individual if you have reason to believe that the individual is no longer qualified to perform a covered task;

(5) Communicating changes that affect covered tasks to individuals performing those tasks; and

(6) Complying with 30 CFR 250, Subpart O—Well Control and Production Safety Training, as applicable.

(e) *Implementation procedures.* You must establish procedures to make sure that your personnel implement and follow the provisions of your operations and maintenance manual, integrity management program, emergency plan, and personnel qualification program.

(f) *Annual review.* You must review your operations and maintenance manual, integrity management program, emergency plan, and personnel qualification program at least annually and make any necessary changes to ensure that they remain effective.

(g) *Inspection.* You must make copies of your operations and maintenance manual, integrity management program, emergency plan, and personnel qualification program available to MMS personnel at the nearest OCS facility upon request.

§ 250.1080 When must I mark the MMS-assigned pipeline segment number on a pipeline?

You must comply with the marking requirements indicated in the following table:

Type of pipeline	When you must mark the pipeline segment number
(a) New pipeline	Before you operate a pipeline you construct after [INSERT THE EFFECTIVE DATE OF THE REGULATION], you must durably mark the MMS-assigned pipeline segment number on the pipeline at each platform.
(b) Existing pipeline	If you constructed a pipeline before [INSERT THE EFFECTIVE DATE OF THE REGULATION], you must durably mark the MMS-assigned pipeline segment number on the pipeline at each platform no later than [INSERT THE DATE 6 MONTHS AFTER THE EFFECTIVE DATE OF THE REGULATION].

Type of pipeline	When you must mark the pipeline segment number
(c) Exception	You are not required to separately mark the MMS-assigned pipeline segment number on a pipeline to comply with paragraphs (a) or (b) of this section if you durably mark the component identification (see API RP14C, section 2.4 (incorporated by reference as specified in § 250.198)) on the pipeline using the MMS-assigned pipeline segment number as the unique identifier (e.g., KAH–1425, where 1425 is the MMS-assigned pipeline segment number).

§ 250.1081 How do I determine the MAOP of a pipeline?

The MAOP of a pipeline must not exceed the lowest of the following:

(a) The internal design pressure of the horizontal component and risers;

(b) The pressure ratings of appurtenances;

(c) Eighty percent of the hydrostatic test pressure of the pipeline; or

(d) If applicable, the MAOP of a connecting pipeline.

§ 250.1082 What must I do if the pipeline transports H_2S?

(a) *H_2S Contingency Plan for operations.* Before you operate a pipeline which transports a product with an H_2S concentration that, if released, could result in atmospheric concentrations of 20 ppm or more, you must prepare an H_2S Contingency Plan in accordance with § 250.490(f) that covers your pipeline operations. You do not need to prepare an H_2S Contingency Plan if the pipeline is covered under an appropriate facility plan.

(b) *H_2S dispersion modeling report.* Before you operate a pipeline which transports a product with an H_2S concentration greater than 500 ppm, you must model a potential worst-case accidental H_2S release from the pipeline and prepare a report. The modeling report must include:

(1) The data you used in the model (e.g., meteorological data) in an electronic format acceptable to the Regional Supervisor;

(2) A site-specific analysis of your pipeline operation that considers any nearby human-occupied OCS platforms, shipping lanes, fishery areas, and other points where humans may be subject to potential exposure from an accidental H_2S release; and

(3) If the accidental release could result in an H_2S concentration of 10 ppm or greater at an onshore area, an analysis consistent with the risk management plan (RMP) methodologies of the EPA as outlined in 40 CFR part 68.

(c) *Batch treatment.* The Regional Supervisor may require that you batch treat your pipeline if there are indications that H_2S could be detrimentally affecting the pipeline.

§ 250.1083 What are the requirements for conducting remote operations during a platform evacuation?

(a) *Pipeline shut-in.* When you evacuate your personnel from an OCS platform due to an impending storm or other emergency, you must shut in any connecting pipeline unless you have remote operations capability.

(b) *Remote operations.* You may conduct remote operations on the pipeline during an evacuation only if:

(1) The Regional Supervisor grants you prior approval;

(2) Your pipeline has remote monitoring and remote shut-in capabilities;

(3) You immediately shut in any pipeline that transports liquid hydrocarbons or H_2S, or any pipeline that transports natural gas (if the pipeline experiences an upset condition) when the sustained wind speeds of any storm reach 74 mph over any part of the pipeline; and

(4) You design time-delay circuitry (local storm timers) to shut in a pipeline no more than 4 hours after the capability to monitor and control a process is lost, and include this circuitry in the SCADA logic.

(c) *Resuming operations.* You may not remotely resume operation of a shut-in pipeline if any part of the pipeline was within 25 miles (or other distance specified by the Regional Supervisor) of the eye center path of a major storm (74 mph or greater).

§ 250.1084 What are the requirements for testing pipeline safety equipment?

(a) You must periodically test your pipeline safety equipment to ensure that it is in good mechanical condition, properly installed, and able to perform safety functions in accordance with the requirements in the following table. You must conduct all tests using the test procedure specified in the appropriate subsection of API RP 14C, appendix D, section D4, table D2 (incorporated by reference as specified in § 250.198).

Safety equipment	Frequency	Subsection	If	Then you must
(1) *FSV.* You must test each required FSV, except those installed underwater, for leakage.	At least annually, with no more than 13 months between tests.	d	The FSV does not operate properly, or if the flow rate exceeds 200 cubic centimeters/minute for liquid flow or 5 cubic feet/minute for natural gas flow.	Repair or replae the FSV.
(2) *PSHL sensors.* You must conduct an external pressure test of each required PSHL sensor.	At least monthly, with no more than 6 weeks between tests.	g	(i) The PSHL sensor does not operate properly. (ii) The PSHL sensor set pressure tolerance is plus or minus 5 percent or five psi, whichever is greater.	Repair or reglace the PSHL sensor. Adjust the set point(s) of the PSHL sensor.

Safety equipment	Frequency	Subsection	If	Then you must
(3) *PSV*. You must conduct an external pressure test of each required PSV.	At least annually, with no more than 13 months between tests.	i	(i) The PSV does not operate properly. (ii) The PSV set pressure tolerance is plus or minus two psi for pressures up to and including 70 psi, or plus or minus 3 percent for pressures above 70 psi.	Repair or replace the *PSV*. Adjust the set point of the PSV.
(4) *SDV*. For each required SDV, you must conduct a(an):				
(i) Operations test	At least monthly, with no more than 6 weeks between tests.	k (option 1)	The SDV does not operate properly.	Repair or replace the SDV.
(ii) Full valve closure test.	At least annually, with no more than 13 months between tests.	k (option 2)	The SDV does not operate properly, or if the flow rate exceeds 200 cubic centimeters/minute for liquid flow or 5 cubic feet/minute for natural gas flow.	Repair or replace the SDV.
(iii) Pressure holding test.	If required by the Regional Supervisor.	Not addressed	To be determined by the Regional Supervisor.	To be determined by the Regional Supervisor.
(5) *SSV*. You must conduct a pressure holding test of each required SSV.	At least monthly, with no more than 6 weeks between tests.	m	The SSV does not operate properly, or if any fluid flow is observed during the test.	Repair or replace the SSV.

(b) *Recordkeeping*. You must retain the records of the results of the tests required by paragraph (a) of this section at the nearest OCS facility for at least 2 years, and make them available to MMS upon request.

§ 250.1085 What must I do when safety equipment is removed from service?

(a) *Removal from service notification*. You must notify the Regional Supervisor:

(1) If the safety equipment remains removed from service for more than 12 hours in the GOMR; or

(2) Immediately after the safety equipment is removed from service in the POCSR and AKOCSR.

(b) *Equivalent degree of protection*. You may continue to operate the pipeline only if you:

(1) Provide an equivalent degree of protection; and

(2) Place an appropriate warning sign on the equipment removed from service.

(c) *Follow-up notification*. If you are required by paragraph (a) of this section to notify the Regional Supervisor immediately that safety equipment is out of service, you must also notify the Regional Supervisor immediately in the POCSR and AKOCSR, and within 12 hours in the GOMR, when you return the safety equipment to service, or when you provide an equivalent degree of protection.

§ 250.1086 What must I do when a pipeline is taken out of service?

(a) *Definition*. Out-of-service pipeline means a pipeline that has not been used to transport oil, natural gas, sulphur, or produced water for more than 30 consecutive days. The out-of-service period begins on the 31st day of inactivity.

(b) *Isolation*. You must immediately equip an out-of-service pipeline with either a blind flange or a block valve locked in the closed position at each end.

(c) *Safety equipment*. During the 30-day period of inactivity preceding the date that a pipeline attains out-of-service status, you must maintain and test all required pipeline safety equipment.

(d) *Out-of-service report*. You must submit a written report to the Regional Supervisor within 48 hours after a pipeline attains out-of-service status. In the out-of-service report, you must include:

(1) The name of the company submitting the report;

(2) The name and telephone number of your contact;

(3) The MMS-assigned pipeline segment number;

(4) The reason you took the pipeline out of service;

(5) An estimate of the time that the pipeline will remain out of service; and

(6) Confirmation that you have isolated the pipeline as required by paragraph (a) of this section.

(e) *Flush and fill*. When a pipeline is out of service for one year, you must:

(1) Immediately flush the pipeline with seawater until the returns comply with appropriate EPA NPDES standards;

(2) Fill the pipeline with inhibited seawater;

(3) Retain the records of your flush and fill activities at your nearest OCS facility until the pipeline is reactivated;

(4) Make the records available to MMS upon request; and

(5) If you discharge any returns into the water column, dispose of them in accordance with applicable laws and regulations.

(f) *Reactivation*. Before you reactivate an out-of-service pipeline, you must test all required safety equipment in accordance with the procedures in § 250.1084.

(g) *Reactivation report*. Within 30 calendar days after you reactivate an out-of-service pipeline, you must submit a written report to the Regional Supervisor. In the reactivation report, you must include the:

(1) Name of the company preparing the report;

(2) Name and telephone number of your contact;

(3) MMS-assigned pipeline segment number;

(4) Date you returned the pipeline to service; and

(5) Report of the hydrostatic pressure test (see § 250.1061(a)), if required by § 250.1060(a)(4).

(h) *Decommissioning an out-of-service pipeline*. You must decommission (see §§ 250.1105 through 250.1113) a pipeline within 1 year after:

(1) It has been out of service for 5 years; or

(2) You determine that it will be out of service for 5 years or more.

§ 250.1087 What must I do if a pipeline is shut in?

Before you resume operations after your pipeline was shut in, you must determine that the pipeline does not leak by conducting a visual survey of the pipeline route (see § 250.1103(a)) and a leak test (see § 250.1059). These requirements are applicable if your pipeline was shut in because:

(a) The eye center path of a major storm (winds 74 mph or greater) passed within 25 miles (or other distance specified by the Regional Supervisor) of any part of the pipeline;

(b) You had indications that pipeline integrity may have been compromised; or

(c) Your pipeline had an unexplained automatic shut-in (e.g., a PSL shut-in).

§ 250.1088 What must I do if a pipeline leaks?

If your pipeline experiences an accidental leak, you must:

(a) Immediately suspend operations and not resume operations until the pipeline is repaired in accordance with §§ 250.1094 through 250.1096; and

(b) Notify the Regional Supervisor immediately, or as soon as practicable, after you discover that a pipeline is leaking.

§ 250.1089 What must I do if I need to flare or vent gas from a pipeline?

(a) *Approval*. You must receive approval from the Regional Supervisor to flare or vent natural gas from your pipeline during blowdown, unless the blowdown discharge point is downstream of the royalty meter (see subpart K, redesignated § 250.1155).

(b) *Report*. You must submit a written report to the Regional Supervisor that includes the location, time, flare or vent volume, and the reason for flaring or venting, within 72 hours after you complete the flaring or venting operations (see subpart K, redesignated § 250.1155).

(c) *Extended flaring or venting*. If you need to flare or vent natural gas from a pipeline for 48 continuous hours or more, you must adhere to the requirements in subpart K, redesignated § 250.1155.

§ 250.1090 When must I provide impact protection for existing risers?

You must provide impact protection to all pipeline risers installed prior to April 1, 1988, and that are outside of the platform structure, whenever:

(a) The Regional Supervisor determines that significant damage potential exists;

(b) You perform maintenance or repair operations on any existing pipeline riser that is protected by a pipe-in-pipe configuration; or

(c) You perform major repairs or modifications on any pipeline riser that is not protected.

§ 250.1091 When will MMS suspend or temporarily prohibit pipeline operations?

The Regional Supervisor may suspend or temporarily prohibit any pipeline operation if:

(a) The Regional Supervisor determines that continued activity would threaten or result in serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life); property; mineral resources; or the marine, coastal, or human environment;

(b) The Regional Supervisor determines that you have failed to comply with a provision of the OCSLA or any other applicable law, a provision of this part or other applicable regulations, or a condition of a pipeline application approval or a pipeline ROW grant; or

(c) Prohibiting the pipeline operation is in the interest of national security or defense.

Pipeline Modifications and Repairs

§ 250.1093 What must I do to modify an approved pipeline?

(a) *Definition*. Modifying a pipeline means significantly changing an approved pipeline. Modifications include changing a pipeline route; installing, modifying, or replacing a subsea tie-in valve assembly; adding, modifying, or replacing safety equipment; changing service; changing flow direction; installing or replacing a pig receiving/launching assembly; changing a pipeline riser configuration; changing the MAOP; replacing or adding anodes; and adding a hot-tap. Modifications do not include routine operations such as performing a hydrostatic pressure test; pigging; injecting chemicals; flushing and filling a pipeline; installing a blind flange on an out-of-service pipeline; installing a clamp, sleeve, or wrap to mitigate pipe wall loss; and performing other routine operations or preventive maintenance.

(b) *Modification application*. Before you conduct any operations to modify a pipeline, you must submit three copies of a modification application to the Regional Supervisor for approval. In the modification application, you must include each of the elements required by the following paragraphs (b)(1) through (b)(7) of this section.

(1) The MMS-assigned pipeline segment number.

(2) Those items in your approved pipeline application (see §§ 250.1014 through 250.1030) affected by the proposed modification.

(3) The step-by-step procedures you will follow in making the modification, including the measures you will take to:

(i) Ensure safety;

(ii) Minimize pollution;

(iii) Comply with burial and covering requirements; and

(iv) Perform any required hydrostatic pressure or leak test.

(4) If required by the Regional Supervisor, a work plan that describes the specific measures you intend to take, and the specific procedures you intend to follow, to ensure the safety of offshore workers and to prevent pollution. The work plan must include or consider:

(i) The operating history of the pipeline you plan to modify, including past modifications or repairs, and the operating conditions peculiar to the pipeline;

(ii) Reasonable measures to ensure that pressure in the pipeline is equal to the external pressure;

(iii) Reasonable measures to ensure that you purge combustibles and H_2S from the pipeline immediately before you conduct the modification;

(iv) Advance notification to facility workers (both company and contract) concerning significant aspects of the upcoming modification;

(v) Re-notification of all facility workers immediately before you attempt to de-pressurize, cut into, or open the pipeline to perform the modification;

(vi) Onsite supervision during the entire modification operation; and

(vii) Safeguards to ensure that the pipeline remains isolated during the entire modification operation so that facility workers are not endangered by pressure, H_2S, or explosive or combustible products.

(5) Requests for alternative compliance (see § 250.141) necessitated by the modification.

(6) If applicable, an electronic file containing the digital coordinates of sufficient points to provide an accurate representation of the proposed modified route, including turns, for both the pipeline and umbilicals.

(7) Payment of a nonrefundable service fee (see § 250.125 for amount).

(c) *Hot tap modification application*. If you plan to modify a pipeline by installing a hot tap, your modification application must include, in addition to

the requirements in paragraph (b) of this section:

(1) The design specifications for the hot tap;

(2) A drawing of the proposed hot tap assembly;

(3) A plat that shows the location of the hot tap, specifies its location in both X–Y coordinates and latitude and longitude in NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for AKOCSR and GOMR (Atlantic), and shows the water depth (feet); and

(4) A description of the hot tapping operations.

(d) *Affected States.* Unless each affected State has given general concurrence, or the Regional Director determines that a State is not an affected State, you must provide the information required by § 250.1016(a) if your planned modification of an approved ROW pipeline involves:

(1) Installation of additional pipe (except those modifications that involve only minor reconfiguration of existing pipelines);

(2) Installation of a new accessory platform; or

(3) Changing the product from natural gas to oil.

(e) *MMS review.* A pipeline modification application is subject to the same review requirements as those for a new pipeline application (see § 250.1009).

(f) *Relocation notification.* If the approved pipeline modification involves the relocation of a pipeline, you must notify the Regional Supervisor at least 48 hours before you begin the work, using Form MMS–153 (Notification of Pipeline Installation/Relocation/Hydrotest).

(g) *Modification report.* Within 30 calendar days after you complete any pipeline modification that changed the location plat, or that required a hydrostatic pressure test, you must submit a written modification report to the Regional Supervisor. In the modification report you must include all of the following:

(1) The MMS-assigned pipeline segment number.

(2) If applicable, a location plat based on the NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for AKOCSR and GOMR (Atlantic), at a minimum scale of 1 inch = 2,000 feet that:

(i) Depicts the actual location of the modification;

(ii) Includes the latitude and longitude coordinates in both NAD 27 and NAD 83, and the X–Y coordinates in NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for the AKOCSR and GOMR (Atlantic), of the key points of the modification; and

(iii) Includes a certification by a registered engineer or land surveyor that attests to the accuracy of the ''as-built'' locations of the pipeline as modified.

(3) If applicable, an electronic file containing the digital coordinates of the key points of the ''as-built'' pipeline and umbilical routes, including turns, as modified. You must report the digital data in decimal degrees latitude and longitude, based on NAD 83.

(4) Confirmation that the modification was accomplished as approved by the Regional Supervisor.

(5) If applicable, a report of the hydrostatic pressure test (see § 250.1061) required by § 250.1060(a)(2), (3), or (6).

(6) If applicable, the pipe-to-electrolyte potential measurements required by § 250.1043(b).

§ 250.1094 What are the general requirements for repairing a pipeline?

Repairing a pipeline means performing remedial work as a result of a failure and/or the leaking of a pipeline or associated equipment, or a reduction in wall thickness that would have required a reduction in the MAOP. You must repair a pipeline in a manner that:

(a) Meets or exceeds the original design specifications of the pipeline, appurtenances, and safety system components;

(b) Prevents unauthorized discharges;

(c) Does not unreasonably interfere with other uses of the OCS; and

(d) Does not cause undue or serious harm or damage to the human, marine, or coastal environment.

§ 250.1095 What must I do to commence and complete a repair?

(a) *Repair application.* Before you conduct any repair work on a pipeline, you must submit one copy of an application to the Regional Supervisor for approval. You may submit this repair application at the same time as, or after, you make the notification required by § 250.1088(b). The repair application must include all of the elements required by the following paragraphs (a)(1) through (a)(9) of this section.

(1) The MMS-assigned pipeline segment number.

(2) The location (latitude and longitude in NAD 27 for the GOMR (Gulf) and POCSR, and in NAD 83 for AKOCSR and GOMR (Atlantic)) and water depth (feet) of the repair.

(3) A description of the damaged component, and the reason for the repair.

(4) For pipelines that transport liquids, an estimate of the volume spilled (barrels), including slick size and appearance, if applicable.

(5) For pipelines that transport natural gas, an estimate of the volume of gas leaked (MMCF), including sheen/boil size and appearance, if applicable.

(6) Specifications of any new pipe, spool piece, clamps, or other materials you will use in making the repair.

(7) The step-by-step procedures you will follow to make the repair, including the measures you will take to:

(i) Ensure safety;

(ii) Minimize pollution;

(iii) Comply with burial and covering requirements; and

(iv) Conduct any required hydrostatic pressure or leak test.

(8) If required by the Regional Supervisor, a work plan that describes the specific measures you intend to take, and the specific procedures you intend to follow, to ensure the safety of offshore workers and to prevent pollution. The work plan must include or consider:

(i) The operating history of the pipeline you plan to repair, including past modifications or repairs, and the operating conditions peculiar to the pipeline;

(ii) Reasonable measures to ensure that pressure in the pipeline is equal to the external pressure;

(iii) Reasonable measures to ensure that you purge combustibles and H_2S from the pipeline immediately before you commence the repair work;

(iv) Advance notification to all facility workers concerning significant aspects of the upcoming repair work;

(v) Re-notification of all facility workers immediately before you attempt to de-pressurize, cut into, or open the pipeline to perform the repair work;

(vi) Onsite supervision during the entire repair operation; and

(vii) Safeguards to ensure that the pipeline remains isolated during the entire repair operation so that facility workers are not endangered by the release of pressure, H_2S, or explosive or combustible products.

(9) Payment of a nonrefundable service fee (see § 250.125 for amount).

(b) *MMS review.* The Regional Supervisor will review the pipeline repair application to ensure that the proposed operations conform to the regulations in this subpart.

(c) *Pressure testing.* You must comply with the pressure testing requirements in § 250.1060(b) and (c).

(d) *Cathodic protection system measurements.* When you conduct underwater repairs, you must measure the pipe-to-electrolyte potential at the location of the repair site if your pipeline:

(1) Is located in the AKOCSR; or

(2) Is located in either the GOMR or POCSR and either:

(i) The pipeline is composed of any pipe that is more than 20 years old; or

(ii) The life expectancy of the cathodic protection system cannot be calculated.

(e) *Repair report.* You must submit a written repair report to the Regional Supervisor within 30 calendar days after you complete a repair. In the repair report, you must include:

(1) The MMS-assigned pipeline segment number;

(2) The actual location of the repair (latitude and longitude in NAD 27 for the GOMR (Gulf) and POCSR, and in NAD 83 for the AKOCSR and GOMR (Atlantic)) and water depth (feet);

(3) Confirmation of the failure or damage to the pipeline as originally reported to the Regional Supervisor;

(4) Confirmation that the repair was accomplished as approved by the Regional Supervisor;

(5) For pipelines that transport liquids, an estimate of the volume that spilled (barrels), if any, while you performed the repair work;

(6) A report of any hydrostatic pressure test (see § 250.1061(a)) required by § 250.1060(b) and (c);

(7) The results of any leak test (see § 250.1061(b)) required by § 250.1060(b)(1) or (c)(1); and

(8) The pipe-to-electrolyte potential measurements required by paragraph (d) of this section.

(f) *Failure analysis and examination.* The Regional Supervisor may require you to analyze a pipeline failure, and examine samples of a failed pipe or associated equipment in a laboratory to determine the cause of failure. When so directed, you must submit a comprehensive written report of your findings to the Regional Supervisor.

§ 250.1096 What must I do to repair a pipeline using a clamp?

When repairing a pipeline using a clamp, you must comply with the requirements in the following table:

If you use . . .	Then . . .
(a) A clamp to make a repair on a pipeline	You must use a full encirclement clamp with a rated working pressure equal to or greater than the MAOP of the pipeline.
(b) A clamp on the horizontal component or on the riser below the splash zone.	You may use a welded clamp or a mechanical clamp.
(c) A mechanical clamp to temporarily repair a riser in or above the splash zone.	You must: (1) Submit a repair application (see § 250.1095(a)) to the Regional Supervisor for approval to make a permanent repair. (2) Within 30 calendar days after you install the mechanical clamp, complete the permanent repair using a welded clamp, spool piece, or other method approved by the Regional Supervisor.

§ 250.1097 When do I need to submit a corrective action plan and report?

(a) *Plan.* The Regional Supervisor may require you to submit a corrective action plan for approval if there are internal or external conditions that could detrimentally affect a pipeline including, but not limited to:

(1) Conditions that might affect the performance or integrity of pipeline valves and fittings at a subsea tie-in;

(2) Conditions that could cause interference with navigation or other uses of the OCS;

(3) Riser or riser clamp damage;

(4) Pipeline exposure or displacement; or

(5) Anomalies and metal loss.

(b) *Submittal.* You must submit the corrective action plan required by paragraph (a) of this section to the Regional Supervisor. If the remedial work under the corrective action plan requires MMS approval of a modification application (see § 250.1093(a)) or a repair application (see § 250.1095(a)), you may include the appropriate application in your corrective action plan.

(c) *Report.* The Regional Supervisor may require you to submit a written report, within 30 calendar days after you complete the corrective action, confirming that you carried out your corrective action plan as approved.

Pipeline Surveying, Monitoring and Inspection

§ 250.1100 What are the general requirements for surveying, monitoring, and inspecting a pipeline?

You must survey, monitor, and inspect all pipelines, including shut in pipelines, in a manner that:

(a) Periodically verifies the integrity of the pipeline and risers;

(b) Prevents unauthorized discharges;

(c) Does not unreasonably interfere with other uses of the OCS; and

(d) Does not cause undue or serious harm or damage to the human, marine, or coastal environment.

§ 250.1101 What must I do to survey and monitor a pipeline or route?

(a) *Surveying.* You must conduct a visual survey of each of your pipeline routes at least monthly (or at a frequency specified by the Regional Supervisor) for indication of pipeline leaks. You may conduct this visual survey from a helicopter, marine vessel, or vehicle; by walking on ice; or by other means approved by the Regional Supervisor. The survey must be conducted during daylight hours (except in the AKOCSR). You must retain the results of the visual survey for at least 2 years, and make them available to MMS upon request.

(b) *Product monitoring.* You must monitor the products transported in the pipeline to ensure that your internal corrosion and flow assurance measures remain effective.

§ 250.1102 What inspections are required for my pipeline or route?

You must conduct the inspections in the following table:

Component and conditions for inspection	Inspection requirements	Reporting and recordkeeping requirements
(a) All risers	You must: (1) Conduct a visual inspection of each pipeline riser in and above the splash zone at least annually for indications of damage or corrosion. (2) In conjunction with the platform inspections required by § 250.919, inspect the underwater portions of each pipeline riser for indications of corrosion, soil erosion, or damage.	You must retain the records of the riser inspections for at least 2 years on the nearest OCS facility, and make them available to MMS upon request.
(b) All flexible joints on risers	You must: (1) Conduct a visual inspection of the flexible joints on each riser at least annually. (2) If the results of an inspection required by item (1) of this paragraph indicate that a flexible joint shows signs of deterioration, conduct the required inspections at least every 6 months.	You must submit the results of each flexible joint inspection to the Regional Supervisor within 30 calendar days after you complete the inspection.
(c) Impressed current sources if your pipeline is protected by rectifiers or other impressed current sources.	You must inspect the impressed current sources at least six times each year (with no more than 10 weeks between inspections) to determine if the pipeline is adequately protected.	You must retain the records of the impressed current source inspections for at least 2 years on the nearest OCS facility, and make them available to MMS upon request.
(d) Anode systems if your pipeline is cathodically protected by anodes and if your pipeline is: (1) Located in the POCSR or AKOCSR; or (2) Located in the GOMR and either: (i) The pipeline is composed of any pipe that is more than 20 years old; or (ii) The life expectancy of the cathodic protection system cannot be calculated.	You must measure the pipe-to-electrolyte potential annually by September 30 of each year.	You must submit the pipe-to-electrolyte potential measurements to the Regional Supervisor no later than October 31 of the same year, or within 60 calendar days of the measurements, whichever is earlier.

§ 250.1103 What additional inspections or surveys may the Regional Supervisor require?

The Regional Supervisor may require you to conduct the inspections or surveys in the following table:

Type of inspection the regional supervisor may require	Inspection requirements	Reporting and record keeping requirements
(a) Horizontal components inspection	Conduct a visual or remote inspection of the horizontal component of your pipeline.	Submit a report on the results of the horizontal component inspection to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.
(b) Pipeline inspection after a storm. If any portion of your pipeline within 25 miles (or other distance specified by Regional Supervisor) of the eye (central path) of a major storm (74 mph or greater).	(1) Survey the pipeline route (2) Conduct a visual inspection of the above-water portion of the pipeline riser for damage to the riser and clamps. (3) Inspect the underwater portion of the pipeline riser (including clamps, VIV suppression, and connection devices) for evidence of displacement or exposure. (4) Inspect the horizontal component from the base of the riser to a point at least 200 feet away from the base of the riser for evidence of displacement or exposure. (5) Conduct an underwater visual inspection by divers or ROV of each of your pipeline valves, crossings, and tie-ins to determine: (i) Whether or not any valves or fittings became exposed; and.	Submit a report of the results of the post-storm inspection(s) listed in this paragraph to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.

Type of inspection the regional supervisor may require	Inspection requirements	Reporting and record keeping requirements
	(ii) The extent of any damage, including damage to protective devices, mats, and sandbags.	
(c) Pipeline Inspection after an earthquake. If any portion of your pipeline mayhave been affected by an earthquake.	Conduct surveillance, inspection, and monitoring of the pipeline.	Submit a report on the results of the post-earthquake surveillance, inspections, or monitoring to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.
(d) Ultrasonic test (UT) inspection	Conduct a UT inspection of your pipeline	Submit a report on the UT inspection results to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.
(e) In-line inspection	Conduct an in-line inspection of your pipeline using smart pigs.	Submit a report on results of the in-line inspection to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.
(f) Trawl test or other survey	Conduct a trawl test, diver survey, or ROV survey, or use another method approved by the Regional Supervisor, to determine whether the pipeline interferes with other uses of the OCS.	Submit a report on the results of the trawl test, diver survey, or ROV survey to the Regional Supervisor. The Regional Supervisor will specify the contents and submittal deadline of the report.

Pipeline Decommissioning

§ 250.1105 When do I accrue pipeline decommissioning obligations?

You accrue pipeline decommissioning obligations when you are, or become:

(a) A lessee, or the owner of operating rights, of a lease on which there is a lease term pipeline; or

(b) The holder of a pipeline ROW on which there is a pipeline, accessory, or appurtenance (including umbilicals).

§ 250.1106 When must I decommission a pipeline?

You must decommission your pipeline within 1 year after:

(a) The pipeline has been out of service for 5 years (see § 250.1086(h)(1));

(b) You determine that a pipeline will be out of service for 5 years or more (see § 250.1086(h)(2));

(c) For ROW pipelines, your pipeline ROW grant terminates (see § 250.1138(b)); or

(d) For lease term pipelines, your OCS lease terminates.

§ 250.1107 What must I do to decommission a pipeline in place?

You may decommission a pipeline in place when the Regional Supervisor determines that the pipeline does not constitute a hazard or obstruction to navigation and commercial fishing operations, unduly interfere with other uses of the OCS, or have adverse environmental effects. To decommission a pipeline in place you must meet the requirements in the following table.

Requirement	What you must do to meet the requirement
(a) Application	Submit a pipeline decommissioning application to the Regional Supervisor in accordance with § 250.1109(a)(1), and receive approval from the Regional Supervisor before you begin the work.
(b) Purging and flushing	(1) You must either: (i) Pig the pipeline, including risers, using a pig that will displace the entire contents of the pipeline; or (ii) Flush the pipeline, including risers, with seawater until the returns comply with appropriate EPA NPDES standards. (2) If you discharge any flushed returns into the water column, you must dispose of them in accordance with applicable laws and regulations.
(c) Filling	Fill the pipeline, including risers, with seawater.
(d) Records	For each pipeline decommissioned in place after (INSERT THE EFFECTIVE DATE OF THE REGULATION), retain the records of your flushing and filling activities and make them available to MMS upon request for the life of the pipeline.
(e) Disconnecting	Disconnect the pipeline from connecting platforms, pipelines, and subsea manifolds.
(f) Cutting and plugging	Cut and plug each end of the pipeline.
(g) Protecting ends	Protect the ends of the pipeline as follows: (1) If the pipeline end is in a water depth less than 200 feet, bury the end to a depth at least 3 feet below the seafloor, and cover it with either sand bags or a concrete mat. If you use sand bags, they must have a slope above the seafloor of 1:3 (rise:run). If you use a concrete mat, the edges of the mat must be below the seafloor. (2) If the pipeline end is in a water depth 200 feet or greater but less than 500 feet, you may either bury the end to a depth at least 3 feet below the seafloor, or cover the end with a concrete mat. If you use a concrete mat, the edges of the mat must be below the seafloor. (3) If the pipeline end is in a water depth 500 feet or greater, you may forego burial and covering if the Regional Supervisor determines that the pipeline end is not an obstruction to other uses of the seafloor or area.
(h) Removing appurtenances	Remove all pipeline appurtenances unless: (1) The Regional Supervisor determines that the appurtenance would not unduly interfere with other uses of the seafloor or area; or (2) The water depth is greater than 2,624 feet.
(i) Decommission umbilicals in place.	Decommissioning all umbilicals in place in accordance with the requirements of paragraphs (a) through (g) of this section.

§ 250.1108 What must I do to decommission a pipeline by removal?

To decommission a pipeline by removal, you must:

Requirement	What you must do to meet the requirement
(a) Application	Submit a pipeline decommissioning application to the Regional Supervisor in accordance with § 250.1109(a)(2), and receive approval from the Regional Supervisor before you begin the work.
(b) Purging and flushing	(1) You must either: (i) Pig the pipeline, including risers, using a pig that will displace the entire contents of the pipeline; or (ii) Flush the pipeline, including risers, with seawater until the returns comply with appropriate EPA NPDES standards. (2) If you discharge any flushed returns into the water column, you must dispose of them in accordance with applicable laws and regulations.
(c) Removing umbilicals	Remove all umbilicals in accordance with the requirements of paragraphs (a) and (b) of this section.
(d) Removing the pipeline	Physically remove the pipeline.

§ 250.1109 How do I obtain approval to decommission a pipeline?

(a) To obtain approval to decommission a pipeline, you must:

What to submit	Application contents
(1) Submit three copies of a pipeline decommissioning application to the Regional Supervisor for approval.	(i)The MMS-assigned pipeline segment number; (ii) Reason for the decommissioning; (iii) Proposed decommissioning procedures, including those to comply with the requirements of § 250.1107; (iv) Length (feet) of pipe to be decommissioned; (v) Length (feet) of pipe that will remain in place; (vi) Requests for alternative compliance or a departure under §§ 250.141 or 250.142; and (vii) If the application is to decommission a lease term pipeline, payment of a nonrefundable service fee (see § 250.125 for amount).
(2) Submit three copies of a pipeline decommissioning application to the Regional Supervisor for approval.	(i) The MMS-assigned pipeline segment number; (ii) The reason for the decommissioning; (iii) Your proposed removal procedures, including decommissioning those to comply with the requirements of § 250.1108; (iv) A description of the vessel(s) you will use to remove the pipeline, including anchor pattern(s), if required by the Regional Supervisor. (v) The length (feet) of pipe to be removed; (vi) The length (feet) of pipe that will remain in place; (vii) Plans for transportation of removed pipe for disposal or salvage; (viii) Plans to protect archaeological and sensitive biological features during removal operations; (ix) An assessment of the environmental impacts of the removal operations, and the procedures and mitigation measures that you will take to minimize such impacts; (x) A projected pipeline removal schedule; (xi) If the application is to decommission an ROW pipeline by removal: (A) A coastal zone consistency certification according to 15 CFR 930.57, for each affected State; and (B) Evidence that you have sent your decommissioning application, consistency certification (see 15 CFR 930.57), and all necessary data and information (see 15 CFR 930.58) to each affected State for their consistency determination under the CZMA; and (xii) If the application is to decommission a lease term pipeline, payment of a nonrefundable service fee (see § 250.125 for amount).

(b) *Electronic submission.* You may submit part or all of your decommissioning application electronically (see § 250.186(a)(3)). If you prefer to submit your application electronically, you should consult with the Regional Supervisor for further guidance.

(c) *Withdrawal of application.* You may withdraw your decommissioning application at any time, for any reason, by notifying the Regional Supervisor in writing.

§ 250.1110 How does MMS process a decommissioning application?

After you submit a decommissioning application, the Regional Supervisor will process it as shown in the following table.

Processing step	What the Regional Supervisor will do
(a) Completeness review.	Determine whether your decommissioning application (either in place or by removal) is complete, and will notify you in writing of any problem or deficiency. The Regional Supervisor will not begin processing your application until it is complete.
(b) Compliance review	Review the proposed operations described in your decommissioning application to ensure that they conform to the OCSLA (43 U.S.C.1331, *et seq.*), other applicable laws, and MMS regulations.

Processing step	What the Regional Supervisor will do
(c) Environmental impact evaluation.	Evaluate the environmental impacts of the operations described in your decommissioning application, and prepare environmental documentation under NEPA (42 U.S.C. 4321, *et seq.*) and the implementing regulations (40 CFR parts 1500 through 1508).
(d) Amendments	During the review of your decommissioning application, the Regional Supervisor may require you, or you may elect, to change the application.
(e) MMS decision	Review your decommissioning application, notify you in writing of the decision, and either: (1) Approve the application, if it complies with all applicable requirements, and inform you of any conditions of approval; or (2) Require you to amend the application, and inform you of the reasons for requiring the amendment, if the proposed decommissioning operations would probably cause serious harm or damage to life (including fish or other aquatic life); property; mineral resources (in areas leased or not leased); the national security or defense; or the marine, coastal, or human environment.

§ 250.1111 After I decommission a pipeline, what information must I submit?

Within 30 calendar days after you decommission a pipeline, you must submit a written decommissioning report to the Regional Supervisor that includes:

(a) The MMS-assigned pipeline segment number;

(b) A summary of the decommissioning operation, including the date the work was completed;

(c) A description of any mitigation measures you took; and

(d) A statement signed by your authorized representative which certifies that the pipeline was decommissioned according to the approved application.

§ 250.1112 When must I remove a pipeline decommissioned in place?

If the Regional Supervisor subsequently determines that the pipeline decommissioned in place is an obstruction to other uses of the OCS, you must remove the pipeline in accordance with the requirements in §§ 250.1108, 1109(a)(2), and 1111.

§ 250.1113 What are the requirements for re-commissioning a decommissioned pipeline?

(a) *Re-commissioning.* Before re-commissioning a decommissioned pipeline, the current lessee, current designated lease operator, or former pipeline ROW holder, as applicable, must:

(1) Submit an application under § 250.1007(a), including the MMS-assigned pipeline segment number, and receive approval from the Regional Supervisor.

(2) If the application is to re-commission a pipeline as an ROW pipeline, include:

(i) An application for a pipeline ROW grant, if applicable (see § 250.1125(a)), and receive approval from the Regional Supervisor; and

(3) Hydrostatically pressure test the pipeline in accordance with § 250.1060(a)(5).

(4) Conduct all inspections required by the Regional Supervisor, including those in § 250.1102(b), (c), and (d) and § 250.1103(a), (d), and (e).

(b) *Re-commissioning report.* Within 30 calendar days after you re-commission a decommissioned pipeline, you must submit a written re-commissioning report to the Regional Supervisor that includes all of the following:

(1) The MMS-assigned pipeline segment number.

(2) A location plat based on the NAD 27 for the GOMR (Gulf) and POCSR, or NAD 83 for AKOCSR and GOMR (Atlantic), at a minimum scale of 1 inch = 2,000 feet. The location plat must depict the actual location of the re-commissioned pipeline.

(3) An electronic file of the digital coordinates of the key points of your ''as-built'' pipeline route, as re-commissioned. You must report the digital data in decimal degrees latitude and longitude, based on NAD 83.

(4) Confirmation that the re-commissioning was accomplished as approved by the Regional Supervisor.

(5) A report of the hydrostatic pressure test (see § 250.1061) required by § 250.1060(a)(5).

Pipeline Right-of-Way (ROW) Grants

§ 250.1115 What is a pipeline ROW grant?

A pipeline ROW grant is an authorization issued by MMS for the use of submerged lands for the construction and operation of an associated ROW pipeline to transport oil, natural gas, sulphur, or other associated products.

(a) *Authority.* MMS grants a pipeline ROW pursuant to section 5(e) of the OCSLA (43 U.S.C. 1334(e)).

(b) *Term.* A pipeline ROW granted by MMS under the provisions of this subpart remains in effect until it is relinquished, cancelled, or forfeited, or until it expires.

(c) *Dimensions.* A pipeline ROW includes the site on which the pipeline, and any associated appurtenances and accessories, are or will be situated.

(1) The width of the pipeline ROW is 200 feet centered on the pipeline.

(2) The site of an accessory includes the areal extent of anchor chains, pipeline risers, and other facilities and devices associated with the accessory.

(d) *Conveyed rights.* If the Regional Supervisor approves a pipeline ROW grant, you have the:

(1) Exclusive right and privilege to construct, maintain, and operate the associated pipeline for the purpose of transporting oil, natural gas, sulphur, or other associated products; and

(2) Right to be notified and consulted if any proposed OCS operations will cross or otherwise impact your pipeline ROW.

§ 250.1116 When must I obtain a pipeline ROW grant?

Before you may construct an ROW pipeline, or use an existing pipeline that qualifies as a ROW pipeline, the Regional Supervisor must grant you a pipeline ROW in accordance with the provisions of this subpart. You must receive a separate pipeline ROW grant for each ROW pipeline, even if the new pipeline ROW grant would overlap another pipeline ROW grant.

§ 250.1117 Who can be a pipeline ROW grant holder?

(a) *Entities.* A pipeline ROW holder must be one of the following:

(1) A citizen or national of the United States;

(2) An alien lawfully admitted for permanent residence in the United States as defined in 8 U.S.C. 1101(a)(20);

(3) A private, public, or municipal corporation recognized by the United States and organized under the laws of the United States or a territory thereof, the District of Columbia, or any State; or

(4) An association (including a partnership) of such citizens, nationals, resident aliens, or private, public, or municipal corporations.

(b) *Qualification file.* In the pipeline ROW grant application required by § 250.1125(a), you may reference statements and records you previously

submitted to an MMS OCS Region regarding incorporation, and the person(s) authorized to act on behalf of your corporation or association (see § 250.1126(b) and (c)) and to receive process and notifications. The Regional Supervisor will maintain this information in a qualification file. If you choose to establish a qualification file, you must ensure that it contains accurate and up-to-date information to avoid delays in reviewing your pipeline ROW grant application.

(c) *Disqualification.* The Director may disqualify you from acquiring any new pipeline ROW grants, or from holding any existing pipeline ROW grants, if your operating performance is unacceptable. The Director will give you notice and an opportunity for a review by MMS before disqualifying you.

§ 250.1118 What are the financial security requirements for holding a pipeline ROW grant?

(a) *ROW grant financial security.* You (the applicant) must furnish the Regional Director with a bond or other security in the sum of $300,000 for each pipeline ROW grant you hold. This security is in addition to any security required of a lessee by 30 CFR 256, subpart I, Bonding.

(b) *ROW grant area financial security.* In lieu of providing the security required by paragraph (a) of this section, you may maintain with the Regional Director, or furnish to the Regional Director, a bond or other security in the sum of $1 million that covers all of the pipeline ROW grants you hold in an MMS OCS Region. The following table shows MMS regions and the areas they encompass.

MMS OCS regions are . . .	For OCS areas adjacent to the . . .
(1) Alaska OCS Region (AKOCSR).	State of Alaska.
(2) Gulf of Mexico OCS Region (GOMR).	Atlantic Coast States or in the Gulf of Mexico.
(3) Pacific OCS Region (POCSR).	States of California, Oregon, Washington, or Hawaii.

(c) *Additional financial security.* The Regional Director may require you to provide additional security (*i.e.*, security above the sum of $300,000 specified in paragraph (a) of this section, or the sum of $1 million specified in paragraph (b) of this section).

(1) The Regional Director will base the determination and the amount of additional security on an evaluation of your ability to carry out present and future financial obligations under the pipeline ROW grant, including your obligation to maintain and remove an accessory to the ROW pipeline.

(2) During the evaluation, the Regional Director will give you an opportunity to submit written or oral statements.

(3) If the Regional Director requires additional security, you may either increase the amount of your existing bond or other security, or provide a supplemental bond(s) or other security.

(d) *General requirements.* Any bond or other security you provide under this section must:

(1) Be submitted on Form MMS–2030 (Outer Continental Shelf (OCS) Pipeline Right-of-Way Grant Bond);

(2) Be payable upon demand to the Regional Director;

(3) Guarantee your compliance with the terms and conditions of the pipeline ROW grant, your obligations under the grant, the OCSLA (43 U.S.C.1331, *et seq.*), other laws, and applicable MMS regulations;

(4) If the security is a bond, be issued by a surety that the U.S. Department of the Treasury certifies as an approved surety on Federal bonds and that is listed in the current Treasury Circular No. 570;

(5) If the security is a bond, be executed by authorized officials representing you and the surety;

(6) If the surety is a corporation, be signed by an authorized corporate officer and attested to with its embossed corporate seal; and

(7) Be non-cancelable, except as provided in §§ 250.1120 and 250.1124.

(e) *State law.* If the security is a bond, the bond must continue in full force and effect even if the surety's obligation has been diminished, terminated, or canceled under State law.

§ 250.1119 When will MMS terminate the period of liability of my financial security?

The Regional Director will not terminate the period of liability of your bond or other security for a pipeline ROW grant except under the conditions in this section.

(a) If your surety requests termination of liability from the Regional Director, the Regional Director will approve the request and terminate that period of liability within 90 calendar days after receipt of the request.

(b) If you intend to maintain the pipeline ROW grant, or have not fulfilled all decommissioning or other obligations, you must provide the Regional Director with a replacement bond or other security of equivalent value.

(c) When the Regional Director terminates the period of liability of a bond or other security, the period during which obligations continue to accrue ends. This termination does not relieve the surety of the responsibility for obligations and responsibilities that accrued during the period of liability and before the date of termination. The obligations and responsibilities that accrue during a period of liability also include those that began accruing before the beginning of the period of liability and have not been fulfilled.

(d) If the Regional Director terminates the period of liability, but the bond or other security is not cancelled, the surety that provided the bond will continue to be liable for accrued obligations until they have been fulfilled.

§ 250.1120 When will MMS cancel my financial security?

The Regional Director will cancel your bond or other security, and thus relieve the surety of accrued obligations, only if you request cancellation from the Regional Director and either:

(a) The Regional Director determines that there are no outstanding obligations; or

(b) You provide the Regional Director with a replacement bond or other security of equivalent value in which:

(1) The new surety agrees to assume all outstanding liabilities under the bond or other security to be cancelled; and

(2) The new bond or other security is in an amount equal to or greater than the bond or other security to be cancelled.

§ 250.1121 What happens if my financial security is reduced or lapses?

(a) *Reduced financial security value.* If the value of a required pipeline ROW grant bond or other security is reduced because of a default, or for any other reason, you must provide the Regional Director with additional coverage sufficient to meet the security required by § 250.1118(a) or (b) and, if applicable, § 250.1118(c). You must provide this additional coverage within 30 calendar days, or within a shorter period if required by the Regional

Director, after the value of your security coverage is reduced.

(b) *Lapse of financial security.* If your surety is decertified by the Department of the Treasury, becomes bankrupt or insolvent, or has its charter or license suspended or revoked, your security coverage terminates immediately. In that event, you must:

(1) Notify the Regional Director within 72 hours; and

(2) Provide the Regional Director with a new bond or other security sufficient to meet the security required by § 250.1118(a) or (b) and, if applicable, § 250.1118(c) You must do this within 15 calendar days after your security coverage terminates, or within a shorter period if required by the Regional Director.

§ 250.1122 How will MMS determine that my financial security is forfeited?

(a) The Regional Director will pursue forfeiture of all or part of your bond(s) or other security if the Regional Director finds that either:

(1) You refuse, or are unable, to comply with the terms and conditions of the pipeline ROW grant, your obligations under the grant, the OCSLA (43 U.S.C. 1331, *et seq.*), other laws, or applicable MMS regulations; or

(2) You have otherwise defaulted under any condition imposed when the Regional Director accepted the bond or other security.

(b) The Regional Director may pursue forfeiture of your bond(s) or other security without first making demands for performance against you.

(c) In pursuing forfeiture of your bond(s) or other security, the Regional Director will:

(1) Notify you and your surety in writing that the forfeiture process has begun, and include the reasons for the forfeiture and the amount to be forfeited;

(2) Base the amount to be forfeited on an estimate of the total cost to bring your pipeline ROW grant into compliance, or to correct any default; and

(3) Advise you and your surety in writing that you may avoid forfeiture if, within 5 working days either:

(i) You agree to, and demonstrate that you will, bring your pipeline ROW grant into compliance or correct any default within a timeframe prescribed by the Regional Director; or

(ii) Your surety agrees to, and demonstrates that it will, bring your pipeline ROW grant into compliance or correct any default within a timeframe prescribed by the Regional Director, even if the cost of compliance or correcting the default exceeds the amount of your bond or other security.

(d) If you or your surety refuse, or are unable, to comply with the conditions in paragraph (c)(3) of this section, the Regional Director will determine that your bond or other security is forfeited, and will:

(1) Collect the forfeited amount;

(2) Use the collected funds to bring your pipeline ROW grant into compliance, or to correct any default;

(3) Initiate proceedings to recover from you all costs in excess of the amount the Regional Director collected from your forfeited bond or other security, if the collected funds are insufficient to bring your pipeline ROW grant into compliance or to correct any default; and

(4) Return any funds collected from the forfeited bond or other security that were not used to bring your pipeline ROW grant into compliance or to correct any default.

(e) If your bond or other security is forfeited, you must furnish the Regional Director with a new bond or other security sufficient to meet the security required by § 250.1118(a) or (b) and, if applicable, § 250.1118(c). You must do this within 15 calendar days after your bond or other security was forfeited, or within a shorter period if required by the Regional Director.

§ 250.1123 What penalties can MMS assess if my financial security is not sufficient, is reduced or lapses, or is forfeited?

If you fail to provide any additional security required by the Regional Director (under § 250.1118(c)), replace or provide additional coverage for a devalued bond or other security (under § 250.1121(a)), or replace a lapsed or forfeited bond or other security (under § 250.1121(b) or § 250.1122), then:

(a) The Regional Director may assess penalties under 30 CFR 250, subpart N, Outer Continental Shelf (OCS) Civil Penalties;

(b) The Regional Supervisor may suspend the pipeline ROW grant in accordance with § 250.1135(b); and

(c) The Secretary may cancel the pipeline ROW grant in accordance with § 250.1137(a)(4).

§ 250.1124 What happens to my financial security after a pipeline ROW grant terminates?

When your pipeline ROW grant terminates (either by relinquishment, cancellation, forfeiture, or expiration), your surety(s) remains responsible, and the Regional Director will retain your bond or other financial security as shown in the following table:

For . . .	the period of liability ends . . .	and . . .
(a) Securities provided under § 250.1118(a) or (b).	When the Regional Director determines that you have fulfilled all of your obligations under the pipeline ROW grant.	(1) The Regional Director will cancel your financial security 7 years after the pipeline ROW grant terminates; 6 years after you complete all secured obligations; or at the conclusion of any appeals or litigation related to your secured obligation, whichever is the latest. (2) The Regional Director will reduce the amount or return a portion of your bond or other security if the Regional Director determines that a lesser amount is required to cover any unforeseen events under your accrued obligations.
(b) Additional securities provided under § 250.1118(c).	When the Regional Director determines that you have fulfilled all of your obligations covered by the additional security.	The Regional Director will cancel your financial security either: (1) When you meet your secured obligations; or (2) Seven years after the pipeline ROW grant terminates; if the Regional Director determines that the amount required to cover unforeseen events under your accrued obligations is greater than the amount of the security you provided under § 250.1118(a) or (b); or (3) At the conclusion of any appeals or litigation related to your secured obligation; whichever is the latest.

§ 250.1125 How do I submit an application for a pipeline ROW grant?

(a) *Application.* You must submit one original and two copies of an application for a pipeline ROW grant to the Regional Supervisor. You must attach the ROW grant application to the application for the associated ROW pipeline (see § 250.1007(a)), and include the information required by § 250.1126 in your ROW grant application.

(b) *Service fee.* With each pipeline ROW grant application you submit, including an application for a pipeline ROW grant to convert an existing lease term pipeline to an ROW pipeline or an application to for an ROW grant for an existing pipeline, you must include payment of the applicable nonrefundable service fee (see § 250.125 for the amount).

(c) *Submitting additional information.* The Regional Supervisor may require your ROW grant application to include information in addition to that required by § 250.1126, if the Regional Supervisor determines that it is necessary to evaluate the application.

(d) *Electronic submission.* You may submit part or all of your pipeline ROW grant application electronically (see § 250.186(a)(3)). If you prefer to submit your pipeline ROW grant application electronically, you should consult with the Regional Supervisor for further guidance.

(e) *Withdrawal of application.* You may withdraw your pipeline ROW grant application at any time, and for any reason, by notifying the Regional Supervisor in writing.

§ 250.1126 What information must I include in an application for a pipeline ROW grant?

(a) *Cover letter.* You must provide a cover letter that states:

(1) You are submitting the pipeline ROW grant application pursuant to section 5 of the OCSLA (43 U.S.C. 1334(e)) or section 8 of the OCSLA (43 U.S.C. 1337(p)(1)(B)) and the regulations contained in 30 CFR 250, subpart J;

(2) You consent to be bound by the provisions of the OCSLA (43 U.S.C. 1331, *et seq.*) and other applicable laws, MMS regulations, and the terms and conditions of the pipeline ROW grant;

(3) The purpose(s) for which you will use the pipeline ROW grant; and

(4) The name, title, and signature of your authorizing official. This information must be the same as the information you provide or reference in your MMS qualification records (see § 250.1117(b)).

(b) *Qualification.* You must provide information regarding your qualification to be a pipeline ROW holder as follows:

If you are . . .	You must provide . . .
(1) An individual	A statement of citizenship or nationality.
(2) An alien lawfully admitted for permanent residence in the United States.	Evidence of such status.
(3) A corporation	(i) A statement certified by the Secretary or Assistant Secretary of the corporation with the corporate seal showing the State where it is incorporated; and (ii) The name(s), title(s), and signature(s) of the person(s) authorized to act on behalf of the corporation.
(4) An association (including a partnership)	(i) A certified copy of the articles of association; and (ii) The name(s), title(s), and signature(s) of the person(s) authorized to act on behalf of the association.

(c) *Reference to qualification records.* In lieu of providing the information required by paragraphs (b)(3) and (4) of this section, you may reference statements and records you previously submitted to MMS regarding the corporation or association, and the persons authorized to act on behalf of the corporation or association (see § 250.1117(b)). If you choose this alternative, you must state that the company official who signed the cover letter has the authority to:

(1) Submit the pipeline ROW grant application;

(2) Bind the corporation or association to compliance with the terms and conditions of the pipeline ROW grant; and

(3) Bind the corporation or association to compliance with the various statements and certifications made in your pipeline ROW grant application.

(d) *Identified ROW pipeline operator.* If the pipeline ROW grant holder will not be the operator of the associated pipeline, you must identify the operator and provide its MMS company number, if any.

(e) *Bond or other financial security.* You must describe your bond or other security coverage for the proposed pipeline ROW (see § 250.1118(a) or (b)).

(f) *Additional financial security.* If the Regional Director determines that you must provide additional security, you must describe such security (see § 250.1118(c)).

(g) *Accessory footprint.* If your pipeline ROW will include a site for an accessory, you must provide the size of the affected area (acres), and information that shows how you determined the size (see § 250.1130(a)(2)) and the maximum water depth.

(h) *Payments.* You must include your service fee and rental payments, made payable to the Minerals Management Service. If you pay by credit card, follow the instructions in § 250.125(b)(1). If you pay by check, your check must identify the check number, date, and name of the financial institution upon which the check is written. You must provide additional information that includes:

(1) Total amount of the service fee (see § 250.125(b));

(2) Total amount of the pipeline rental, and the time period it covers (see § 250.1130(a)(1));

(3) Total amount of rental for an accessory site (if applicable), and the time period it covers (see § 250.1130(a)(2)); and

(4) Total payment amount.

§ 250.1127 How does MMS process an application for a pipeline ROW grant?

(a) *Compliance review.* The Regional Supervisor will review your pipeline ROW grant application to ensure that it complies with the OCSLA (43 U.S.C.1331, *et seq.*), other applicable laws, and MMS regulations.

(b) *Amendments.* During the review of your pipeline ROW grant application, the Regional Supervisor may require you, or you may elect, to change the application.

(c) *Decision.* The Regional Supervisor will review your pipeline ROW grant application, and take one of the following actions:

The Regional Supervisor will . . .	If . . .	And the Regional Supervisor also . . .
(1) Approve your application for a pipeline ROW grant in writing.	It complies with all applicable requirements	(i) Will simultaneously approve the associated pipeline (see § 250.1012(a)) and, if applicable, any associated accessory (see § 250.1142(e)(1)); and (ii) May require you to meet certain conditions.
(2) Require you amend your application for a pipeline ROW grant.	The Regional Supervisor determines that it is inconsistent with the OCSLA (43 U.S.C. 1331, *et seq.*), applicable MMS regulations, or other Federal laws.	Will notify you in writing of the decision, and describe the changes you must make to your pipeline ROW grant application to ensure it complies with all applicable requirements.
(3) Deny your application	(i) The application for the associated pipeline is disapproved under § 250.1012(b); (ii) You do not qualify to hold a pipeline ROW grant, or are unable to post the required bonds or other security;. (iii) You do not comply with applicable requirements, and are unable to amend the application to achieve compliance; or. (iv) The proposed pipeline ROW will cross any OCS lands (e.g., fairways or anchorage areas) that are under the jurisdiction of another Federal agency and that agency does not consent to the pipeline ROW grant.	Will issue the decision to you in writing, and state the reasons for the denial.

§ 250.1128 When will MMS temporarily suspend or prohibit construction of an ROW pipeline?

The Regional Supervisor may suspend or temporarily prohibit construction operations if the Regional Supervisor determines that a significant change in conditions occurred after the Regional Supervisor granted a pipeline ROW, but before you complete construction of the associated ROW pipeline.

§ 250.1129 What must I do if the as-built location of the associated ROW pipeline deviates from the approved pipeline ROW grant?

The Regional Supervisor will notify you in writing if the Regional Supervisor determines that the as-built location of the associated ROW pipeline deviates from the approved pipeline ROW grant. Within 60 calendar days after the date you submitted the pipeline construction report to the Regional Supervisor (see § 250.1050(a)), you must:

(a) Notify the lessee or designated lease operator of each lease, and the pipeline ROW holder of each pipeline ROW, that is crossed or could be affected by the associated pipeline as constructed;

(b) Provide the Regional Supervisor with evidence of such notification; and

(c) Submit an application under § 250.1132(a)(3) to the Regional Supervisor for approval to modify the pipeline ROW grant.

§ 250.1130 What rental fees and payment schedules apply to a pipeline ROW grant?

(a) *Rental fees.* For the first calendar year, or fraction thereof, that you hold a pipeline ROW grant, and for each calendar year thereafter that the grant remains in effect, you must pay MMS an annual rental as follows:

(1) You must pay $70.00 for each statute mile, or part of a statute mile, of the OCS that your pipeline ROW crosses; and

(2) If you hold a pipeline ROW grant that includes a site for an accessory to your pipeline, you must pay MMS an additional annual rental according to the following table:

If your accessory site is or will be located in water depths . . .	You must pay MMS an additional annual rental of . . .
(i) Less than 656 feet	$5.00 per acre, with a minimum of $450 for use of the affected area.
(ii) 656 feet or greater	$7.50 per acre, with a minimum of $675 for use of the affected area.

(b) *Affected area.* For purposes of this section, the affected area includes the areal extent of anchor chains, risers, appurtenances, and other devices associated with the accessory.

(c) *Payment schedule and deadline.* You may make the rental payments required by paragraph (a) of this section to MMS on an annual basis, for a 5-year period, or for multiples of 5 years. All payment periods begin on January 1. You must pay all rental fees in advance and before the beginning of the payment period.

(d) *Late rental payments.* You will be subject to an interest charge if you do not make a rental payment by the deadline specified in paragraph (c) of this section.

(1) MMS will assess interest on a late payment on unpaid and underpaid amounts from the date the amounts are due.

(2) MMS will assess interest only on the amount not received.

(3) MMS will assess interest only for the number of days the payment is late.

(4) The interest charge on a late rental payment will be at the underpayment rate established by the Internal Revenue Service Code, 26 U.S.C. 6621(a)(2) (Supp. 1987).

(5) MMS may offset an overpayment you made on the rental for a pipeline ROW grant that you hold against an underpayment you made on a different pipeline ROW grant that you hold to determine the net underpayment for which interest is due.

§ 250.1131 What are the terms and conditions for holding a pipeline ROW grant?

(a) *Compliance.* You must comply with the OCSLA (43 U.S.C. 1331, *et seq.*), as amended, other applicable laws, and MMS regulations.

(b) *Address changes.* You must update your qualification file (see § 250.1117(b)) within 30 calendar days after a change of address as follows:

If you are . . .	You must provide . . .
(1) An individual	Your change of address.
(2) A corporation or association	Address of your principal place of business, or name and address of the officer or agent authorized to act on your behalf and to be served with process.

(c) *Non-interference*. Your pipeline ROW grant does not allow you to prevent or interfere in any way with the management, administration, or the granting of other rights by the United States, either before or after the pipeline ROW is granted by MMS.

(d) *Occupancy and use*. You must allow the occupancy and use by the United States, its lessees or designated lease operators, or other pipeline ROW holders of any part of the pipeline ROW grant not actually occupied, or necessarily incident to its use, for any necessary operations involved in the management, administration, or the enjoyment of other granted rights.

(e) *Compensation and indemnification*. You must:

(1) Compensate the United States, its lessees, or other pipeline ROW holders, as the case may be, for the full value of all damages to the property of the United States or of its lessees or pipeline ROW holders; and

(2) Indemnify the United States against any and all liability for damages to life, person, or property arising from the occupation and use of the area covered by the pipeline ROW grant.

(f) *Federal Energy Regulatory Commission (FERC) determination*. The pipeline associated with the pipeline ROW grant must transport, or you must purchase, oil or natural gas produced from submerged lands of the OCS in the vicinity of the pipeline in such proportionate amounts as FERC may determine to be reasonable. The FERC will make this determination only after a full hearing with due notice thereof to the interested parties, taking into account, among other things, conservation and the prevention of waste.

(g) *Open and nondiscriminatory access*. (1) Unless otherwise exempted by FERC under section 5(f)(2) of the OCSLA (43 U.S.C. 1334(f)(2)), you must provide open and nondiscriminatory access to the associated ROW pipeline to both owner and non-owner shippers.

(2) The express condition that ROW oil and natural gas pipelines must transport or purchase without discrimination is within MMS's delegated authority to enforce, even when those pipelines are also under FERC jurisdiction by separate authority. To the extent that the oil or natural gas pipelines are subject to FERC's jurisdiction, MMS intends to defer to FERC its authority to decide whether those pipelines have complied with the open and nondiscriminatory access requirements. For pipelines not under FERC jurisdiction, MMS will decide whether those pipelines have complied with the open and nondiscriminatory access requirements of the OCSLA. All complaints by shippers alleging that pipelines have not complied with the open and nondiscriminatory access requirements are subject to the regulations in 30 CFR part 291.

(h) *Expansion of throughput capacity*. You must comply with the provisions of section 5(f)(1)(B) of the OCSLA (43 U.S.C. 1334(f)(1)(B)), under which FERC may order expansion of the throughput capacity of an associated ROW pipeline that was approved after September 18, 1978, and that is not located in the Gulf of Mexico or the Santa Barbara Channel.

(i) *Open for inspection*. You must keep the area covered by the pipeline ROW grant, and all improvements thereon, open for inspection by MMS.

(j) *Nondiscrimination in employment*. You must comply fully with Executive Order 11246, section 202, paragraphs (1) through (7), as amended (reprinted in 41 CFR 60–1.4(a)), and must not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, or national origin.

(k) *Sabotage or subversive activity*. You must immediately notify the Regional Supervisor, by the fastest possible means of communication, if you discover any evidence of sabotage or subversive activity involving or endangering any pipeline, accessory, vessel, aircraft, or any operation conducted under the pipeline ROW grant.

§ 250.1132 How do I modify a pipeline ROW grant?

(a) *Application*. You must submit one executed original and two copies of an application to modify a pipeline ROW grant to the Regional Supervisor for approval if you plan to:

(1) Cease pipeline operations, and need to maintain the pipeline ROW grant in effect;

(2) Change the purpose(s) for which the grant was made;

(3) Change the route of the associated ROW pipeline; or

(4) Establish a site for an accessory, or change the footprint of an accessory.

(b) *Associated pipeline application*. For those applications specified in paragraphs (a)(2), (a)(3), and (a)(4) of this section, you must attach the application to modify the pipeline ROW grant to the application to modify the associated ROW pipeline (see § 250.1093(a)).

(c) *Application contents*. Your application to modify a pipeline ROW grant must include:

(1) Company name;

(2) Contact name, telephone number, telefax number, and e-mail address;

(3) Reason for the modification, and a description of the proposed modification to the pipeline ROW grant;

(4) MMS-assigned pipeline ROW number, the segment number of the associated pipeline, and, if applicable, the name of any accessory;

(5) Name, title, and signature of your authorizing official. This information must be the same as the information you provided or referenced in the MMS qualification records;

(6) If you propose to cease pipeline operations:

(i) Date that you stopped using the pipeline;

(ii) Steps you will take to resume operations under the pipeline ROW grant;

(iii) The approximate date you intend to resume operations; and

(iv) Plans for maintaining the associated ROW pipeline in the interim;

(7) If the modification results in additional rental (see § 250.1130), payment for the increase in the manner prescribed in § 250.1126(h); and

(d) *MMS actions*. The Regional Supervisor will review your application to modify a pipeline ROW grant, along with your application to modify the associated ROW pipeline (see § 250.1093(a)), to ensure that it complies with the OCSLA (43 U.S.C. 1331, *et seq.*), other applicable laws, and applicable MMS regulations, and will take one of the actions prescribed in § 250.1127(c).

§ 250.1133 How does temporary cessation and cessation of pipeline operations affect a pipeline ROW grant?

(a) *Definitions*—(1) *Temporary cessation of pipeline operations* means the use of a pipeline associated with a pipeline ROW grant for a purpose other than that for which the grant was made for a period of 180 consecutive calendar days or less.

(2) *Cessation of pipeline operations* means the use of a pipeline associated with a pipeline ROW grant for a purpose other than that for which the grant was made for a period of more than 180 consecutive calendar days. Simply maintaining pressure on the pipeline is not using the pipeline for the purpose for which the grant was made.

(b) *Temporary cessation of pipeline operations*. Temporary cessation of pipeline operations will not cause the associated pipeline ROW grant to expire.

(c) *Cessation of pipeline operations*. Cessation of pipeline operations, whether voluntary or resulting from a suspension or temporary prohibition of operations directed by MMS, will cause the associated pipeline ROW grant to expire unless the Regional Supervisor approves an application to modify the pipeline ROW grant (see § 250.1132(a)(1)) to allow for a cessation of operations for a specified time period.

(d) *Obligations*. If MMS approves your application to modify the pipeline ROW grant to cease operations, you must:

(1) Continue to pay the annual rentals required by § 250.1130(a);

(2) Adhere to the requirements for out-of-service pipelines in § 250.1086; and

(3) If, at any time, you determine that cessation of pipeline operations will continue for 5 years or more, or for a shorter period as specified by the Regional Supervisor, you must submit to the Regional Supervisor, within 60 days:

(i) A request to relinquish the pipeline ROW grant (see § 250.1136(a)); and

(ii) An application to decommission the associated pipeline (see §§ 250.1107 or 1108).

§ 250.1134 How do I assign a pipeline ROW grant?

(a) *Assignment request*. You may assign a pipeline ROW grant by submitting two originals of Form MMS–149 (Assignment of Federal OCS Pipeline Right-of-Way Grant) to the Regional Supervisor for approval. The assignment must transfer the pipeline ROW grant in its entirety and to only one assignee. Your assignment request must include:

(1) The MMS-assigned pipeline ROW number, the segment number of the associated pipeline, and, if applicable, the name of any accessory;

(2) The names and MMS company numbers for both the assignor and the assignee;

(3) The names and telephone numbers of the contacts for both the assignor and the assignee;

(4) The names, titles, and signatures of the authorizing officials for both the assignor and the assignee;

(5) Payment of a nonrefundable service fee (see § 250.125 for the amount);

(6) A statement from the assignee that the assignee agrees to comply with, and to be bound by, the terms and conditions of the pipeline ROW grant;

(7) The same showing of qualifications of the assignee as is required of an applicant for a pipeline ROW grant in § 250.1117;

(8) A statement describing how the assignee will comply with the financial security requirements of § 250.1118;

(9) The name of the identified operator, if the company that will operate the associated pipeline will not be the assignee;

(10) A revised safety flow schematic that shows the new transfer point, if the assignment will result in a change of the jurisdictional transfer point of the associated pipeline; and

(11) The information required by §§ 250.1028 and 250.1029.

(b) *Rental payments for a pipeline ROW grant pending assignment*. If you have submitted a request to assign a pipeline ROW grant, you (the assignor) will be billed for the annual pipeline ROW rental payment if the payment is due (see § 250.1130(c)) and the Regional Supervisor has not yet approved the assignment. MMS will not mediate any financial disputes between an assignor and an assignee.

(c) *Effective date*. The assignment takes effect on the date the Regional Supervisor approves it.

(d) *Assignor obligations*. The assignor is liable for all obligations that accrue under a pipeline ROW grant before the date the Regional Supervisor approves the assignment. An assignment approval by MMS does not relieve the assignor of liability for accrued obligations that the assignee, or a subsequent assignee, fails to fulfill.

(e) *Assignee obligations*. The assignee and each subsequent assignee:

(1) Agrees to be bound by the terms and conditions of the pipeline ROW grant; and

(2) Is liable for all obligations that accrue under a pipeline ROW grant after the date the Regional Supervisor approves the assignment.

(f) *Disqualification*. The Director may disqualify you from acquiring any pipeline ROW grants by assignment if your operating performance is unacceptable. The Director will give you adequate notice, and an opportunity to have your case reviewed, before disqualification.

(g) *Financial securities*. After the Regional Supervisor approves an assignment of a pipeline ROW grant, you may request that the Regional Director approve a ''Termination of the Period of Liability'' for your pipeline ROW area bond or other security and any additional securities (see § 250.1119) if you:

(1) No longer hold any pipeline ROW grants in an MMS OCS Region; and

(2) Do not plan to become a pipeline ROW grant holder in the near future in that MMS OCS Region.

§ 250.1135 When may MMS suspend a pipeline ROW grant?

The Regional Supervisor may suspend a pipeline ROW grant if:

(a) The Regional Supervisor suspends or temporarily prohibits operation of the associated ROW pipeline under § 250.1091;

(b) You fail to provide any additional security required by the Regional Director (see § 250.1118(c)), replace or provide additional coverage for a de-valued bond or other security (see § 250.1121(a)), or replace a lapsed or forfeited bond or other security (see §§ 250.1121(b) and 1122) within the prescribed time period; or

(c) The Regional Supervisor determines that you have failed to comply with a provision of the OCSLA (43 U.S.C.1331, *et seq.*) or any other applicable law, a provision of applicable regulations, or a stipulation, term, or condition of the pipeline ROW grant.

§ 250.1136 How do I relinquish a pipeline ROW grant?

(a) *Relinquishment request*. You may voluntarily surrender a pipeline ROW grant, or a portion of a pipeline ROW grant, by filing one original and two copies of a relinquishment request with the Regional Supervisor for approval. You must attach the relinquishment request to the application required by §§ 250.1107 or 250.1108 to decommission the associated ROW pipeline and, if applicable, the application required by § 250.1727 to decommission an associated accessory. Your relinquishment request must include:

(1) Company name;

(2) Contact name, telephone number, telefax number, and e-mail address;

(3) Reason you are requesting relinquishment of the pipeline ROW grant;

(4) MMS-assigned pipeline ROW number, the segment number of the associated pipeline, and, if applicable, the name of any accessory;

(5) Name, title, and signature of your authorizing official which must be the

same as the information you provide or reference in your MMS qualification records;

(6) Payment of a nonrefundable service fee (see § 250.125 for the amount); and

(7) A statement that you will adhere to the requirements of § 250.1138(a) and (b).

(b) *Rental payment for a pipeline ROW grant pending relinquishment.* If you have submitted a request to relinquish a pipeline ROW grant, you will be billed for the annual pipeline ROW rental payment if the payment is due (see § 250.1130(c)) and the Regional Supervisor has not yet approved the relinquishment.

(c) *Delinquent payments.* The Regional Supervisor will not approve your relinquishment request until you have paid all outstanding rentals and fines.

(d) *Effective date.* The relinquishment takes effect on the date the Regional Supervisor approves it.

(e) *Financial securities.* After the Regional Supervisor approves the relinquishment of a pipeline ROW grant you may request that the Regional Director approve a ''Termination of the Period of Liability'' for your pipeline ROW area bond or other security and any additional securities (see § 250.1119) if you:

(1) No longer hold any pipeline ROW grants in an MMS OCS Region; and

(2) Do not plan to become a pipeline ROW grant holder in the near future in that MMS OCS Region.

§ 250.1137 When will a pipeline ROW grant be cancelled, be forfeited, or expire?

Your ROW grant will be cancelled, be forfeited, or expire as shown in the following table.

Termination type	When termination will occur
(a) *Cancellation*	The Secretary may cancel a pipeline ROW grant if: (1) The Secretary cancels MMS approval of the application for the associated ROW pipeline pursuant to § 250.1013; (2) You no longer qualify to hold a pipeline ROW grant; (3) You are disqualified from holding pipeline ROW grants according to § 250.1117(c); or (4) You fail to provide any additional security required by the Regional Director (see § 250.1118(c)), replace or provide additional coverage for a de-valued bond or other security (see § 250.1121(a)), or replace a lapsed or forfeited bond or other security (see §§ 250.1121(b) and 1122) within the prescribed time period.
(b) *Forfeiture*	You may forfeit a pipeline ROW grant, in an appropriate judicial proceeding instituted by the United States, in accordance with the provisions of § 23 of the OCSLA (43 U.S.C. 1349) if: (1) You fail to comply with the provisions of § 5(e) of the OCSLA (43 U.S.C. 1334(e)), or the regulations prescribed in this subpart; (2) The Director determines that you have not provided open access or nondiscriminatory access to a shipper; or (3) There is substantial deviation of an associated ROW pipeline (as constructed) from the pipeline ROW grant, and the Regional Supervisor has not approved a modification to the pipeline ROW grant.
(c) *Expiration*	A pipeline ROW grant expires if: (1) You do not construct the associated pipeline within 5 years after the grant was approved by the Regional Supervisor; (2) You ceased pipeline operations and did not obtain approval from the Regional Supervisor pursuant to § 250.1132(a)(1); (3) You permanently discontinue using the associated ROW pipeline for any reason; or (4) You cease operations for 5 years.

§ 250.1138 What must I do after a pipeline ROW grant terminates?

(a) *Pipeline operation.* After a pipeline ROW grant terminates, for any reason (relinquishment, cancellation, forfeiture, or expiration), you must no longer use the associated pipeline.

(b) *Decommissioning.* Within 1 year after a pipeline ROW grant terminates, you must decommission:

(1) The associated ROW pipeline in accordance with the requirements of §§ 250.1106 through 1109 and § 250.1111; and

(2) Any associated accessory in accordance with the requirements of §§ 250.1725 through 1730 and §§ 250.1741 through 1743.

(c) *Failure to comply.* If you fail to decommission the associated pipeline and any accessory within the prescribed time period:

(1) You remain liable for decommissioning costs, and responsible for accidents or damages that might result from such failure; and

(2) The violation may be subject to a civil penalty under 30 CFR 250, subpart N, Outer Continental Shelf (OCS) Civil Penalties.

(d) *Obligations.* You remain liable for all obligations that accrued under a pipeline ROW grant before the date the pipeline ROW grant terminated.

Accessories to Right-of-Way (ROW) Pipelines

§ 250.1140 What are the requirements for an accessory to an ROW pipeline?

(a) *General.* You must design, fabricate, install, and maintain an accessory to an ROW pipeline in accordance with the requirements of 30 CFR 250, subpart I, Platforms and Structures.

(b) *Surface safety system.* You must protect personnel, the environment, and the accessory with a basic and ancillary surface safety system. You must design, analyze, install, test, operate, and maintain the surface safety system in accordance with the applicable requirements of subpart H of this part, Oil and Gas Production Safety Systems.

(c) *Existing OCS platforms.* If you plan to convert an existing OCS platform to an accessory, you must decommission all wells on the platform in accordance with the requirements of §§ 250.1715 and 250.1716 before the Regional Supervisor will approve the accessory application (see § 250.1141(a)).

§ 250.1141 How do I obtain approval to install, operate, and maintain an accessory?

(a) *Accessory application.* Before you install, operate, and maintain an accessory to a ROW pipeline, you must submit three copies of an application to the Regional Supervisor for approval. You must attach the accessory application to the application for the associated ROW pipeline. Your accessory application must include all of the following:

(1) The following information, based on the type of platform:

For . . .	Your application must include . . .	and . . .
(i) New platforms	the information required by §§ 250.905 and 912, if applicable.	
(ii) Existing platforms that are being converted for a different use.	the information required by § 250.905.	the results of your platform assessment in accordance with API RP 2A–WSD, section 15, Reuse (incorporated by reference as specified in § 250.198).
(iii) Existing platforms that are completing ongoing activity.	the information required by § 250.905.	the results of your platform assessment in accordance with API RP 2A–WSD, section 17, Assessment of Existing Platforms (incorporated by reference as specified in § 250.198.

(2) The MMS-assigned pipeline ROW number and the segment number of the associated pipeline, if the accessory will be under an existing pipeline ROW grant.

(3) The maximum anchor radius (feet) of the construction vessel you will use to install the accessory.

(4) Information on air emission sources that includes:

(i) The rated output (horsepower) of each tug, construction vessel, and service vessel or equipment;

(ii) An estimate of the number of vessel or equipment trips per year;

(iii) An estimate of the time (days) that each vessel/equipment will be within 25 miles of the accessory;

(iv) An estimate of the number of component connections (e.g., valves, flanges) on the accessory;

(v) The contents and capacity (gallons) of hydrocarbon storage tanks, and their average daily and annual throughput (gallons/day and gallons/year); and

(vi) Documentation of any emission control technologies you will employ.

(5) Information on combustion emission sources that includes:

(i) The rated output (horsepower) of each emission source (e.g., crane, compressor, generator, dehydrator);

(ii) The run time (hours/day and days/year) for each emission source; and

(iii) The average hourly and annual throughput of gas through glycol dehydrators.

(6) Information on wastes generated at the accessory that includes, as appropriate:

(i) The type and general characteristic of the wastes that will be generated by operations at the accessory and released (locally) into the ocean;

(ii) The amount of waste to be discharged (gallons);

(iii) The average maximum discharge rates (gallons/day);

(iv) A description of any waste treatment or storage; and

(v) The discharge location and method for each type of discharge.

(7) The safety system design and installation information required by § 250.802(e).

(b) *Electronic submission.* You may submit part or all of your accessory application electronically (see § 250.186(a)(3)). If you prefer to submit your application electronically, you should consult with the Regional Supervisor for further guidance.

(c) *Withdrawal of application.* You may withdraw your accessory application, at any time, and for any reason, by notifying the Regional Supervisor in writing.

§ 250.1142 How does MMS process an accessory application?

(a) *Completeness review.* The Regional Supervisor will determine whether your accessory application is complete, and will notify you in writing of any problem or deficiency. The Regional Supervisor will not begin processing your application until it is complete.

(b) *Compliance review.* The Regional Supervisor will review the proposed operations described in your accessory application to ensure that they conform to the OCSLA (43 U.S.C. 1331, *et seq.*), other applicable laws, and MMS regulations.

(c) *Environmental impact evaluation.* The Regional Supervisor will evaluate the environmental impacts of the operations described in your accessory application, and prepare environmental documentation under NEPA (42 U.S.C. 4321, *et seq.*) and the implementing regulations (40 CFR parts 1500 through 1508).

(d) *Amendments.* During the review of your accessory application, the Regional Supervisor may require you, or you may elect, to change the application.

(e) *MMS decision.* The Regional Supervisor will review your accessory application and will notify you in writing of the decision. The Regional Supervisor will either:

(1) Approve the application if it complies with all applicable requirements, and inform you of any conditions you may be required to meet; or

(2) Disapprove the application, and inform you of the reasons for disapproval if the:

(i) Proposed accessory operations would probably cause serious harm or damage to life (including fish or other aquatic life); property; mineral resources (in areas leased or not leased); the national security or defense; or the marine, coastal, or human environment; and you cannot amend the proposed accessory operations to avoid such condition(s); or

(ii) Regional Supervisor has disapproved your application for a connecting ROW pipeline (see § 250.1012(b)) or denied your application for the associated pipeline ROW grant (see § 250.1127(c)(3)).

§ 250.1143 Who do I need to notify before I install an accessory?

(a) *Military installations.* Before you install an accessory in an established military warning area or water test area, you must notify the commander of the military installation that exercises jurisdiction of the area concerning the control of electromagnetic emissions and the use of vessels, equipment, and aircraft in the area.

(b) *U.S. Coast Guard (USCG).* You are encouraged to notify the applicable USCG Marine Safety Office at least 30 calendar days before you conduct accessory installation operations so that a Notice to Mariners can be prepared.

(c) *National Geospatial-Intelligence Agency (NGA).* You must notify the NGA in Bethesda, Maryland before you begin accessory installation operations.

§ 250.1144 What information must I submit after an accessory is installed?

You must submit three copies of an accessory installation report to the Regional Supervisor within 45 calendar days after you complete accessory installation. The installation report must include:

(a) The MMS-assigned pipeline ROW number and the segment number of the associated pipeline;

(b) The dates you started and concluded accessory installation operations; and

(c) An ''as built'' location plat that depicts the accessory, based on the NAD 27 for the GOMR (Gulf) and POCSR, or on the NAD 83 for the AKOCSR and

GOMR (Atlantic), drawn at a minimum scale of 1 inch = 2,000 feet.

§ 250.1145 What accessory inspections must I conduct?

You must conduct structural and pollution inspections on your accessory as required by this section.

(a) *Structural inspections.* If the accessory is a platform, you must do all of the following:

(1) Periodically inspect the platform in accordance with a comprehensive in-service inspection plan as required by § 250.919(a).

(2) As required by § 250.919(b), submit a written report, by November 1 of each year, of the inspections that you conducted during the preceding 12 months. The report must include:

(i) The MMS-assigned pipeline ROW number and the segment number of the associated pipeline, and the MMS complex identification number for the platform;

(ii) The extent and area of each inspection;

(iii) The type of inspection conducted (i.e., visual, magnetic particle, ultrasonic);

(iv) The results of the inspection;

(v) A discussion of the overall condition of the platform; and

(vi) A description of any necessary repairs.

(b) *Pollution inspections.* If the accessory is a compressor or booster platform, you must inspect the accessory daily in accordance with § 250.301 for evidence of pollution. You must retain the inspection records for at least two years, and make them available to MMS upon request.

§ 250.1146 What must I do to modify an accessory?

Before you conduct any operations to modify an approved accessory, you must submit three copies of a modification application to the Regional Supervisor for approval. In the accessory modification application, you must include:

(a) The MMS-assigned pipeline ROW number and the segment number of the associated pipeline;

(b) Those items in your approved application affected by the proposed modification;

(c) If required by the Regional Supervisor, the step-by-step procedures you will follow to modify the accessory; and

(d) If the accessory is a platform, the results of your platform assessment, based on platform assessment initiators listed in sections 17.2.1 through 17.2.5 of API RP 2A–WSD (incorporated by reference as specified in § 250.198).

§ 250.1147 When must I decommission an accessory?

Within 1 year after an accessory has not been used for 5 years, or within 1 year after you determine that an accessory will not be used for 5 years or more, you must decommission the accessory (see §§ 250.1725 through 1730 and §§ 250.1740 through 1743).

§ 250.1700 [AMENDED]

8. In § 250.1700(a)(2), remove the phrase ''or pipeline right-of-way.''

§ 250.1701 [AMENDED]

9. Amend § 250.1701 as follows:

A. Remove paragraph (b);

B. Redesignate paragraph (c) as paragraph (b);

C. Remove the phrase ''and to right-of-way holders as to facilities installed under the authority of a right-of-way'' in newly redesignated paragraph (b); and

D. Remove the comma after the word ''lease'' and add in its place a period.

10. In § 250.1702, revise paragraphs (b) and (d), remove paragraph (e), and redesignate paragraph (f) as paragraph (e). The revisions read as follows:

§ 250.1702 When do I accrue decommissioning obligations?

* * * * *

(b) Install a platform or other facility;

* * * * *

(d) Are or become a lessee or the owner of operating rights of a lease on which there is a well that has not been permanently plugged according to this subpart, a platform, or other facility, or an obstruction; or

* * * * *

§ 250.1703 [Amended]

11. In § 250.1703, remove paragraph (d) and redesignate paragraphs (e) and (f) as paragraphs (d) and (e).

§ 250.1704 [Amended]

12. In § 250.1704, remove paragraphs (d) and (e) and redesignate paragraphs (f) and (g) as paragraphs (d) and (e).

§§ 250.1750 through 250.1754 [Removed]

13. Remove §§ 250.1750 through 250.1754 and the undesignated center heading ''Pipeline Decommissioning'' before § 250.1750.

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

14. The authority citation for part 253 continues to read as follows:

Authority: 33 U.S.C. 2701 *et seq.*

15. In § 253.3, revise the definitions of the terms ''Designated applicant,'' ''Pipeline,'' ''Responsible party,'' and ''Right of use and easement (RUE)'' to read as follows:

§ 253.3 How are the terms used in this regulation defined?

* * * * *

Designated applicant means the responsible party or, if there is more than one responsible party, a person that the responsible parties designate to demonstrate OSFR for a COF on a lease, permit, pipeline right-of-way (ROW), or right-of-use and easement (RUE).

* * * * *

Pipeline means the horizontal component, risers, and appurtenances installed for the purpose of transporting oil, gas, sulphur, and produced water.

Responsible Party has the following meanings:

(1) For a COF that is an ROW pipeline, responsible party means the pipeline ROW holder.

(2) For a COF that is not an ROW pipeline, responsible party means either a lessee or permittee of the area on which the COF is located; or the holder of an RUE granted under applicable State law, or under the OCSLA (43 U.S.C. 1331 *et seq.*) for the area in which the COF is located (if the holder is a different person than the lessee or permittee). A Federal agency, State, municipality, commission, or political subdivision of a State, or any interstate body that as owner transfers possession and right to use the property to another person by lease, assignment, or permit is not a responsible party.

(3) For a decommissioned COF, responsible party means any person who would have been a responsible party for the COF immediately before decommissioning.

Right-of-use and easement (RUE) means an authorization granted by MMS to use the OCS to construct and maintain platforms, artificial islands, and installations and other devices at an OCS site other than an OCS lease you own. This does not include pipeline ROWs.

* * * * *

16. Revise § 253.10 to read as follows:

§ 253.10 What facilities does this part cover?

(a) This part applies to any COF that is on any lease or permit issued, any ROW pipeline (see definition at § 250.105 of this chapter), or on any RUE granted under the OCSLA (43 U.S.C. 1331, *et seq.*) or applicable State law.

(b) For a COF that is an ROW pipeline which extends onto land, this part applies to the portion of the pipeline lying seaward of the first accessible flow shut-off device on land.

17. Amend § 253.11 as follows:

A. Redesignate paragraphs (d), (e), and (f) as paragraphs (e), (f), and (g), respectively.

B. Add new paragraph (d), and revise newly redesignated paragraphs (e) and (f) as follows:

§ 253.11 Who must demonstrate OSFR?

* * * * *

(d) The designated applicant for a ROW pipeline must be the pipeline ROW holder.

(e) The designated applicant for a COF on a RUE must be the holder of the RUE.

(f) MMS may require the designated applicant for a lease, permit, pipeline ROW, or RUE to be a person other than the person identified in paragraphs (b) through (e) of this section if MMS determines that the person identified in paragraphs (b) through (e) of this section cannot adequately demonstrate OSFR.

* * * * *

18. Revise § 253.15(a) as follows:

§ 253.15 What are my general OSFR compliance responsibilities?

(a) You must maintain continuous coverage for all your leases, permits, pipeline ROWs, and RUEs with COFs for which you are the designated applicant.

* * * * *

PART 254—OIL SPILL RESPONSE REQUIREMENTS FOR FACILITIES LOCATED SEAWARD OF THE COASTLINE

19. The authority citation for part 254 continues to read as follows:

Authority: 33 U.S.C. 1321

§ 254.6 [Amended]

20. In § 254.6, revise the definition of ''Owner or operator'' to read as follows:

* * * * *

Owner or operator means, in the case of an offshore facility, any person owning or operating such a facility. If the facility is a right-of-way (ROW) pipeline (see definition at § 250.105), the owner or operator is the pipeline ROW holder. In the case of a decommissioned offshore facility, it means the person who owned such facility immediately prior to such decommissioning.

* * * * *

PART 256—LEASING OF SULPHUR OR OIL AND GAS IN THE OUTER CONTINENTAL SHELF

21. The authority citation for part 256 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*, 42 U.S.C. 6213, 31 U.S.C. 9701.

22. In § 256.62, add a new paragraph (g) to read as follows:

§ 256.62 Assignment of lease or interest in lease.

* * * * *

(g) Within 30 calendar days after MMS approves an assignment of a lease, or approves a new designation of operator for a lease under § 250.143 or § 250.144, you (the new lessee or designated lease operator) must submit a report to the Regional Supervisor that:

(1) Lists every lease term pipeline (see definition at § 250.105), including decommissioned pipelines on the lease; and

(2) Indicates which pipelines remained as lease term pipelines after the lease assignment was approved by MMS.

[FR Doc. 07–4831 Filed 10–2–07; 8:45 am]

BILLING CODE 4310–MR–C

Federal Register

Wednesday,
October 3, 2007

Part III

Federal Reserve System

Securities and Exchange Commission

12 CFR Part 218 and 17 CFR Parts 240 and 247

Definitions of Terms and Exemptions Relating to the "Broker" Exceptions for Banks and Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of 1934 and Related Rules; Final Rules

FEDERAL RESERVE SYSTEM

12 CFR Part 218

[Regulation R; Docket No. R–1274]

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 247

[Release No. 34–56501; File No. S7–22–06]

RIN 3235–AJ74

Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks

AGENCIES: Board of Governors of the Federal Reserve System (''Board'') and Securities and Exchange Commission (''SEC'' or ''Commission'') (collectively, the Agencies).

ACTION: Final rule.

SUMMARY: The Board and the Commission jointly are adopting a single set of final rules that implement certain of the exceptions for banks from the definition of the term ''broker'' under Section 3(a)(4) of the Securities Exchange Act of 1934 (''Exchange Act''), as amended by the Gramm-Leach-Bliley Act (''GLBA''). The rules define terms used in these statutory exceptions and include certain related exemptions. In developing these rules, the Agencies have consulted with, and sought the concurrence of, the Office of the Comptroller of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC'') and the Office of Thrift Supervision (''OTS''), and have taken into consideration all comments received on the proposed rules issued in December 2006. The rules are intended, among other things, to facilitate banks' compliance with the Exchange Act and the GLBA.

DATES: *Effective dates:* The addition of parts 12 CFR 218 and 17 CFR 247 is effective September 28, 2007. Regulations at 12 CFR 218.781 and 17 CFR 247.781 (collectively ''Rule 781'') are effective on September 28, 2007. Regulations at 12 CFR 218.100 through 218.780 and 17 CFR 247.100 through 247.780 are effective December 3, 2007. Amendments affecting Part 240 of Title 17 are effective December 3, 2007.

Compliance date: Banks are exempt from complying with the rules and the ''broker'' exceptions in Section 3(a)(4)(B) of the Exchange Act until the first day of their first fiscal year that commences after September 30, 2008.

FOR FURTHER INFORMATION CONTACT:

BOARD: Kieran J. Fallon, Assistant General Counsel, (202) 452–5270, Andrea Tokheim, Counsel, (202) 452–2300, or Brian Knestout, Attorney, (202) 452–2249, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SEC: Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Senior Special Counsel, Joshua Kans, Senior Special Counsel, John J. Fahey, Branch Chief, or Elizabeth MacDonald, Special Counsel, at (202) 551–5550, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

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I. Introduction

A. Background

The GLBA amended several federal statutes governing the activities and supervision of banks, bank holding

companies, and their affiliates.[1] Among other things, it lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (''Glass-Steagall Act'').[2] It also altered the way in which the supervisory responsibilities over the banking, securities, and insurance industries are allocated among financial regulators. Among other things, the GLBA repealed most of the separation of investment and commercial banking imposed by the Glass-Steagall Act. The GLBA also revised the provisions of the Exchange Act that had completely excluded banks from broker-dealer registration requirements.

In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with certain exceptions from Commission oversight for specified securities activities. With respect to the definition of ''broker,'' the GLBA amended the Exchange Act to provide eleven specific exceptions for banks.[3] Each of these exceptions permits a bank to act as a broker or agent in securities transactions that meet specific statutory conditions.

In particular, Section 3(a)(4)(B) of the Exchange Act as amended by the GLBA provides conditional exceptions from the definition of broker for banks that engage in certain securities activities in connection with third-party brokerage arrangements;[4] trust and fiduciary activities;[5] permissible securities transactions;[6] certain stock purchase plans;[7] sweep accounts;[8] affiliate transactions;[9] private securities offerings;[10] safekeeping and custody activities;[11] identified banking products;[12] municipal securities;[13] and a de minimis number of other securities transactions.[14]

In October 2006, the Financial Services Regulatory Relief Act of 2006 (''Regulatory Relief Act'') became effective.[15] Among other things, the Regulatory Relief Act requires that the SEC and the Board jointly adopt a single set of rules to implement the bank broker exceptions in Section 3(a)(4) of the Exchange Act.[16] In addition, it required that the Agencies issue a single set of proposed rules to implement these exceptions not later than 180 days after enactment of the Regulatory Relief Act (April 11, 2007).

In December 2006, the Agencies jointly issued, and requested public comment on, a single set of proposed rules to implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and safekeeping and custody activities.[17] The proposed rules included certain exemptions related to these activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, the execution of transactions involving mutual fund shares, and the potential liability of banks under Section 29 of the Exchange Act. In developing the proposed rules, the Agencies considered, among other things, the language and legislative history of the ''broker'' exceptions for banks adopted in the GLBA, the rules previously issued or proposed by the Commission relating to these exceptions, and the comments received in connection with those prior rulemakings.

The Agencies requested comment on all aspects of the proposed rules. In addition, the Agencies requested comment on whether it would be useful or appropriate for the Agencies to adopt rules implementing the other bank ''broker'' exceptions in Section 3(a)(4)(B) of the Exchange Act that were not addressed in the proposal.

B. Overview of Comments

The Agencies received comments from 58 organizations and individuals on the proposed rules. Commenters included 22 trade associations, 20 banking organizations, 7 other organizations in the financial services industry, 3 community and nonprofit groups, two credit unions, one state government, one self-regulatory organization, one association of state securities administrators, and one individual. Many commenters supported the proposed rules as a general matter. For example, commenters asserted that the proposed rules would provide banks considerable flexibility in providing securities services to their customers, would avoid disrupting bank activities and customer relationships, or were a significant improvement over earlier proposals.[18] In addition, many commenters supported the general approaches (including related exemptions) taken by the proposed rules to implement the networking, trust and fiduciary, sweep, and safekeeping and custody exceptions. Several commenters, however, contended that the proposed rules did not adequately protect investors, and particularly retail investors.[19] Some of these commenters argued that that the Agencies should withdraw the proposed rules and issue new rules based on those issued in 2001[20] or 2004.[21]

Most commenters also recommended that the Agencies modify specific provisions of the proposed rules to, among other things, reduce administrative burden, better protect bank customers or investors, or clarify the scope or effect of the rules. The comments received on the proposed rules are discussed in greater detail in the following sections of this **SUPPLEMENTARY INFORMATION.**

C. Final Rules and Related Matters

After carefully considering the comments, the Agencies have adopted

[1] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[2] Pub. L. No. 73–66, ch. 89, 48 Stat. 162 (1933) (as codified in various Sections of 12 U.S.C.).

[3] 15 U.S.C. 78c(a)(4).

[4] Exchange Act Section 3(a)(4)(B)(i). This exception permits banks to enter into third-party brokerage, or ''networking'' arrangements with brokers under specific conditions.

[5] Exchange Act Section 3(a)(4)(B)(ii). This exception permits banks to effect transactions as trustees or fiduciaries for securities customers under specific conditions.

[6] Exchange Act Section 3(a)(4)(B)(iii). This exception permits banks to buy and sell commercial paper, bankers' acceptances, commercial bills, exempted securities, certain Canadian government obligations, and Brady bonds.

[7] Exchange Act Section 3(a)(4)(B)(iv). This exception permits banks, as part of their transfer agency activities, to effect transactions for certain issuer plans.

[8] Exchange Act Section 3(a)(4)(B)(v). This exception permits banks to sweep funds into no-load money market funds.

[9] Exchange Act Section 3(a)(4)(B)(vi). This exception permits banks to effect transactions for affiliates, other than broker-dealers.

[10] Exchange Act Section 3(a)(4)(B)(vii). This exception permits certain banks to effect transactions in certain privately placed securities, under certain conditions.

[11] Exchange Act Section 3(a)(4)(B)(viii). This exception permits banks to engage in certain enumerated safekeeping or custody activities, including stock lending as custodian.

[12] Exchange Act Section 3(a)(4)(B)(ix). This exception permits banks to buy and sell certain ''identified banking products,'' as defined in Section 206 of the GLBA.

[13] Exchange Act Section 3(a)(4)(B)(x). This exception permits banks to effect transactions in municipal securities.

[14] Exchange Act Section 3(a)(4)(B)(xi). This exception permits banks to effect up to 500 transactions in securities in any calendar year in addition to transactions referred to in the other exceptions.

[15] Public Law No. 109–351, 120 Stat. 1966 (2006).

[16] *See* Exchange Act Section 3(a)(4)(F), as added by Section 101 of the Regulatory Relief Act.

[17] *See* 71 FR 77522, December 26, 2006.

[18] *See, e.g.*, Citigroup Letter, Independent Community Bankers Ass'n (''ICBA'') Letter, American Bankers Ass'n (''ABA'') Letter, JPMorgan Chase & Co. (''JP Morgan'') Letter, Financial Services Roundtable (''Roundtable'') Letter.

[19] *See, e.g.*, Massachusetts Securities Division Letter, Pace Investors Rights Project (''Pace Project'') Letter, Boyd Financial Letter.

[20] Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

[21] Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004). *See, e.g.*, North American Securities Administrators Association (''NASAA'') Letter.

final rules to implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and custody and safekeeping activities.[22] The Board and SEC have consulted extensively with, and sought the concurrence of, the OCC, FDIC and OTS in developing these final rules.

Like the proposal, the final rules include certain exemptions related to these activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, the execution of transactions other than through a broker-dealer, the potential liability of banks under Section 29 of the Exchange Act, and the date on which the GLB Act's ''broker'' exceptions for banks will go into effect.

As discussed in the following sections, the Agencies have modified the rules in numerous respects in light of the comments received. These changes include, among other things, modifications to the examples of ''relationship compensation'' in Rule 721 to clarify the scope of the term for purposes of the rules relating to trust and fiduciary activities; the custody exemption in Rule 760 to permit banks acting as a directed trustee to accept orders under the exemption; and Rule 781 to extend the compliance date for a bank until the first day of its first fiscal year commencing after September 30, 2008. The Agencies also have adopted new exemptions relating to trust or fiduciary accounts held in a foreign branch of a bank,[23] and to permit a bank to effect, under certain conditions and without using a broker-dealer, transactions in a fiduciary or custodial capacity for an employee benefit plan in the stock of the plan's sponsor.[24]

The final rules are designed to accommodate the business practices of banks and protect investors. If more than one broker exception or exemption is available to a bank under the statute or rules for a securities transaction, the bank may choose the exception or exemption on which it relies to effect the transaction without registering as a broker-dealer. For example, if the bank effects a transaction in a security sold in an offshore transaction for a custody account that is permissible under either the Regulation S exemption in Rule 771 or the custody exemption in Rule 760, the bank may choose which exemption to rely on and comply with in effecting the transaction. Similarly, if a bank effects no more than 500 securities transactions as agent for its customers in a calendar year, the bank may rely on the de minimis exception in Section 3(a)(4)(B)(xi) of the Exchange Act in lieu of any other available exception or exemption for such transactions. The bank, of course, must comply with all of the requirements contained in the exception or exemption on which it relies.[25]

Section 401 of the Regulatory Relief Act amended the definition of ''bank'' in Section 3(a)(6) of the Exchange Act to include any Federal savings association or other savings association the deposits of which are insured by the FDIC. Accordingly, as used in the final rules, the term ''bank'' includes any savings association that qualifies as a ''bank'' under Section 3(a)(6) of the Exchange Act, as amended.[26]

Identical sets of the final rules are being adopted by the Board and SEC and will be published by the Board in Title 12 of the Code of Federal Regulations and by the SEC in Title 17 of the Code of Federal Regulations.[27] Pursuant to the Regulatory Relief Act, this single set of final rules supersedes any and all other proposed or final rules issued by the Commission on or after the date of enactment of the GLBA with regard to the definition of ''broker'' under Section 3(a)(4) of the Exchange Act.[28]

Any additions or changes to these rules that may be appropriate to implement Section 3(a)(4)(B) of the Exchange Act will be adopted jointly by the SEC and Board in accordance with the consultation provisions in Section 101(b) of the Regulatory Relief Act. In addition, if any rules (including exemptions) are proposed or adopted in the future related to the other bank ''broker'' exceptions in Section 3(a)(4)(B) of the Exchange Act that are not addressed in the final rules now being adopted by the SEC and the Board, they would be proposed and adopted jointly by the SEC and Board.[29]

As required by the GLBA, the Board, OCC, FDIC, and OTS (collectively, the Banking Agencies) will develop, and request public comment on, recordkeeping rules for banks that operate under the ''broker'' exceptions in Section 3(a)(4) of the Exchange Act.[30] These rules, which will be developed in consultation with the SEC, will establish recordkeeping requirements to enable banks to demonstrate compliance with the terms of the statutory exceptions and the final rules and will be designed to facilitate compliance with the statutory exceptions and the rules.

Several commenters urged the Agencies also to cooperate in providing interpretations or guidance (such as staff no-action letters) concerning the final rules or the broker exceptions for banks in Section 3(a)(4)(B) of the Exchange Act or in taking enforcement action to enforce compliance with these rules or exceptions.[31] In addition, a number of commenters urged the Agencies to work

[22] Commenters generally did not request that the Agencies adopt rules to implement the other broker exceptions for banks at this time or stated that no additional guidance was needed at this time with respect to these exceptions. *See* ABA Letter.

[23] *See* Rule 723(c).

[24] *See* Rule 776.

[25] An employee of a bank that operates in accordance with the exceptions in Section 3(a)(4)(B) of the Exchange Act and, where applicable, the rules is not required to register as a ''broker'' to the extent that the employee's activities are covered by the relevant exception or rule.

[26] Several commenters asked the Agencies, or the Commission independently, to adopt rules that would extend to federal or state-chartered credit unions some or all of the ''broker'' exceptions or exemptions provided banks under Section 3(a)(4)(B) of the Exchange Act or the final rules. *See, e.g.*, Credit Union Nat'l Ass'n Letter, Nat'l Ass'n of Credit Union Service Organizations Letter, Nat'l Ass'n of Fed. Credit Unions Letter, Navy Fed. Credit Union Letter, and XCU Corp. Letter. While the GLBA's ''bank'' exceptions do not by their terms apply to credit unions, these requests are under consideration by the Commission, which is the agency with authority to address these matters. The Commission notes the existence of SEC staff positions with regard to networking relationships between a credit union and a broker-dealer and is not addressing this issue at this time. *See, e.g.*, Chubb Securities Corp., 1993 SEC No-Act. LEXIS 1204 (Nov. 24, 1993).

[27] The final rules adopted by the Board and the SEC within their respective titles of the Code of Federal Regulation (12 CFR part 218 for the Board and 17 CFR part 247 for the SEC) are identically numbered from § ___.100 to § ___.781. For ease of reference, the single set of final rules adopted by each Agency are referred to in this release as Rule ___, excluding title and part designations. A similar format is used to refer to the single set of proposed rules issued by the Agencies.

[28] Pub. L. No. 109–351, § 101(a)(3), 120 Stat. 1966, 1968 (2006).

[29] A few commenters requested that the Commission delegate authority to act on future exemptive requests from banks to the Director of its Division of Market Regulation. *See* America Community Bankers Ass'n (''ACB'') Letter, Roma Bank Letter. Because particular banks may have individual situations that may be appropriate for additional relief, the Commission delegated authority to the Director of the Division of Market Regulation to consider, on a case-by-case basis, individual requests for exemptive relief from banks. To facilitate the processing of these requests, the Commission delegated this exemptive authority within its Rules of Organization and Program Management in Rule 30–3(a)(70) (17 CFR 200.30–3(a)(70)). The Commission continues to expect the staff to submit novel and complex requests for exemptions to the Commission.

[30] *See* 12 U.S.C. 1828(t)(1).

[31] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter, Citigroup Letter, The PNC Financial Services Group, Inc. (''PNC'') Letter. One commenter, however, expressed concern that coordination among the Agencies might result in slower responses to requests for guidance. See American Bar Ass'n Section of Business Law Letter (''Business Law Section Letter'').

with the Financial Industry Regulatory Authority (''FINRA'') [32] to modify promptly its Rule 3040 as it applies to persons that are employees of both a bank and a broker-dealer (so-called ''dual employees'').[33]

In light of the joint nature of the final rules and the Agencies' joint rule-writing authority for the bank broker exceptions in Section 3(a)(4)(B),[34] the Agencies will jointly issue any interpretations and responses to requests for no-action letters or other interpretive guidance concerning the scope or terms of the exceptions and rules, and will consult and, to the extent appropriate, coordinate with each other and the appropriate federal banking agency for a bank concerning any formal enforcement actions proposed to be taken against a bank for violations of the exceptions or rules.

The Agencies already consult with and coordinate with each other and the other federal banking agencies in a variety of areas, and the Agencies and the other federal banking agencies are in the process of supplementing their existing policies and procedures to facilitate coordination with respect to the broker exceptions and rules. Banks or others that seek an interpretation of, or a no-action letter or other staff guidance concerning, the rules or the exceptions should submit their request to both Agencies. The Agencies also expect to continue their dialogue with FINRA concerning potential modifications to that authority's Rule 3040.

II. Networking Arrangements

The third-party brokerage exception (''networking exception'') in Section 3(a)(4)(B)(i) of the Exchange Act permits a bank to avoid being considered a broker if, under certain conditions, it enters into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services to bank customers.[35] The networking exception does not address the type or amount of compensation that a bank may receive from its broker-dealer partner under a networking arrangement. However, the networking exception provides that a bank may not pay its unregistered employees [36] incentive compensation for brokerage transactions. Nevertheless, the statutory exception does permit a bank employee to receive a ''nominal one-time cash fee of a fixed dollar amount'' for referring bank customers to the broker-dealer if payment of the referral fee is not ''contingent on whether the referral results in a transaction.'' [37] Congress included this general prohibition on, and limited exception to, incentive compensation to reduce concerns regarding the securities sales practice of unregistered bank employees.

A. Overview of Proposed Rules and Comments

Proposed Rule 700 defined certain key terms related to referral fees and incentive compensation used in the networking exception. For example, the proposed rule provided that a referral fee would be considered ''nominal'' if it met any of four standards included in the rule. The proposed rule also defined when a referral fee would be ''contingent on whether a referral results in a transaction,'' what constitutes ''incentive compensation,'' and what types of bank bonus plans would not be considered incentive compensation under the networking exception. Proposed Rule 701 included an exemption that permitted bank employees, subject to certain conditions, to receive higher-than-nominal, contingent referral fees for referring institutional customers and high net worth customers to a broker-dealer.

Many commenters supported the general approach of Proposed Rules 700 and 701, including the range of alternatives provided for determining if a referral fee is nominal and the adoption of an exemption for referrals involving high net worth or institutional customers.[38] Some commenters, however. suggested that the proposed rules would harm investors by giving bank employees undue incentives to direct unsophisticated customers into potentially unsuitable investment products.[39]

B. Rule 700: Definition of Terms Used in Networking Exception

1. Definition of ''Nominal One-Time Cash Fee of a Fixed Dollar Amount''

Proposed Rule 700 defined the term ''nominal one-time cash fee of a fixed dollar amount'' to mean a cash payment for a referral in an amount that meets any one of four alternative standards: the first based on twice the average hourly base wage established by the bank for the employee's job family; the second based on 1/1000th of the average annual base salary established by the bank for the employee's job family; the third based on twice the employee's actual base hourly wage; and the fourth based on a specified dollar amount ($25), indexed for inflation.[40]

Many commenters generally supported the flexibility that this range of alternatives would afford in determining whether a referral fee is ''nominal.'' [41] Some commenters expressed concern that the proposed rule placed greater limits on permissible payments under networking arrangements than exist currently under applicable federal banking agency guidance or questioned the need for a definition of ''nominal'' to be established by rule at all.[42] A few commenters contended that the specific dollar amount in the proposed rule ($25) was too low.[43] A number of commenters, however, believed that the alternatives would result in the payment of fees that are higher than nominal and would create incentives for bank employees to make securities referrals even when not appropriate for the customer. These commenters questioned, for example, whether twice an employee's hourly wage was truly nominal and whether the Agencies had sufficient basis for selecting that measure of ''nominal.'' [44]

[32] 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 member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Release No. 56146 (July 26, 2007). FINRA's Rules currently consist of the rules adopted by the NASD and effective on the date of the consolidation (which include NASD Rule 3040), as well as certain rules of the NYSE that FINRA has incorporated into its own rules.

[33] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter, Harris Bank Letter, HSBC Bank, N.A. (''HSBC Bank'') Letter, HSBC Securities (USA) Inc. (''HSBC Securities'') Letter, Roundtable Letter. These commenters asserted that it was important for the requested modifications to FINRA's Rule 3040 to be made prior to the date on which banks would first have to comply with the new ''broker'' exceptions in the GLBA.

[34] *Rapaport* v. *U.S. Department of Treasury*, 59 F. 3d 212, 216–217 (D.C. Cir. 1995), *cert. denied* 116 S.Ct. 775 (1996).

[35] 15 U.S.C. 78c(a)(4)(B)(i).

[36] An unregistered bank employee is an employee that is not registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization.

[37] 15 U.S.C. 78c(a)(4)(B)(i)(VI).

[38] *See, e.g.* ABA Letter, Roundtable Letter, Citigroup Letter, Union Bank of California (''Union Bank'') Letter.

[39] *See, e.g.*, Pace Project Letter.

[40] Proposed Rule 700(c).

[41] *See, e.g.*, Roundtable Letter, ACB Letter.

[42] *See, e.g.*, Bank Insurance & Securities Ass'n (''BISA'') Letter, Wisconsin Bankers Ass'n (''WBA'') Letter.

[43] *See, e.g.*, Clearing House Ass'n Letter and ICBA Letter.

[44] *See, e.g.*, Boyd Financial Letter, NASAA Letter, Pace Project Letter, and University of Cincinnati Corp. Law Ctr. Letter.

After carefully reviewing the comments, the Agencies have determined to adopt the ''nominal'' definition substantially as proposed. Including a definition of ''nominal'' in the rule will provide banks with certainty as to the Agencies'' interpretation of that standard and should facilitate compliance. The Agencies believe that each of the alternatives for defining ''nominal'' is consistent with the statutory networking exception, which provides that a bank employee may receive compensation for each referral if the compensation for that referral is ''nominal'' and meets the other requirements of the statute. Under each of the alternatives established, the amount of compensation a bank employee may receive for each referral will be small in relation to the employee's overall compensation and therefore unlikely to create undue incentives for the bank employee to engage in activities, such as ''pre-selling'' specific securities to the customer involved in violation of the networking exception,[45] which would raise sales practice concerns. As discussed below, the multiple alternatives are designed to provide flexibility for banks of all sizes and locations to use different business models and to take into account economic differences around the country and among their employees in assessing how best to structure their program(s) for paying ''nominal'' cash referral fees under the networking exception. The alternatives also were designed to allow for roughly equivalent treatment of bank employees at different base or hourly compensation levels within a bank.

Rule 700(c) provides that a referral fee paid to any bank employee will be considered ''nominal'' if it does not exceed $25.[46] This dollar amount will be adjusted for inflation on April 1, 2012, and every five years thereafter, to reflect any changes in the value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index thereto), as published by the Bureau of Labor Statistics, from December 31, 2006.[47] The Agencies selected this index because it is a widely used and broad indicator of increases in the wages of private industry workers, which includes bank employees. Available data indicate that the $25 amount is consistent with the level of referral fees generally paid to tellers and other bank employees engaged in making referrals of retail customers under existing Banking Agency guidance, which also includes a ''nominal'' standard.[48]

As under the proposal, a referral fee also will be considered ''nominal'' under Rule 700(c) if the payment does not exceed (1) twice the employee's actual base hourly wage; (2) twice the average of the minimum and maximum hourly wage established by the bank for the current or prior year for the job family that includes the employee; or (3) 1/1000th of the average of the minimum and maximum annual base salary established by the bank for the current or prior year for the job family that includes the employee.[49]

In developing these alternatives to the fixed $25 fee, the Agencies considered data on the average hourly wages of bank tellers, which are the class of bank employees most typically engaged in making referrals of retail customers. These data indicate that the national mean hourly wage in 2005 for tellers was $10.59.[50] Accordingly, the $25 amount is slightly more than twice the national mean hourly wage for tellers in 2005, and slightly more than 1/1000th of the annualized salary of an employee that makes $12.50 per hour (or $25 every two hours) based on a 40 hour work week.[51] Thus, the alternatives based on twice the employee's hourly base wage or 1/1000th of the employee's base annual salary, at current pay rates, are designed to allow bank employees to receive referral fees that are roughly equivalent to those that may be received by bank tellers under the flat dollar option.

The options based on the employee's job family use these same measurements but allow comparisons to the average of the minimum and maximum hourly base wage or base salary of the employee's job family. These options are designed to reduce administrative burden while also ensuring that referral fees remain nominal in amount. To provide comparability between the alternative based on an employee's actual compensation and those based on the compensation established for the employee's job family, the Agencies have modified the final rule to provide that a referral fee also will be considered nominal if it does not exceed 1/1000th of the employee's actual base annual salary.[52] Under the final rules, a bank may use a different ''nominal'' methodology in its different business lines or operating units and may alter the methodology it uses within a given year.

One commenter suggested that the term ''job family'' was ambiguous and could allow banks to include all employees in a single job family, which would result in payments to employees with salaries at the lower end of the job family that may be well in excess of twice their hourly wage.[53] Rule 700 defines a ''job family'' as a group of jobs or positions involving similar responsibilities, or requiring similar skills, education or training, that a bank, or a separate unit, branch or department of a bank, has established and uses in the ordinary course of its business to distinguish among its employees for purposes of hiring, promotion, and compensation.[54] The requirements that a job family include jobs or positions with similar responsibilities, or that require similar skills, education and training, and be used by the bank in the ordinary course of its business for hiring, promotion and compensation purposes are designed to prevent a bank from establishing special job family classifications to evade the ''nominal'' standard. A bank may not deviate from its ordinary classification of jobs for purposes of determining whether a referral fee is nominal under this standard, and the Banking Agencies will monitor the job family classifications used by banks for ''nominal'' determination as part of the risk-focused examination process. Depending on a bank's internal employee classification system, examples of a job family may include tellers, loan officers, or branch managers. The Agencies note, moreover, that other provisions of the networking exception also provide significant protection to customers. For example, the networking exception provides that unregistered bank employees may perform only clerical or ministerial functions in connection with brokerage transactions.[55] Accordingly, bank employees referring a customer to a broker-dealer under the exception may not provide investment advice concerning securities or make specific

[45] *See* Exchange Act Section 3(a)(4)(B)(i)(V).

[46] Rule 700(c)(3).

[47] Each adjustment would be rounded to the nearest multiple of $1. Rule 700(f).

[48] *See* ABA Securities Ass'n., 2003/2004 National Survey of Bank Retail Investment Services, Vol. I, at 60 (survey data demonstrate that 20 percent of banks pay retail referral fees of $20 or more); Banking Agencies' Interagency Statement on Retail Sales of Nondeposit Investment Products (Feb. 15, 1994).

[49] Rule 700(c)(1) and (2).

[50] Occupational Employment and Wages, May 2005, (Tellers), U.S. Department of Labor, Bureau of Statistics.

[51] Specifically, twice the hourly wage for an employee who earns an annual base salary of $25,000 (1,000 × $25) would be $24.04, based on a 40 hour per week (or 1080 hours per year) work schedule.

[52] Rule 700(c)(2).

[53] *See* Pace Project Letter.

[54] Proposed Rule 700(d).

[55] *See* 15 U.S.C. 78c(a)(4)(B)(i)(V).

securities recommendations to the customer.[56]

A few commenters suggested that, by defining ''nominal'' by reference to hourly wages and annual base salary, the rule treats unfairly employees who receive a considerable portion of their compensation through bonuses tied to sales of non-securities products.[57] Because the five alternatives included in the final rule are based on a set dollar amount or the hourly wage or annual base salary established by a bank for the employee or the employee's job family, the alternatives help ensure that a referral fee will be nominal in relation to the employee's compensation in the year it is paid. Bonuses, however, typically are discretionary, vary significantly from year-to-year and, as noted by commenters, may constitute a significant portion of the compensation of certain types of bank employees in particular years. Permitting referral fees to be based in part on the size of a bonus paid in a previous year (or projected to be paid in the current year) could allow bank employees to receive a referral fee that is not nominal in relation to the employee's compensation, or the average compensation paid to employees within the relevant job family, in the year in which the fee is paid and, thus, could increase the potential for sales practice concerns.

Commenters also asserted that more than one employee should be able to receive a fee for a single referral and also requested clarification as to whether officers and directors of a bank may receive referral fees under the exception.[58] The Agencies believe that the networking exception permits a bank employee who personally participated in a referral to receive a referral fee for the referral.[59] Accordingly, the Agencies have modified Rule 700(c) to clarify this position. Thus, for example, a supervisory employee may receive a separate, nominal one-time cash fee for a referral made by another individual supervised by the employee only if the supervisory employee personally participated in the referral. A supervisory employee may not, however, receive a referral fee merely for supervising the employee making the referral or administering the referral process. An officer or director of a bank who makes or personally participates in making a referral may receive a nominal fee for the referral as a bank employee.

The proposed rule permitted a nominal referral fee to be paid only in cash. Many commenters requested that banks be given the flexibility to pay referral fees in non-cash forms.[60] The terms of the networking exception, however, provide for a ''nominal, one-time cash fee of a fixed dollar amount''[61] and, accordingly, the final rule continues to require that referral fees paid under the exception be paid in cash. A bank, therefore, may not pay referral fees in non-cash forms, such as vacation packages, stock grants, annual leave, or consumer goods. The final rules do not, however, prevent a bank from paying an employee on a quarterly or more frequent periodic basis the total amount of nominal, fixed cash fees the employee earned during the period. For example, if a bank employee is entitled to receive a $25 referral fee for each securities referral and the employee makes three qualifying referrals in a given quarter, the bank may pay the employee $75 at the end of the quarter instead of three individual payments of $25. A bank also may use a ''points'' system to keep track of the number of qualifying securities referrals made by the employee during a quarterly or more frequent period and the total amount of nominal, fixed cash fees that the employee is entitled to receive at the end of the period. In all cases, however, points must translate into cash payments on a uniform basis and the cash amount that an employee will receive for a qualifying securities referral (*e.g.*, twice the employee's actual base hourly wage) must be fixed before the referral is made and may not be contingent or vary based on whether an employee makes a specified number or type of securities referrals during a quarterly or more frequent period.[62]

2. Definition of ''Referral''

The statutory networking exception permits bank employees to receive a nominal one-time cash fee of a fixed dollar amount for the ''referral'' of a customer to a broker-dealer. Rule 700(e) defines a referral as an action taken by one or more bank employees to direct a customer of the bank to a broker-dealer for the purchase or sale of securities for the customer's account.[63] For purposes of the networking exception and Rules 700 and 701, the term ''customer'' includes both existing and potential customers of the bank.

As proposed, a bank employee may receive a referral fee under the networking exception and Rule 700 for each referral made to a broker-dealer, including separate referrals of the same individual or entity. In addition, nothing in the statutory networking exception or the final rules limits or restricts the ability of a bank employee to refer customers to other departments or divisions of the bank itself, including, for example, the bank's trust, fiduciary or custodial department. Likewise, the networking exception and the rules do not apply to referrals of retail, institutional or high net worth customers to a broker-dealer or other third party solely for transactions not involving securities, such as loans, futures contracts (other than a security future), foreign currency, or over-the-counter commodities, or solely for transactions in securities (such as U.S. Government obligations) that would not require the other party to register under section 15 of the Exchange Act.[64]

3. Definition of ''Contingent on Whether the Referral Results in a Transaction''

Under the statutory networking exception, a nominal fee paid to an unregistered bank employee for referring a customer to a broker-dealer may not be contingent on whether the referral results in a transaction. This limitation is designed to allow banks to reward bank employees for introducing customers to a broker-dealer without giving unregistered bank employees a direct financial interest in any resulting securities transaction at the broker-dealer.

The final rule, like the proposed rule, provides that a referral fee will be considered ''contingent on whether the referral results in a transaction'' if payment of the fee is dependent on

[56] A bank employee, however, may describe in general terms the types of investment vehicles available from the bank and the broker-dealer under the arrangement. *See id.*

[57] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, Harris Bank Letter, Roundtable Letter, PNC Letter, U.S. Trust Company, N.A. (''U.S. Trust'') Letter, and WBA Letter.

[58] *See, e.g.*, Consumer Bankers Ass'n (''CBA'') Letter, BISA Letter.

[59] *See* Section 3(a)(4)(B)(i)(VI) of the Exchange Act (permitting ''the bank employee [to] receive compensation for the referral of any customer'' in accordance with the exception).

[60] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, and JP Morgan Letter.

[61] *See* Exchange Act Section 3(a)(4)(B)(i)(VI).

[62] The exception and the final rules also do not prohibit a bank from providing its employees non-cash items, such as pizza or coffee mugs, in connection with programs to familiarize bank employees with new types of investment vehicles offered by the bank or the broker-dealer through the arrangement, provided that the programs or items given to employees do not reward or compensate an employee for making a referral to a broker-dealer. Thus, for example, a ''pizza party'' that is made available only to those employees that have made one or more referrals to a broker-dealer would not be permissible.

[63] Rule 700(e).

[64] A bank that acts as a government securities broker (as defined in Section 3(a)(43) of the Exchange Act) is not exempt from and must comply with the notification and other applicable requirements of section 15C of the Exchange Act.

whether the referral results in a purchase or sale of a security; whether an account is opened with a broker-dealer; whether the referral results in a transaction involving a particular type of security; or whether the referral results in multiple securities transactions.[65] The final rule expressly provides that a referral fee may be contingent on whether a customer (1) contacts or keeps an appointment with a broker-dealer as a result of the referral; or (2) meets any objective, base-line qualification criteria established by the bank or broker-dealer for customer referrals, including such criteria as minimum assets, net worth, income, or marginal federal or state income tax rate, or any requirement for citizenship or residency that the broker-dealer, or the bank, may have established generally for referrals for securities brokerage accounts.[66] A bank or broker-dealer may establish and use different objective, base-line qualification criteria (including citizenship or residency requirements) for different classes of customers or for different business lines, divisions or units of the bank or broker-dealer.

Commenters generally supported these permissible contingencies. Some commenters contended that the rule also should allow payment of a nominal referral fee to be contingent on other events, such as the opening of an account at the broker-dealer or on the opening of an account that may be used to conduct only securities transactions that the bank itself could effect without registering as a broker under the exceptions for banks in Sections 3(a)(4)(B) of the Exchange Act.[67] Opening a securities account at the broker-dealer, however, is a necessary first step to executing securities transactions and one that a customer is unlikely to take unless the customer anticipates engaging in securities transactions with the broker-dealer. In light of this close link between opening an account and executing securities transactions, the Agencies have not modified the rule as requested and the final rule continues to provide that payment of a referral fee may not be contingent on whether the customer opens an account (other than the types of accounts described in Part B.2 *supra*.) at the broker-dealer. Other contingencies not specified in the rule may be permissible if they are not based on whether the referral results in a securities transaction at the broker-dealer.

In addition, the ''broker'' exceptions in Sections 3(a)(4)(B) of the Exchange Act are available only to banks. Accordingly, a referral to a broker-dealer for a securities transaction within the scope of section 15 of the Exchange Act still involves a ''broker'' transaction at the broker-dealer even if a bank could conduct the transaction itself without registering as a broker, and a referral fee may not be contingent on the occurrence of such a transaction (or the opening of an account to engage in such transactions).[68]

4. Definition of ''Incentive Compensation''

The networking exception prohibits an unregistered employee of a bank that refers a customer to a broker-dealer under the exception from receiving ''incentive compensation'' for the referral or any securities transaction conducted by the customer at the broker-dealer other than a nominal, non-contingent referral fee. To provide banks and their employees additional guidance in this area, Proposed Rule 700(b) defined ''incentive compensation'' as compensation that is intended to encourage a bank employee to refer potential customers to a broker-dealer or give a bank employee an interest in the success of a securities transaction at a broker-dealer.

The proposed rule also excluded certain types of bonus compensation from the definition of ''incentive compensation.'' Proposed Rule 700(b)(1) excluded compensation paid by a bank under a bonus or similar plan if such compensation is paid on a discretionary basis; based on multiple factors or variables; such factors or variables include significant factors or variables that are not related to securities transactions at the broker-dealer; and a referral made by the employee or any other person is not a factor or variable in determining the employee's compensation under the plan.

In addition, Proposed Rule 700(b)(2) provided that the definition of incentive compensation did not prevent a bank from compensating its employees on the basis of any measure of the overall profitability of (1) the bank, either on a stand-alone or consolidated basis; (2) any of the bank's affiliates (other than a broker-dealer) or operating units; or (3) a broker-dealer if such profitability is only one of multiple factors or variables used to determine the compensation of the officer, director, or employee and those factors or variables include significant factors or variables that are not related to the profitability of the broker-dealer. The Agencies specifically requested comment on whether existing bank bonus programs would fit, or could easily be adjusted to fit, within these proposed exclusions.

Many commenters indicated that the proposed bonus provisions worked well and would not interfere with bank bonus plans generally. One commenter, however, opposed the proposed bonus provisions arguing that permitting bonuses to be based even in part on revenues generated by activity conducted at a broker-dealer would encourage bank employees to make referrals regardless of the appropriateness of the referral in order to increase their compensation under the bonus plan.[69] In addition, a number of commenters requested that the Agencies either confirm that bonus programs structured in particular ways identified by the commenter would not fall within the definition of ''incentive compensation'' or modify the terms of the exclusions to encompass plans with these features. For example, several commenters asked the Agencies to confirm that the rules would not prohibit a bank from basing an employee's bonus on the assets, revenues or profits brought to the bank and its partner broker-dealer by that employee. Other commenters asked that the Agencies provide that all ''traditional'' bank bonus programs are protected under the rule.

A number of commenters also raised specific issues with one or more aspects of the exception in Rule 700(b)(1) for discretionary, multi-factor bonus plans or the safe harbor in Rule 700(b)(2) for plans based on overall profitability. For example, some commenters requested clarification of the ''discretionary'' requirement in paragraph (b)(1) and asserted that a bonus plan should be considered ''discretionary'' if employees do not have an enforceable right to compensation under the plan until it is paid.[70] One commenter also argued that Proposed Rule 700(b)(1) should not prohibit the number of referrals made by an employee from playing a role in the employee's compensation under a bonus plan.[71]

Several commenters also asserted that the safe harbor in paragraph (b)(2) should be clarified or expanded to cover

[65] Rule 700(a).

[66] Rule 700(a).

[67] *See, e.g.*, BISA Letter, Clearing House Ass'n Letter, and U.S. Trust Letter.

[68] For similar reasons, a referral to a broker-dealer for such a transaction is a ''referral'' for purposes of the networking exception and Rule 700.

[69] *See* NASAA Letter.

[70] *See, e.g.*, U.S. Trust Letter and Union Bank Letter.

[71] *See* TD Banknorth, N.A. (''TD Banknorth'') Letter.

bonus programs based on any measure of the financial performance, and not just the ''overall profitability,'' of a bank, affiliate, operating unit or broker-dealer.[72] Commenters indicated that bank bonus programs may be based on a wide variety of measures or metrics related to the operations or performance of the bank, an affiliate or operating unit.[73] Some commenters also requested that the safe harbor be revised to clarify that a bonus program may be based on the overall profitability of an operating unit of an affiliate of a bank (other than a broker-dealer), or be expanded to allow bonus programs to be based on the financial performance of a branch, division, or geographical or operational unit of a broker-dealer.[74]

The purpose of the exception and exclusion in paragraph (b) is to recognize that certain types of bonus plans are not likely to give unregistered bank employees a promotional interest in the brokerage services offered by the broker-dealers with which the bank networks and to avoid affecting bonus plans of banks generally. As described below, the Agencies have made several revisions to the exception and exclusion to help clarify the types of bonus plans that fall outside of the scope of ''incentive compensation'' and to ensure that excepted or excluded plans are not likely to give bank employees an impermissible promotional interest in the broker-dealer's activities. These exceptions and exclusions are crafted to accommodate existing types of bank bonus programs in general. Nevertheless, a plan's longevity or the number of banks that utilize similar plans are not factors in determining whether a plan constitutes ''incentive compensation'' under this definition. Accordingly, banks that have networking arrangements with a broker-dealer should review their existing bonus programs in light of the standards set forth in the rule to evaluate whether they may constitute impermissible incentive compensation.

a. Exception for Discretionary, Multi-Factor Bonus Plans

Under Rule 700(b)(1) of the final rules, compensation paid by a bank under a bonus or similar plan is specifically excepted from ''incentive compensation'' if it is paid on a discretionary basis and based on multiple factors or variables, provided that (1) those factors or variables include multiple, significant factors or variables that are not related to securities transactions at the broker-dealer; (2) a referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and (3) the employee's compensation under the plan is not determined by reference to referrals made by any other person.[75] The Agencies have modified the rule to make clear that, to be excluded under Rule 700(b)(1), a multi-factor plan must include *multiple*, significant factors or variables that are not related to securities transactions at the broker-dealer.[76] The proposed rule already required that there be ''significant factors or variables'' and the addition of ''multiple'' highlights the plural nature of these terms.

Each factor or variable unrelated to securities transactions at the broker-dealer will be considered ''significant'' for purpose of Rule 700(b) if it plays a material role in determining an employee's compensation under the bonus or similar plan, *i.e.*, the amount of the employee's bonus could be reduced or increased by a material amount based on the non-securities factor or variable. This clarification will give banks greater certainty and will allow them to more readily identify the types of factors or variables not related to securities transactions that must be included within a discretionary, multi-factor bonus plan under paragraph (b)(1) of the Rule. Thus, under paragraph (b)(1), a bank's bonus program may take account of the full range of banking, securities or other business of one or more customers brought to the bank and its partner broker-dealer by an employee so long as the bonus is paid on a discretionary basis, the banking and other factors or variables not related to securities transactions at the broker-dealer are significant factors or variables under the bonus program, and a referral or number of referrals made by the employee or others is not a factor or variable under the program. In this way, the rule is designed to accommodate discretionary bank bonus programs that are based on general measures of the business or performance of a bank or a particular customer, branch or other unit of the bank, that are *not* based on referrals made by one or more bank employees and that include some inputs based on securities transactions at a broker-dealer as well as multiple significant factors or variables that are unrelated to securities transactions at the broker-dealer.

A bank may not establish or maintain one or more ''sham'' non-securities factors or variables in its bonus or similar plan for the purpose of evading the restrictions in Rule 700(b) and the Banking Agencies will continue to review the bonus and similar plans of banks participating in networking arrangements as part of the risk-focused supervisory process. In considering if a bonus program at a bank contains sufficient banking or other factors unrelated to securities transactions at a broker-dealer, the agencies will consider, among other things, whether such factors or variables relate to banking or other non-broker-dealer business(es) actually being conducted by the bank or its employees, the resources devoted by the bank to such business(es), and whether such business(es) materially contributes to the payments made under the plan over time. It is not expected that the actual payments made under a bank's bonus or similar plan would, over time, be based predominantly on securities transactions conducted at a broker-dealer. If such a situation were to occur, the bank would be expected to make appropriate modifications to its bonus or similar plan going forward.

A bonus or similar plan will be considered ''discretionary'' under the final rule if the amount an employee may receive under the plan is not fixed in advance and the employee does not have an enforceable right to payments under the plan until the amount of any payments are established and declared by the bank. A plan may, however, include targets or metrics that must be met in order for any bonus to be paid, provided the plan is otherwise a ''discretionary'' plan.

The Agencies have not modified the rule to allow a bonus plan to be based on the fact of a referral or the number of referrals made by one or more bank employees. The Agencies believe that doing so would allow a direct linkage between a referral and an employee's bonus compensation and be contrary to the purposes of the exception.

b. Safe Harbor for Plans Based on Overall Profitability or Revenue

The safe harbor provisions of Rule 700(b)(2) are designed to allow banks to avoid having to analyze whether a particular bonus program meets the

[72] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter.

[73] *See, e.g.*, Clearing House Ass'n Letter, Harris Bank Letter, U.S. Trust Letter.

[74] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter, HSBC Bank Letter, PNC Letter, and Union Bank Letter.

[75] Rule 700(b)(1). The requirement that an employee's compensation not be based on a ''referral'' made by the employee or another person means that the employee's compensation under the bonus or similar plan may not vary based on the fact that the employee or other person made a referral to a broker-dealer or the number of securities referrals made by the employee or other person to a broker-dealer.

[76] A similar change has been made to the corresponding language in Rule 700(b)(2).

requirements of the exception in paragraph (b)(1) in circumstances where the general structure of the program clearly reduces the potential for sales practice concerns in connection with a referral to a broker-dealer. The Agencies have made several changes to the safe harbor to address the issues raised by commenters and to ensure that the safe harbor achieves its purpose. In particular, the Agencies have modified paragraph (b)(2) of the rule to cover any bonus or similar plan that is based on the overall profitability or revenue of:

(i) The bank, either on a stand-alone or consolidated basis;

(ii) Any affiliate of the bank (other than a broker-dealer), or any operating unit of the bank or an affiliate (other than a broker-dealer), if the affiliate or operating unit does not over time predominately engage in the business of making referrals to a broker-dealer; or

(iii) A broker-dealer if:

(A) Such measure of overall profitability or revenue is only one of multiple factors or variables used to determine the compensation of the officer, director or employee;

(B) The factors or variables used to determine the compensation of the officer, director or employee include multiple significant factors or variables that are not related to the profitability or revenue of the broker-dealer;

(C) A referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and

(D) The employee's compensation under the plan is not determined by reference to referrals made by any other person.

When a bonus program is based on the overall profitability of a bank, an affiliate of a bank (other than a broker-dealer), or an operating unit of the bank or an affiliate (other than a broker-dealer), any relationship between a referral made by an employee and the amount of payments that the employee may receive under the plan are likely to be attenuated. In these circumstances, for example, any potential connection between the revenue received by a bank from its partner broker-dealer as a result of a referral and the payments made to the referring bank employee under the plan likely would be tenuous and largely speculative given the number of other employees, business and actions that contribute to the overall profitability of the bank, affiliate or most operating units. The Agencies believe this attenuation effectively addresses any potential that payments under the plan would give an employee an undue promotional interest in any securities transactions that may occur at the broker-dealer as a result of a referral. A bonus plan based on the overall *revenue* of a bank or qualifying affiliate or operating unit would be similarly attenuated and, for this reason, the Agencies have modified the safe harbor to cover plans based on either the ''overall profitability or revenue'' of a bank or a qualifying affiliate or operating unit. This would include plans based on an entity's earnings per share or stock price, both of which are directly related to the entity's overall profitability or revenue. Because other, more granular measures of the financial performance of a bank, affiliate or operating unit could create an unduly close connection between the employee's expected payment under the bonus plan and referrals made to the broker-dealer or the securities transactions that result from those referrals, the rules provide for plans structured in more granular ways to be analyzed under the multi-factor, discretionary criteria in Rule 700(b)(1).

The potential connection between a referral made by a bank employee and the payments made to the employee under a bonus plan may be particularly strong if payments under the plan are based on the profitability or revenue of (i) the partner broker-dealer itself or a specific branch or operating unit of the broker-dealer (such as the branch or operating unit responsible for handling customers referred by the bank), or (ii) an operating unit of the bank or a non-broker-dealer affiliate that is predominantly engaged over time in referring customers to the broker-dealer. To address the potential for improper incentives in these situations, the Agencies have modified Rule 700(b)(2)(iii) to allow a bonus program to be based on the overall profitability or revenue of a broker-dealer only if the program meets the conditions specified in (A)–(D) above. These conditions are similar to those that would apply to a discretionary bonus or similar plan under paragraph (b)(1) and are designed to ensure that the profitability or revenue of the broker-dealer is only one of multiple significant factors or variables in determining the employee's compensation and that a referral or number of referrals made by the employee is not a factor or variable under the program.[77] Like the proposal, the safe harbor in paragraph (b)(2) is not available to bonus plans based on the profitability or revenue of a particular branch, division or operating unit of the partner broker-dealer.

In addition, the Agencies have modified paragraph (b)(2)(ii) of the rule to exclude bonus plans based on the profitability or revenue of an operating unit of a bank or non-broker-dealer affiliate that over time predominantly engages in the business of making referrals to a broker-dealer. This exclusion is intended to prevent a bank from basing a bonus plan on the overall profitability or revenue of a bank unit that is focused solely or predominately on making referrals to a broker-dealer. This restriction, however, is not intended to prevent a bonus plan from being based on the overall profitability or revenue of a bank unit, such as a call center, that in fact markets, sells or supports a range of bank products in addition to making referrals to a broker-dealer and which is not, over time, predominantly engaged in the business of making referrals to a broker-dealer.

C. Rule 701: Exemption for Referrals Involving Institutional Customers and High Net Worth Customers

The proposed rules included an exemption that would permit a bank, subject to certain conditions, to pay an employee a contingent referral fee of more than a nominal amount for referring an ''institutional customer'' or ''high net worth customer'' to a broker-dealer with which the bank has a contractual or other written networking arrangement.[78] Among the conditions included in the proposed rule were conditions that—

- Established the financial thresholds at which a customer would be considered an ''institutional customer'' or ''high net worth customer'';
- Limited the types of bank employees that may receive a higher-than-nominal referral fee under the exemption and the manner in which these fees may be structured;[79]
- Required the bank to provide certain disclosures to the customer regarding the referral arrangement;[80] and
- Required that the agreement between the bank and the broker-dealer include certain provisions, including a provision obligating the broker-dealer to perform a suitability analysis of certain securities transactions that may result from the referral or a sophistication analysis of the customer referred.[81]

Many commenters supported providing an exemption for referrals

[77] As with a multi-factor bonus plan under paragraph (b)(1) of the Rule, a non-securities factor or variable will be considered ''significant'' under paragraph (b)(2)(iii) if it plays a material role in determining an employee's compensation under the bonus or similar plan.

[78] Proposed Rule 701.

[79] *See* Proposed Rule 701(a)(1) and (d)(4).

[80] *See id.* at 701(a)(2)(i).

[81] *See id.* at 701(a)(3)(ii).

involving sophisticated individuals and entities.[82] These commenters, for example, asserted that the exemption was appropriate in light of the required sophistication of the customer involved.[83] Other commenters, however, argued that providing an exemption to the ''nominal'' requirement would not be in the interest of investors or the public. These commenters asserted that the exemption as proposed would allow bank employees to have a significant salesman's stake in securities transactions and encourage bank employees to act as finders or salespeople for a broker-dealer.[84]

Many commenters, including a number that supported the exemption, also asked that the Agencies modify the exemption to, among other things, lower or alter the thresholds at which a person would be considered an ''institutional customer'' or ''high net worth customer'' under the rule; eliminate the provisions of the rule requiring the broker-dealer to perform a suitability or sophistication analysis in connection with a referral; or eliminate the limitations on the manner in which a higher-than-nominal referral fee may be structured. In addition, many commenters requested that the Agencies modify the rule in several respects to reduce administrative burden and complexity. For example, several commenters asked that the Agencies provide a bank and its partner broker-dealer greater flexibility to assign between themselves the responsibility for fulfilling the disclosure and other obligations included in the rule.

After carefully considering the comments, the Agencies have decided to retain the exemption. The Agencies continue to believe that it is appropriate to provide an exemption from the nominal and contingency limitations in the networking exception for referrals that both involve institutions and individuals that meet certain financial criteria and that occur under other conditions designed for investor protection. When provided appropriate information, such institutions and individuals are more likely to be able to understand and evaluate the relationship between a bank and its employees and the bank's broker-dealer partner and the impact of that relationship on any resulting securities transaction with the broker-dealer. The conditions in the final exemption are designed to help ensure that, among other things, institutional and high net worth customers, as defined in the rule, receive appropriate investor protections and information that enables the customer to understand the financial interest of the bank employee so the customer can make informed choices. Moreover, as the exemption itself provides, a bank operating under the exemption also must comply with the terms and conditions in the statutory networking exception (other than the compensation restrictions in Section 3(a)(4)(B)(i)(VI) of the Exchange Act's networking exception), including the terms and conditions that require the disclosure of the uninsured nature of securities and that limit the role that a bank employee may have in a brokerage transaction.[85] These conditions provide additional protections to institutional and high net worth customers that may be referred to a broker-dealer under Rule 701.

The Agencies have modified the final rule in several respects to, among other things, provide banks and broker-dealers greater flexibility in complying with the rule's disclosure requirements and to make the exemption more workable in practice. In light of the protections retained in the rule, the Agencies also have modified the thresholds at which a non-natural person will be considered an ''institutional customer'' for purposes of the rule. These modifications are discussed further below.

Banks that pay their employees only nominal, non-contingent fees in accordance with Rule 700 for referring customers—including institutional or high net worth customers—to a broker-dealer do not need to rely on, or comply with, the exemption provided in Rule 701. As under the proposal, the final rule requires that the written agreement between a bank operating under the exemption and its partner broker-dealer include terms that obligate the broker-dealer to take certain actions. Banks and broker-dealers are expected to comply with the terms of their written networking arrangements. If a bank or broker-dealer does not comply with the terms of the agreement, however, the bank would not become a ''broker'' under Section 3(a)(4) of the Exchange Act or lose its ability to operate under the proposed exemption.

1. Definitions of ''Institutional Customer'' and ''High Net Worth Customer''

Proposed Rule 701(d)(2) defined an ''institutional customer'' to mean any corporation, partnership, limited liability company, trust, or other non-natural person that has at least $10 million in investments *or* $40 million in assets. Under the proposal, a non-natural person also would qualify as an ''institutional customer'' with respect to a referral if the customer has $25 million in assets *and* the bank employee refers the customer to the broker-dealer for investment banking services. Proposed Rule 701(d)(1) defined a ''high net worth customer'' to mean any natural person who, either individually or jointly with his or her spouse, has at least $5 million in net worth excluding the primary residence and associated liabilities of the person and, if applicable, his or her spouse. Proposed Rule 701 also included provisions governing the allocation of assets held by a natural person jointly with his or her spouse and provided for the dollar thresholds in the rule to be adjusted for inflation every five years.

A number of commenters argued that the proposed dollar thresholds for both types of customers were too high in light of the nature of the transactions involved and the other requirements of the exemption.[86] Commenters asserted that customers with lower levels of net worth, assets or investments are sophisticated enough to understand and evaluate the implications of a higher-than-nominal or contingent referral fee. Commenters suggested a wide variety of alternative thresholds, with many recommending that the Agencies use an existing standard established under the federal securities laws for assessing a customer's investment sophistication. For example, commenters recommended that the Agencies use the ''accredited investor'' definition in the Commission's Regulation D, or the definition of that term proposed for use in connection with investments in certain private investment vehicles, for purposes of defining an institutional or high net worth customer;[87] treat all corporate and non-natural persons as an institutional customer; consider all persons advised by a bank or a registered investment adviser to be sophisticated; or lower the asset threshold for municipalities or

[82] *See, e.g.*, BISA Letter, CBA Letter, Citigroup Letter, ICBA Letter, Roundtable Letter, Securities Industry and Futures Markets Ass'n (''SIFMA'') Letter, State Street Corp. Letter, U.S. Trust Letter, Union Bank Letter.

[83] *See* CBA Letter.

[84] *See, e.g.*, Massachusetts Securities Division Letter, NASAA Letter.

[85] *See* Exchange Act Section 3(a)(4)(B)(i)(V) and (IX).

[86] *See, e.g.*, HSBC Bank Letter, U.S. Trust Letter, SIFMA Letter, Roundtable Letter.

[87] *See* 17 CFR 230.501(a)(3), (5) and (6); Securities Act Rel. No. 33–8766, 72 FR 400, Jan. 4, 2007.

charitable organizations.[88] Several commenters also asked that the Agencies allow banks to use a business customer's revenues for purposes of determining if the customer is an institutional customer.

After carefully reviewing the comments, the Agencies have modified the definition of an ''institutional customer'' in the final rule to mean any corporation, partnership, limited liability company, trust, or other non-natural person that has, or is controlled by a non-natural person that has, at least: (i) $10 million in investments; or (ii) $20 million in revenues; or (iii) $15 million in revenues if the bank employee refers the customer to the broker-dealer for investment banking services.[89] When converted to an equivalent asset number, the $20 million and $15 million revenue thresholds in the final rule are somewhat lower than $40 million and $25 million asset thresholds in the proposed rule.[90] The Agencies believe that these lower thresholds are appropriate for corporate and other non-natural customers in light of the other protections retained in the final rule, including the provisions requiring a suitability or sophistication determination, and the greater internal and external resources that business entities typically have as compared to individuals. The Agencies have modified the thresholds to be based on revenues (rather than assets) to eliminate the potential for borrowings to influence the status of a corporate customer and to promote the equivalent treatment of non-financial companies and financial companies. In addition, the Agencies have amended the rule to provide that a company controlled by an institutional customer will itself be considered an institutional customer. A company controlled by another company should generally have access to the resources and sophistication of the controlling company.

The lower revenue threshold for referrals involving investment banking services is designed to facilitate access to the capital markets by smaller companies. Like the proposal, the final rule defines ''investment banking services'' to include, without limitation, acting as an underwriter in an offering for an issuer, acting as a financial adviser in a merger, acquisition, tender-offer or similar transaction, providing venture capital, equity lines of credit, private investment-private equity transactions or similar investments, serving as placement agent for an issuer, and engaging in similar activities.[91] The phrase ''other similar services'' would include, for example, acting as an underwriter in a secondary offering of securities and acting as a financial adviser in a divestiture. These examples are not exhaustive and are provided solely for illustrative purposes.[92]

The final rule continues to define a ''high net worth customer'' as a natural person who, either individually or with his or her spouse, has at least $5 million in net worth excluding the primary residence and associated liabilities of the person and, if applicable, his or her spouse. In response to comments,[93] the Agencies have modified this definition to include any revocable, inter vivos or living trust the settlor of which is a natural person who, either individually or jointly with his or her spouse, meets the $5 million in net worth test.[94] This change is designed to reflect the fact that otherwise sophisticated individuals may hold assets through such trusts for estate planning or other purposes.

The Agencies believe that customers that meet the net worth, investment and revenue thresholds included in the final rule should have the ability to understand and evaluate the financial interest of the bank employee making a referral to a broker-dealer under the exemption. In developing these thresholds, the Agencies took into account the limited nature of activities covered by the exemption (*i.e.*, a referral by a bank employee to a broker-dealer). The Agencies have not modified the rule, as requested by some commenters, to treat any person advised by a bank or a registered investment adviser as an institutional or high net worth customer. The existence of such an advisory relationship generally is not, by itself, sufficient to establish the financial sophistication of an individual or corporate entity for purposes of the other similar standards in or developed under the federal securities laws.[95]

For purposes of determining whether a natural person meets the $5 million net worth test, the assets of a person include: (1) Any assets held individually; (2) if the person is acting jointly with his or her spouse, any assets of the person's spouse (whether or not such assets are held jointly); and (3) if the person is not acting jointly with his or her spouse, fifty percent of any assets held jointly with such person's spouse and any assets in which such person shares with such person's spouse a community property or similar shared ownership interest. These rules are designed to ensure that the full amount of jointly owned assets are not considered in cases where one spouse acts independently of the other in contacting a broker-dealer.[96] The Agencies have re-formatted these allocation provisions in the final rule to make them easier to understand and promote compliance.

As in the proposal, the dollar threshold for both institutional customers and high net worth customers will be adjusted for inflation on April 1, 2012, and every five years thereafter, to reflect changes in the value of the Personal Consumption Expenditures Chain-Type Price Index, as published by the Department of Commerce, from December 21, 2006. The Agencies selected this index because it is a widely used and broad indicator of inflation in the U.S. economy.

2. Determining That a Customer Meets the Relevant Thresholds

The proposal required the bank to determine that the customer being

[88] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter, State Street Corp. Letter.

[89] Rule 701(d)(2).

[90] To develop comparable asset and revenue thresholds for an institutional customer, the Agencies used a dataset composed of all publicly traded, U.S.-incorporated, non-financial companies with a market capitalization of greater than $0 and for which asset and sales data were available in the 2005 CompuStat Universe of North American companies published by Standard & Poor's Corporation. For more information on the CompuStat Universe, *see http://www2.standardandpoors.com/spf/pdf/products/Compustat2006.pdf.* A company with $40 million in assets and a company with $25 million in assets would rank at approximately the 27.5th percentile and the 21.9th percentile, respectively, of all companies within this dataset when ranked according to assets. When the companies within this dataset are ranked according to sales, the companies at approximately the 27.5th percentile and the 21.9th percentile have approximately $27.7 million and $15.7 million in sales.

[91] *See* Rule 701(d)(3).

[92] When used in this rule, the term ''include, without limitation'' means a non-exhaustive list. This usage is not intended to suggest that the term ''including'' as used in the Exchange Act and the rules under that Act means an exhaustive list. The use of the term ''including, but not limited to'' in Exchange Act Rules 10b–10 and 15b7–1 is also not intended to create a negative implication regarding the use of ''including'' without the term ''but not limited to'' in other Exchange Act rules. *See* Exchange Act Release No. 49879, 69 FR 39682 (June 30, 2004), at footnote 76.

[93] *See* ABA Letter, PNC Letter, Roundtable Letter.

[94] Rule 701(d)(1)(i)(B).

[95] *See, e.g.*, 15 U.S.C. 80a–2(a)(51), 78c(a)(54); 17 CFR 230.501(a).

[96] One commenter asserted that the Agencies should allow a person to include assets that the person holds jointly with someone other than a spouse, such as a relative or domestic partner, for purposes of calculating whether the person meets the net worth threshold. *See* Roundtable Letter. The Agencies have not modified the rule in this manner to keep the scope of individuals whose assets may be considered in determining whether a natural person has the appropriate level of financial sophistication consistent with the standards used in determining whether a natural person is an accredited investor under the Commission's Regulation D. *See* 17 CFR 230.501(a).

referred met the standards to be a high net worth or institutional customer either (i) before the referral fee was paid to the bank employee, in the case of a non-natural person, or (ii) prior to or at the time of the referral, in the case of a natural person.[97] In making these determinations for a natural person, the proposed rule allowed the bank to rely on a signed acknowledgment from the person that he or she met the standards to be a high net worth customer.[98] The proposed rule also required that the written agreement between the bank and the broker-dealer provide for the broker-dealer to (i) determine that the customer being referred met the standards to be a high net worth customer or institutional customer before the referral fee was paid,[99] and (ii) promptly inform the bank if the broker-dealer determined that a customer referred under the exemption did *not* meet the applicable standard.[100]

Commenters argued that either the bank or the broker-dealer, but not both, should be required to make these customer eligibility determinations and that the bank and the broker-dealer should be permitted to allocate responsibility for these determinations between themselves.[101] In addition, several commenters contended that a bank should be allowed to make the eligibility determinations for both high net worth customers and institutional customers before the referral fee is paid or before a securities transaction is effected at the broker-dealer.[102] A few commenters also asserted that banks and broker-dealers should be permitted to rely on a signed acknowledgement from either an institutional or high net worth customer.[103]

The status of the referred customer as a high net worth or institutional customer is a fundamental aspect of the exemption and the final rule continues to provide for both the bank and the broker-dealer to determine that the customer meets the necessary qualification criteria to provide added assurance that these criteria are met.[104] In addition, less information typically is in the public domain concerning the financial resources of an individual than of a corporation or other business entity and, accordingly, there is a greater likelihood that a bank employee—without further investigation—will be able to preliminarily identify corporate or other business customers that are likely to satisfy the rule's eligibility criteria than in the case of individuals. For these reasons, the final rule continues to provide for the bank to determine that a natural person is a high net worth customer before a referral is made and before the employee potentially develops an expectation of a higher-than-nominal fee.

The Agencies, however, have modified the final rule to make it more flexible while retaining its underlying purpose by providing that a bank or a broker-dealer satisfies its customer eligibility requirements if the bank or broker-dealer ''has a reasonable basis to believe that the customer'' is an institutional customer or high net worth customer before the time specified in the rule.[105] A bank or broker-dealer would have a ''reasonable basis to believe'' that a customer is a high net worth customer or institutional customer if, for example, the bank or broker-dealer obtains a signed acknowledgment from the customer (or, in the case of an institutional customer, from an appropriate representative of the customer) that the customer meets the applicable standards to be considered a high net worth customer or an institutional customer, respectively, and the bank employee making the referral or the broker-dealer employee dealing with the referred customer does not have information that would cause the employee to believe that the information provided by the customer (or representative) is false.

3. Conditions Relating to Disclosures

The proposed exemption required that the bank provide a high net worth customer or institutional customer being referred to the bank's broker-dealer partner certain written disclosures about the bank employee's potential interest in the referral prior to or at the time of the referral.[106] Commenters generally believed that providing these types of disclosures to a high net worth or institutional customer would help ensure that the customer received appropriate information concerning the relationship between the bank and the broker-dealer,[107] although a few questioned whether sophisticated customers required any disclosures at all or suggested that more simplified disclosures be permitted.[108] A number of commenters also asserted that the requirement that the bank provide these disclosures ''prior to or at the time of the referral'' was impractical or burdensome.[109] Commenters instead asserted that the rule should allow the disclosures to be provided before the referral fee is paid or before a securities transaction is effected at the broker-dealer, or allow the bank and the broker-dealer to determine which entity would make the disclosures.[110]

The final rule continues to require that a high net worth or institutional customer referred to a broker-dealer under the exception receive disclosures that clearly and conspicuously disclose (i) the name of the broker-dealer; and (ii) that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker-dealer and that payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer.[111] This requirement ensures that high net worth or institutional customers receive notice of the financial interest the referring employee may have in the transaction so they can make informed choices.

In light of the comments, the Agencies have modified the provisions of the rule governing how and when these disclosures must be provided to make the rule more workable and less burdensome while also requiring that customers receive the information in time to make informed choices. Specifically, the final rule provides two options for providing the required

[97] Proposed Rule 701(a)(2)(ii).

[98] Proposed Rule 701(a)(2)(ii)(B)(2).

[99] Proposed Rule 701(a)(3)(i).

[100] Proposed Rule 701(a)(3)(iii)(A).

[101] *See, e.g.*, BISA Letter, Clearing House Ass'n Letter, Citigroup Letter, and SIFMA Letter. Some commenters, for example, suggested that requiring bank employees to make these determinations might require the employee to go beyond the limited role a bank employee is permitted to play in a brokerage transaction under the statute. *See, e.g.*, BISA Letter, ABA Letter.

[102] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, HSBC Bank Letter, and PNC Letter.

[103] *See, e.g.*, Citigroup Letter, SIFMA Letter.

[104] *See* Rule 701(a)(2)(ii) and (3)(ii)(B). The final rule also continues to provide for the written agreement between the bank and the broker-dealer to require the broker-dealer to inform the bank if the broker-dealer determines that a referred customer does not meet the relevant eligibility thresholds. *See* Rule 701(a)(3)(v)(A).

[105] Rule 701(a)(2)(ii).

[106] Proposed Rule 701(a)(2)(i).

[107] *See, e.g.*, ABA Letter, JP Morgan Letter, Roundtable Letter, BISA Letter.

[108] *See, e.g.*, Bank of America Corp. (''BofA'') Letter and WBA Letter.

[109] For example, some commenters noted that some referrals may occur only by telephone or asserted that it may be unclear to an employee when a referral actually occurs.

[110] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, HSBC Bank Letter, and WBA Letter. In addition, some commenters contended that banks should be required to provide similar conflict-of-interest disclosures to customers referred to a broker-dealer under the statutory networking exception. *See, e.g.*, Boyd Financial Letter, Pace Project Letter, University of Cincinnati Corp. Law Center Letter. The statutory networking exception itself sets certain disclosures that the bank or broker-dealer must provide a customer in situations where the bank employee making the referral may receive only a ''nominal'' referral fee. 15 U.S.C. 78c(a)(4)(i)(IX).

[111] Rule 701(b).

disclosures. Under the first option, as under the proposal, the bank must provide the high net worth or institutional customer the disclosures *in writing* prior to or at the time of the referral.[112] The second option allows the bank to provide the disclosure to the customer *orally* prior to or at the time of the referral. However, if the bank provides the customer the required disclosures only orally, then either (i) the bank must provide the disclosure to the customer in writing within 3 business days of the date of the referral; or (ii) the broker-dealer must be obligated, under the terms of its written agreement with the bank, to provide the disclosures in writing to the customer.[113] If the broker-dealer is responsible for providing the written disclosures, then it must provide the disclosures to the customer prior to or at the time the customer begins the process of opening an account at the broker-dealer (if the customer does not already have an account with the broker-dealer) or prior to the time the customer places an order for a securities transaction with the broker-dealer as a result of the referral (if the customer already has an account at the broker-dealer).[114] In this way, the rule provides a mechanism for customers to receive the disclosures in writing when they initially are provided only orally. Whether provided orally or in writing, the required disclosures will be considered to have been made in a clear and conspicuous manner if they are provided in a manner designed to call attention to the nature and significance of the information.

4. Suitability or Sophistication Analysis by Broker-Dealer

The proposed exemption required that the written agreement between the bank and the broker-dealer provide for the broker-dealer to perform a suitability or sophistication analysis of a securities transaction or the customer being referred, respectively. The type and timing of the analysis needed to be conducted by the broker-dealer depended on whether the referral fee was contingent on the completion of a securities transaction at the broker-dealer.[115] The proposed rule also required that the written agreement between the bank and its partner broker-dealer obligate the broker-dealer to inform the bank if it determined that a customer referred under the exemption, or a transaction to be conducted by the customer, did not meet the relevant suitability or sophistication standard.[116]

Several commenters objected to this suitability/sophistication requirement arguing that the broker-dealer should be required to conduct a suitability/sophistication analysis only when such an analysis would otherwise be required under the rules of the broker-dealer's self-regulatory organization (''SRO'') (*i.e.*, in those cases where the broker-dealer makes a recommendation to the customer concerning securities).[117] Commenters also argued that the suitability/sophistication requirement was unworkable or unnecessary given that the transaction may involve only a referral (without a securities transaction occurring) of a sophisticated customer.[118] In addition, some commenters expressed concern that the proposed standards would increase the potential liability of broker-dealers or delay the ability of a broker-dealer to respond to a customer's instructions.

After carefully considering the comments, the Agencies have retained the requirement that the parties' written agreement provide for the broker-dealer to perform a suitability analysis when a referral fee is contingent on a transaction and a suitability or sophistication analysis for other referrals. These requirements provide additional investor protections in those circumstances where the bank employee making the referral may receive a higher-than-nominal referral fee. The suitability and sophistication standards included in the final rule are based on the standards that broker-dealers currently must apply and use under applicable SRO rules and, thus, should be familiar to those broker-dealers that partner with banks operating under the exemption.[119] In addition, the exemption gives a broker-dealer the flexibility to perform a suitability analysis, if one is otherwise required by the rule, in connection with all referrals made under the exemption if the broker-dealer determines that such an approach is appropriate for business, compliance or other reasons.

Specifically, for contingent referral fees payable under the exemption, the written agreement between the bank and the broker-dealer must provide for the broker-dealer to conduct a suitability analysis of each securities transaction that triggers any portion of the contingency fee in accordance with the rules of the broker-dealer's applicable SRO as if the broker-dealer had recommended the securities transaction.[120] This analysis must be performed by the broker-dealer before each securities transaction on which the referral fee is contingent is conducted.

For non-contingent referral fees payable under the exemption, the written agreement must provide for the broker-dealer to conduct, before the referral fee is paid, either (1) a sophistication analysis of the customer being referred; or (2) a suitability analysis with respect to all securities transactions requested by the customer contemporaneously with the referral in accordance with the rules of the broker-dealer's applicable SRO as if the broker-dealer had recommended the securities transaction.[121] Under the sophistication analysis option, the broker-dealer must determine that the customer has the capability to evaluate investment risk and make independent decisions, and determine that the customer is exercising independent judgment based on the customer's own independent assessment of the opportunities and risks presented by a potential investment, market factors, and other investment considerations.[122] This sophistication analysis is based on

[112] Rule 700(a)(2)(i).

[113] Rule 701(a)(2)(i) and (a)(3)(i).

[114] Rule 701(a)(3)(i). As a general matter, a customer begins the account-opening process when the customer fills out the appropriate forms provided by the broker-dealer to establish an account.

[115] Proposed Rule 701(a)(3)(ii).

[116] Proposed Rule 701(a)(3)(iii)(C).

[117] *See, e.g.*, ABA Letter, Clearing House Ass'n Letter, Citigroup Letter, and PNC Letter. *See also* FINRA Rule 2310 and FINRA IM–2310–3 (discussing suitability obligations of member broker-dealers). One commenter also asserted that any expansion of a broker-dealer's suitability obligations should be processed and approved through the normal market regulation and SRO process. *See* SIFMA Letter.

[118] *See, e.g.*, Clearing House Ass'n Letter, SIFMA Letter. Commenters also asserted that a broker-dealer may not be able to perform the proposed ''sophistication'' analysis if the customer does not open an account or refuses to provide the broker-dealer the information necessary to perform the analysis.

[119] One commenter expressed concern that the suitability/sophistication requirements of the rule may discourage low-cost, execution-only brokers from establishing relationships with banks under the exemption. *See* Business Law Section Letter. The Agencies are mindful of the need to keep appropriate investment options, including low-cost options, available to investors. However, given the cost structure of low-cost brokers, the Agencies expect that few such brokers would participate in referral arrangements under the exemption that provides for higher-than-nominal referral fees. Broker-dealers that do not wish to become obligated to perform the suitability/sophistication analyses required by the rule also may continue to establish and maintain networking arrangements pursuant to the statutory networking exception.

[120] Rule 701(a)(3)(ii)(A). Because the exemption provides for a broker-dealer to conduct its suitability analysis in accordance with the rules of its applicable SRO, the broker-dealer may follow and take advantage of any applicable SRO rules or interpretations that allow the broker-dealer to make an alternative suitability evaluation. See, *e.g.*, FINRA IM–2310–3 (discussing a member's suitability obligations with respect to certain institutional investors).

[121] Rule 701(a)(3)(iii)(B).

[122] Rule 701(a)(3)(ii)(B)(*1*).

elements of FINRA IM–2310–3 (Suitability Obligations to Institutional Customers).

The Agencies have modified the final rule to provide for the broker-dealer to notify the customer, rather than the bank, if the broker-dealer determines that a high net worth or institutional customer, or a securities transaction to be conducted by such a customer, does not meet the applicable sophistication or suitability standard.[123] Providing such notification to the customer should assist the customer in deciding whether or not to conduct the transaction.

5. Conditions Relating to Bank Employees

Paragraph (b)(1) of the Proposed Rule included certain limitations on the types of bank employees that may receive a higher-than-nominal referral fee under the rule. In particular, the Proposed Rule provided that the bank employee: be predominantly engaged in banking activities, other than making referrals to a broker-dealer; encounter the high net worth or institutional customer in the ordinary course of the employee's assigned business for the bank; not be qualified or required to be qualified under the rules of a SRO; and not be subject to statutory disqualification under Section 3(a)(39) of the Exchange Act (other than subparagraph (E) of that Section) (''statutory disqualification'').[124]

The proposed exemption also included other provisions related to the SRO and statutory disqualification conditions. First, it required that the written agreement between the bank and the broker-dealer must provide for the bank *and* the broker-dealer to affirmatively determine, before a referral fee is paid to a bank employee under the exemption, that the employee is not subject to statutory disqualification.[125] Second, it required that the bank provide the broker-dealer the name of the employee and such other identifying information that may be necessary for the broker-dealer to determine whether the bank employee is subject to statutory disqualification or associated with a broker-dealer.[126] And third, it required that the parties' written agreement obligate the broker-dealer to promptly inform the bank if it determined the bank employee was subject to statutory disqualification.[127]

The final rule retains these provisions with the following modifications.[128] In response to comments,[129] the Agencies have modified the SRO condition in paragraph (a)(1)(A) of the Rule to provide that the employee receiving the referral fee must not be ''registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization.'' The Agencies have modified the related language in paragraph (a)(2)(iii) of the rule in a similar manner.

Several commenters argued that the requirement that a bank employee encounter the high net worth or institutional customer ''in the ordinary course of the bank employee's assigned duties'' was unnecessary and ambiguous.[130] The Agencies have retained the requirement to help ensure that a bank employee making a referral under the rule does so as part of the employee's duties as a bank employee and not as a sales representative of the broker-dealer. However, the Agencies recognize that in the ordinary course of his or her assigned duties for the bank, a bank employee may encounter customers or potential customers outside the employee's regular business hours or at locations outside of the bank, such as at social or civic functions or gatherings.

A number of commenters contended that the bank and the broker-dealer should not both be required to verify that the bank employee is not subject to statutory disqualification and suggested that the bank and broker-dealer be permitted to allocate this responsibility between themselves.[131] The Agencies have modified the rule to provide for these determinations to be made by the broker-dealer under the terms of the parties' written agreement.[132] The Agencies believe that broker-dealers are better suited to make this determination given their familiarity with the Exchange Act's statutory disqualification standards, provided that they receive the necessary information concerning the employee from the bank. A broker-dealer fulfills its responsibilities under paragraph (a)(3)(ii)(A) of Rule 701 if the broker-dealer determines that a bank employee is not subject to statutory disqualification before the employee first receives a referral fee under Rule 701 and at least once each year thereafter as long as the employee remains eligible to receive referral fees under the rule.

As a means designed to ensure that the broker-dealer has the appropriate information to make these determinations, the rule continues to require that, before a higher-than-nominal referral fee is paid to a bank employee under the exemption, the bank provide the broker-dealer the name of the employee and such other identifying information that the broker-dealer may need to determine whether the employee is subject to statutory disqualification.[133] Once the information for a particular employee is conveyed to the broker-dealer, the bank should provide at least annually its broker-dealer partner any changes to the identifying information initially provided under paragraph (a)(2)(iii) of Rule 701 for an employee who continues to make referrals and receive referral fees under the exemption so that the broker-dealer may perform its periodic review of the employee's qualifications under paragraph (a)(3)(ii)(A).

6. Good Faith Compliance and Corrections by Banks

As in the proposal, the final exemption provides that a bank that acts in good faith and that has reasonable policies and procedures in place to comply with the requirements of the exemption will not be considered a ''broker'' under Section 3(a)(4) of the Exchange Act solely because the bank fails, in a particular instance, to determine that a customer is an institutional or high net worth customer, provide the customer the required disclosures, or provide the broker-dealer the required information concerning the bank employee receiving the referral fee within the time periods prescribed. If the bank is seeking to comply and takes reasonable and prompt steps to remedy the error, such as by promptly making the required determination or promptly providing the broker-dealer the required information, the bank will not lose the exemption from registration in these circumstances. Similarly, to promote compliance with the terms of the

[123] Rule 701(a)(3)(iv).

[124] *See* Proposed Rule 701(a)(1).

[125] Proposed Rule 701(a)(3)(i)(A).

[126] Proposed Rule 701(a)(2)(iii).

[127] Proposed Rule 701(a)(3)(iii)(B).

[128] *See* Rule 701(a)(1), (a)(2)(iii), (a)(3)(ii)(A), and (a)(3)(v)(B).

[129] *See* Business Law Section Letter.

[130] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, Comerica Bank Letter, and U.S. Trust Letter. For example, some asserted that bank employees may be expected to identify and develop client relationships at social or other events and expressed concern that the language might prevent a bank employee from receiving a referral fee for institutional or high net worth customers encountered in these ways.

[131] *See, e.g.*, ABA Letter, BISA Letter, Clearing House Ass'n Letter, Citigroup Letter, PNC Letter, and SIFMA Letter.

[132] Rule 701(a)(3)(ii)(A).

[133] Rule 700(a)(2)(iii).

exemption, the bank must make reasonable efforts to reclaim the portion of the referral fee paid to the bank employee for a referral that does not, following any required remedial actions, meet the requirements of the exemption and that exceeds the amount the bank otherwise would be permitted to pay under the statutory networking exception and Rule 700.[134]

A few commenters suggested that the Agencies strike the requirement that the bank seek to reclaim the higher-than-nominal portion of a referral fee. The Agencies have retained this requirement as it helps provide employees an incentive to comply with the rule.[135]

7. Referral Fees Permitted Under the Exemption

Proposed Rule 701 placed certain limits on how a higher-than-nominal referral fee paid under the exemption may be structured.[136] Some commenters argued that these restrictions are unnecessary in light of the other protections included in the exemption, or that the rule should allow a higher-than-nominal referral fee to be based on a percentage of any type of securities transaction conducted at a broker-dealer (rather than just investment banking transactions).[137] On the other hand, one commenter asserted that, by allowing a referral fee to be based on the total amount of assets maintained in an account with the broker-dealer, the rule would provide an incentive for bank employees to provide ongoing investment advice to customers.[138]

The final rule continues to place limits on the types of referral fees a bank employee may receive under the exemption. These limitations are designed to reduce the potential ''salesman's stake'' of the bank employee in securities transactions conducted at the broker-dealer. Specifically, the exemption provides that a referral fee paid under the exemption may be a dollar amount based on a fixed percentage of the revenues received by the broker-dealer for investment banking services provided to the customer.[139] Alternatively, the referral fee may be a predetermined dollar amount, or a dollar amount determined in accordance with a predetermined formula, so long as the amount does not vary based on (1) the revenue generated by, or the profitability of, securities transactions conducted by the customer with the broker-dealer; (2) the quantity, price, or identity of securities purchased or sold over time by the customer with the broker-dealer; or (3) the number of customer referrals made.[140] For these purposes, ''predetermined'' means established or fixed before the referral is made. The requirement that the amount of the referral fee not vary based on the number of customer referrals made does not prohibit an employee from receiving a referral fee for each referral made by the employee under the exemption.

As the exemption provides, these restrictions do not prevent a referral fee from being paid in multiple installments or from being based on a fixed percentage of the total dollar amount of assets placed in an account with the broker-dealer. Additionally, these restrictions do not prevent a referral fee from being based on a fixed percentage of the total dollar amount of assets (including securities and non-securities assets) maintained by the customer with the broker-dealer. Fees structured in this manner and consistent with the limitations in paragraph (d)(4)(i) of the Rule do not provide a bank employee an incentive to recommend the purchase or sale of particular securities. In fact, the bank employee would have no special incentive to recommend the purchase of any security, as the addition of cash or other non-security instruments to the account would count equally towards the employee's compensation as any addition of securities to the account.

8. Permissible Bonus Compensation Not Restricted

The exemption for high net worth and institutional customers expressly provides that nothing in the exemption prevents or prohibits a bank from paying, or a bank employee from receiving, any type of compensation under a bonus or similar plan that would not be considered incentive compensation under paragraph (b)(1), or that is described in paragraph (b)(2), of Rule 700 (implementing the networking exception).[141] As explained above, these types of bonus arrangements do not tend to create the kind of financial incentives for bank employees that the statute was designed to address.

III. Trust and Fiduciary Activities

A. Trust and Fiduciary Exception and Proposed Rules

Section 3(a)(4)(B)(ii) of the Exchange Act (the ''trust and fiduciary exception'') permits a bank, under certain conditions, to effect securities transactions in a trustee or fiduciary capacity without being registered as a broker.[142] A bank must effect such transactions in its trust department, or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards.[143] In addition the bank must be ''chiefly compensated'' for such transactions, consistent with fiduciary principles and standards, on the basis of: (1) An administration or annual fee; (2) a percentage of assets under management; (3) a flat or capped per order processing fee that does not exceed the cost the bank incurs in executing such securities transactions; or (4) any combination of such fees.[144]

Banks relying on this exception may not publicly solicit brokerage business, other than by advertising that they effect transactions in securities in conjunction with advertising their other trust activities.[145] In addition, a bank that effects a transaction in the United States of a publicly traded security under the exception must execute the transaction in accordance with Exchange Act Section 3(a)(4)(C).[146] This Section requires that the bank direct the trade to a registered broker-dealer for execution, effect the trade through a cross trade or substantially similar trade either within the bank or between the bank and an affiliated fiduciary in a manner that is not in contravention of fiduciary principles established under applicable federal or state law, or effect the trade in some other manner that the Commission permits.[147] The trust and fiduciary exception recognizes the

[134] Rule 701(a)(2)(iv).

[135] One commenter requested that the rule provide a similar safe harbor for broker-dealers. *See* SIFMA Letter. Any obligations of a broker-dealer that arise by reason of Rule 701 run only to its bank partner under the terms of their agreement and the Agencies believe the issue of contractual liability between the parties is best addressed by the parties themselves. As stated in the proposal, the Commission anticipates that it may be necessary for either FINRA or the Commission to propose a rule that would require broker-dealers to comply with the written agreements entered into pursuant to Rule 701.

[136] Proposed Rule 701(d)(4).

[137] *See, e.g.,* Clearing House Ass'n Letter and JPMorgan Letter.

[138] *See* NASAA Letter.

[139] Rule 701(d)(4)(ii).

[140] Rule 701(d)(4)(i). A referral fee paid under the exemption may be contingent on whether the customer opens an account with the broker-dealer or executes one or more transactions in the account during the initial phases of the account.

[141] Rule 701(c).

[142] 15 U.S.C. 78c(a)(4)(B)(ii).

[143] *Id.*

[144] 15 U.S.C. 78c(a)(4)(B)(ii)(I).

[145] 15 U.S.C. 78c(a)(4)(B)(ii)(II).

[146] 15 U.S.C. 78c(a)(4)(C).

[147] 15 U.S.C. 78c(a)(4)(C)(i)–(iii). As discussed *infra* at Part VI.C, the Agencies have adopted Rule 775 that permits banks, subject to certain conditions, to effect trades in securities issued by an open-end company and certain variable insurance contracts without sending the trade to a registered broker-dealer. Trades effected by a bank in accordance with Rule 775 are conducted in accordance with Section 3(a)(4)(C) of the Exchange Act.

traditional securities role banks have performed for trust and fiduciary customers and includes conditions to help ensure that a bank does not operate a securities broker in the trust department.

The proposed rules provided that a bank would meet the ''chiefly compensated'' condition in the trust and fiduciary exception if the bank's relationship compensation attributable to each trust or fiduciary account exceeded 50 percent of the total compensation attributable to the relevant account.[148] The proposed rules also included an exemption that would permit a bank to use a bank-wide approach to the ''chiefly compensated'' condition as an alternative to the account-by-account approach. A bank using this proposed alternative would be able to use the aggregate relationship and total compensation that the bank received from its trust and fiduciary business as a whole to monitor its compliance with the chiefly compensated test. The proposed rule allowed a bank to use this bank-wide alternative if, among other things, the bank's aggregate relationship compensation attributable to its trust or fiduciary business as a whole equaled or exceeded 70 percent of the total compensation attributable to its trust or fiduciary business. This bank-wide alternative was designed to simplify compliance, alleviate concerns about inadvertent noncompliance, and reduce the costs and disruptions banks likely would incur under the account-by-account approach.

The proposal defined the term ''relationship compensation'' to mean the types of trust and fiduciary compensation specifically identified in the trust and fiduciary exception. The proposed rules also provided examples of fees that would be considered an administration fee or a fee based on a percentage of assets under management for these purposes. For example, the proposed rules provided that fees paid by an investment company pursuant to a plan under 17 CFR 270.12b–1 (''12b–1 fees'') or for personal service or the maintenance of shareholder accounts (''service fees'') would be considered relationship compensation under the rules. The proposed rules also implemented the statute's advertising restriction and provided certain other conditional exemptions.

[148] Proposed Rule 721.

B. Joint Final Rules

1. ''Chiefly Compensated'' Test and Bank-Wide Exemption Based on Two-Year Rolling Averages

A majority of commenters supported the general approach taken in the proposed rules implementing the trust and fiduciary exception, including the proposed bank-wide alternative for the chiefly compensated test. For example, a number of commenters stated that the proposed bank-wide approach would provide banks an improved, workable and flexible method of complying with the statutory exception.[149] Some commenters, however, opposed either the account-by-account or bank-wide alternative to the ''chiefly compensated'' requirement. For example, some commenters argued that the account-by-account approach was inconsistent with the terms and purposes of the trust and fiduciary exception.[150] Another commenter argued that an account-by-account approach to the chiefly compensated test is the only way to help ensure that a bank does not operate a brokerage business out of its trust or fiduciary departments and, for this reason, recommended that the Agencies eliminate the bank-wide alternative.[151] Some commenters also requested that the Agencies lower the 70 percent relationship compensation/total compensation percentage required by the bank-wide exemption to 60 percent or 50 percent to make it more consistent with the percentage required by the account-by-account approach.[152]

After carefully considering the comments, the Agencies have retained the two alternative approaches in substantially the same form as proposed. Specifically, Rule 721 provides that a bank meets the ''chiefly compensated'' condition in the trust and fiduciary exception if the ''relationship-total compensation percentage'' for each trust or fiduciary account of the bank is greater than 50 percent.[153] The ''relationship-total compensation percentage'' for a trust or fiduciary account is calculated by (1) Dividing the relationship compensation attributable to the account during each of the immediately preceding two years by the total compensation attributable to the account during the relevant year; (2) translating the quotient obtained for each of the two years into a percentage; and (3) then averaging the percentages obtained for each of the two immediately preceding years.[154]

The final rules (Rule 722) also allow a bank to use a bank-wide approach to the ''chiefly compensated'' condition as an alternative to the account-by-account approach. To use this bank-wide methodology, the bank must meet two conditions. First, the ''aggregate relationship-total compensation percentage'' for the bank's trust and fiduciary business as a whole must be at least 70 percent.[155] The ''aggregate relationship-total compensation percentage'' of a bank operating under the bank-wide approach is calculated in a similar manner as the ''relationship-total compensation percentage'' of an account under the account-by-account, except that the calculations would be based on the aggregate relationship compensation and total compensation received by the bank from its trust and fiduciary business as a whole during each of the two immediately preceding years. In other words, the percentage would be determined by (1) Dividing the relationship compensation attributable to the bank's trust and fiduciary business as a whole during each of the immediately preceding two years by the total compensation attributable to the bank's trust and fiduciary business as a whole during the relevant year; (2) translating the quotient obtained for each of the two years into a percentage; and (3) then averaging the percentages obtained for each of the two immediately preceding years.[156] Second, the bank must comply with the conditions in the trust and fiduciary exception (other than the compensation test in Section 3(a)(4)(B)(ii)(I)) [157] and comply with Section 3(a)(4)(C) (relating to trade execution) of the Exchange Act.[158]

The Agencies believe that providing banks these two alternatives is consistent with the purposes of the trust and fiduciary exception. In this regard, the availability of these two alternatives is designed to avoid disrupting the trust and fiduciary operations of banks. The

[149] *See, e.g.*, ABA Letter, Roundtable Letter, U.S. Trust Letter, WBA Letter.

[150] *See, e.g.*, Clearing House Ass'n Letter.

[151] *See* NASAA Letter.

[152] *See* ACB Letter, CBA Letter.

[153] Rule 721(a)(1).

[154] The rule provides for this process to be accomplished by calculating the ''yearly compensation percentage'' and the ''relationship-total compensation percentage'' for the account. *See* Rule 721(a)(2) and (3).

[155] Rule 722(a)(2).

[156] The rule provides for this process to be accomplished by calculating the ''yearly bank-wide compensation percentage'' and the ''aggregate relationship-total compensation percentage'' for the bank's trust and fiduciary business as a whole. *See* Rule 722(b) and (c).

[157] The Agencies have modified the bank-wide exemption to clarify that these conditions include the advertising restrictions contained in the trust and fiduciary exception as implemented by Rule 721(b). *See* Rule 722(a)(1).

[158] Rule 722(a)(1).

compensation tests in both the account-by-account and bank-wide approaches are designed to ensure that a bank's trust department is not unduly dependent on the types of securities-related compensation not permitted by the statute. The 70 percent compensation threshold in the bank-wide exemption is higher than that required under the account-by-account approach in order to compensate for the loss of particularity when the chiefly compensated test is implemented and monitored on a bank-wide basis, rather than on an account-by-account basis. The Agencies note that several commenters also asserted that the proposed aggregate relationship compensation-total compensation percentage required by the bank-wide alternative (70 percent) would not disrupt the trust and fiduciary operations or customer relationships of banks in light of the proposal's definition of ''relationship compensation.''

Some commenters asked that the Agencies modify how the bank-wide exemption could be applied in several ways. For example, some asserted that a bank should be allowed to apply the 70 percent compensation threshold separately to each individual fiduciary business line, operating unit or geographic region of the bank, rather than only on an aggregate bank-wide basis. Others asked that the Agencies allow a bank to use an aggregate compensation approach only for some trust or fiduciary business lines and use the account-by-account approach for the bank's trust or fiduciary accounts in its remaining business lines.[159] In addition, some asked that a bank be permitted to monitor compliance with the 70 percent compensation test on a combined basis with its affiliated entities engaged in trust or fiduciary activities (such as an affiliated bank or a subsidiary or affiliate registered as an investment adviser).[160] Some commenters also asked the Agencies to modify the bank-wide approach to provide for a bank's relationship compensation-total compensation percentage to be calculated based on the compensation attributable to all of the bank's trust and fiduciary accounts rather than the compensation from the bank's ''trust and fiduciary business.'' [161]

The Agencies believe that the bank-wide alternative as structured provides banks appropriate and adequate flexibility in conducting their trust and fiduciary operations while meeting the statute's goals. The bank-wide approach is designed to reflect both the relationship compensation and total compensation received by a bank through the conduct of its full range of trust or fiduciary services, and, thus, allow banks to avoid tracking their trust or fiduciary revenue back to one or more specific accounts. At the same time, the use of two uniform methodologies (account-by-account or bank-wide) should facilitate the review of bank compliance during the bank supervisory process and aid the development of software and related systems by banks and their service providers for compliance purposes. Furthermore, because the broker exceptions for a bank in Section 3(a)(4)(B), including the trust and fiduciary exception, apply to each bank individually and are not available to a nonbank entity, including a nonbank subsidiary or affiliate of a bank, the Agencies have not modified the rules to allow a bank to monitor its compliance with the compensation limit in Rule 721 on a combined basis with one or more affiliated banks, subsidiaries or affiliates. The Agencies also do not believe that requiring banks to monitor their compliance with the 70 percent compensation test on a bank-wide basis, rather than on an individual business line or operating unit basis, will impose significant additional burdens on banks.[162]

A bank has the flexibility to elect to use a calendar year or the bank's fiscal year for purposes of complying with the compensation provisions of either the account-by-account or bank-wide approach.[163] In addition, whether a bank decides to use the account-by-account approach or the bank-wide approach, the bank's compliance with the relevant compensation restriction is based on a two-year rolling average of the compensation attributable to the trust or fiduciary account or the bank's trust or fiduciary business, respectively. This two-year averaging is designed to allow for short-term fluctuations that otherwise could lead a bank to fall out of compliance with the exception or exemption from year-to-year.

Some commenters asked that the Agencies clarify when a bank must commence monitoring its compliance with the two-year rolling compensation test. As discussed *infra* in Part VI.F, a bank must comply with the exceptions in Section 3(a)(4)(B) of the Exchange Act and the final rules starting the first day of the bank's first fiscal year commencing after September 30, 2008. Thus, a bank that operates on a calendar-year basis must start monitoring its compliance with the compensation requirements on either an account-by-account or bank-wide basis beginning January 1, 2009, and would first have to meet the applicable compensation restriction after the conclusion of 2010 (based on the average of the bank's year-end compensation ratios for 2009 and 2010).[164] To allow banks sufficient time to obtain and verify the relevant compensation data, the Agencies have modified both the account-by-account approach and the bank-wide approach to provide banks up to 60 days after the end of a year to calculate their compliance with the relevant compensation restriction.[165] While the rules provide for a bank's compliance with the compensation tests to be determined based solely on calculations as of year-end, banks are encouraged to monitor their trust and fiduciary compensation on a regular basis as appropriate to identify and address potential compliance issues before the end of the relevant two-year period.

2. ''Relationship Compensation''

Both the account-by-account and bank-wide approaches are based on the ratio of the relationship compensation attributable to a trust or fiduciary account or a bank's trust and fiduciary business to the total compensation attributable to the account or business. The proposal defined the term ''relationship compensation'' to mean the types of trust and fiduciary compensation identified in the statute: an administration fee; an annual fee (payable on a monthly, quarterly or other basis); a fee based on a percentage

[159] *See* Clearing House Ass'n Letter.

[160] *See* Citigroup Letter, Clearing House Ass'n Letter, Mellon Bank, N.A. (''Mellon'') Letter, PNC Letter, ABA Letter.

[161] *See, e.g.*, ABA Letter, Joint ABA/ABASA/Clearing House Ass'n Letter of July 16, 2007, BISA Letter, Clearing House Ass'n Letter, Comerica Bank Letter.

[162] The Agencies note, for example, that a bank that operates under the bank-wide approach may use different systems across its trust or fiduciary business lines, units or regions to monitor its compensation within those business lines, units or regions, provided that such information is then aggregated on a bank-wide basis as provided in Rule 722.

[163] Proposed Rule 721(a)(6).

[164] This same schedule also would apply to a bank that operates on an October 1st to September 30th fiscal year, but that elects to use the calendar year for purposes of monitoring its compliance with the chiefly compensated test. The Agencies believe the delay and phased-in nature of the compensation tests should provide banks as a general matter sufficient notice and time to address potential compensation issues across the full range of their trust and fiduciary accounts, including personal and charitable accounts and estates. *See* Business Law Section Letter.

[165] *See* Rule 721(a)(3)(ii) and Rule 722(c)(2).

of assets under management; a flat or capped per order processing fee that is equal to not more than the cost incurred by the bank in connection with executing securities transactions for trust or fiduciary accounts; or any combination of these fees.[166] The proposed rules also provided examples of fees that would be considered an administration fee or a fee based on a percentage of assets under management for these purposes. For example, the proposed rules provided that 12b–1 fees,[167] service fees,[168] and fees for certain sub-transfer agent, sub-accounting or related services [169] paid by an investment company on the basis of assets under management would be considered relationship compensation under the rules.

The Agencies received numerous comments on the definition of relationship compensation. A number of commenters supported the definition including, in particular, the examples recognizing 12b–1 and service fees as relationship compensation. For example, some commenters stated that treating these fees as relationship compensation is consistent with the terms and purposes of the trust and fiduciary exception and ''critical'' to ensuring that the rules do not disrupt the trust and fiduciary operations and customer relationships of banks.[170] Other commenters, however, argued that all 12b–1 fees, or the portion of such fees paid for distribution expenses, should be excluded from relationship compensation.[171] These commenters asserted that treating 12b–1 fees as relationship compensation would allow banks to have a ''salesman's stake'' in their customers'' securities transactions in contravention of the purposes of the statute, result in the disparate treatment of banks and registered investment advisers, and create confusion as to how 12b–1 fees should be treated under other aspects of the federal securities laws and rules of the NASD (now FINRA).

In addition, many commenters asked that the Agencies clarify whether additional types of fees not mentioned in the proposed rules would qualify as relationship compensation. For example, commenters asked the Agencies to confirm that fees separately charged a trust or fiduciary customer for custodial services and fees charged or earned in connection with securities lending and borrowing transactions conducted for a trust or fiduciary customer are relationship compensation.

After carefully considering the comments, the Agencies have retained, consistent with the statute, the definition of relationship compensation as any compensation that a bank receives that is attributable to a trust or fiduciary account and that consists of (1) an administration fee, (2) an annual fee (payable on a monthly, quarterly or other basis), (3) a fee based on a percentage of assets under management (an ''AUM fee''), (4) a flat or capped per order processing fee, paid by or on behalf of a customer or beneficiary, that is equal to not more than the cost incurred by the bank in connection with executing securities transactions for trust or fiduciary accounts; or (5) any combination of these fees.[172]

The final rules also continue to list all 12b–1 fees that are paid on the basis of assets under management and attributable to a trust or fiduciary account (under the account-by-account test) or the bank's trust and fiduciary business as a whole (under the bank-wide test) as examples of AUM fees that are relationship compensation. The Agencies believe that treating 12b–1 fees in this manner is consistent with both the language and purposes of the trust and fiduciary exception. When paid on the basis of a percentage of assets under management these fees fall within the types of fees expressly permitted by the trust and fiduciary exception. 12b–1 fees that are paid on the basis of assets under management also are distinguishable from the types of non-relationship compensation, such as front-end or back-end sales loads [173] or per-order transaction fees that exceed a bank's costs, that are limited by the statute's chiefly compensated test.

Treating 12b–1 fees in this manner also will avoid significant disruptions to the trust and fiduciary operations of banks and, when viewed in light of other provisions and protections, is consistent with investor protection. Many bank trust and fiduciary departments, particularly those that act as a corporate trustee or as a trustee or fiduciary for employee benefit plans, receive a significant portion of their trust and fiduciary compensation through payments made under a 12b–1 plan.

Importantly, as provided in the trust and fiduciary exception, all 12b–1 fees received by a bank must be consistent with the fiduciary principles and standards governing the bank-customer relationship,[174] and the bank's compliance with these principles and standards will continue to be regularly examined by bank examiners during the bank supervisory and examination process. In addition, the treatment of 12b–1 fees that are paid on the basis of assets under management and service fees as ''relationship compensation'' for purposes of the trust and fiduciary exception and related rules does not affect the treatment of such fees under other provisions of the federal securities laws, the federal banking laws, applicable trust or fiduciary principles and standards, or the rules of an SRO. Thus, for example, the treatment of 12b–1 fees that are paid on the basis of assets under management and service fees as relationship compensation for purposes of these rules does not alter or affect the

[166] Proposed Rule 721(a)(4).

[167] Proposed Rule 721(a)(4)(iii)(A).

[168] Proposed Rule 721(a)(4)(iii)(B).

[169] *See* Proposed Rule 721(a)(4)(i) and (iii)(C). Specifically, these fees, which are hereinafter referred to as ''sub-transfer agent and related fees'' are paid for (1) providing transfer agent or sub-transfer agent services for the beneficial owners of investment company shares; (2) aggregating and processing purchase and redemption orders for investment company shares; (3) providing the beneficial owners with account statements showing their purchases, sales, and positions in the investment company; (4) processing dividend payments to the account for the investment company; (5) providing sub-accounting services to the investment company for shares held beneficially in the account; (6) forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or (7) receiving, tabulating, and transmitting proxies executed by the beneficial owners of investment company shares in the account.

[170] *See* Joint ABA/ABASA/Clearing House Ass'n Letter of June 7, 2007.

[171] *See* NASD Letter, NASAA Letter.

[172] Rule 721(a)(4). For banks operating under the bank-wide alternative, fees of these types are relationship compensation if they are attributable to the bank's trust or fiduciary business as a whole. *See* Rule 722(c)(1).

[173] A front-end sales charge is a charge that is used to finance sales or sales promotion expenses and that is included in the public offering price of the shares of an investment company. A deferred sales charge is an amount properly chargeable to sales or promotional expenses that is paid by a shareholder of an investment company after purchase of the company's shares but before or upon redemption. *See* FINRA Rule 2830(b)(8)(B) and (c); 17 CFR 270.6c–10.

[174] Section 802(f) of the Uniform Trust Code, for example, provides that a trustee may receive compensation from an investment company in which the trustee has invested trust funds and receipt of such compensation will not be presumed to represent a conflict of interest if the investment otherwise complies with the jurisdiction's prudent investor rule. *See* Uniform Trust Code, § 902(f) and related comment (2005). In addition, a bank's receipt of 12b–1 fees from an employee benefit plan for which the bank acts as a fiduciary is governed by the Employee Retirement Income Security Act (''ERISA'') and the regulations and guidance issued by the Department of Labor thereunder. *See* 29 U.S.C. 1001 *et seq.*; DOL Advisory Opinion 2003–09A (June 25, 2003) (discussing conditions under which a directed trustee may receive 12b–1 fees under ERISA).

treatment of, or limitations imposed on, these fees under FINRA Rule 2830.[175]

In light of the comments received, the Agencies have modified Rule 721 to provide additional examples of the types of fees that qualify as relationship compensation under the statute and the rules. For example, the Agencies have modified the rule to include, as additional examples of an administration fee, compensation received by a bank (1) for disbursing funds from, or for recording payments to, a trust or fiduciary account; (2) in connection with securities lending and borrowing transactions conducted for a trust or fiduciary account; and (3) for custody services provided to a trust or fiduciary account (whether or not separately charged).[176] In addition, the Agencies have included (1) as an example of an annual fee, an annual fee paid for assessing the investment performance of a trust or fiduciary account or for reviewing such an account's compliance with applicable investment guidelines or restrictions, and (2) as an example of an assets under management fee, a fee based on the financial performance, such as capital gains or capital appreciation, of trust or fiduciary assets under management. The Agencies believe the characterization of these fees comports with the manner in which banks generally receive compensation for these services. Several commenters noted that banks currently may receive 12b–1 fees, service fees or sub-transfer agent and related fees either directly from a mutual fund or from the fund's distributor, transfer agent, administrator or adviser.[177] In light of these comments, the Agencies have eliminated the language in the proposed rules that required that these types of fees be ''paid by an investment company.''

The examples of an administration fee, annual fee and an asset under management fee included in Rule 721(b) are provided only for illustrative purposes. Other types of fees or fees for other types of services could be an administration fee, annual fee or an AUM fee. In addition, an administration fee, annual fee or assets under management fee attributable to a trust or fiduciary account or a bank's trust or fiduciary business is considered relationship compensation regardless of what entity or person pays the fee, and regardless of whether the fee is related to only securities assets, to a combination of securities and non-securities assets, or to only non-securities assets. These fees are part of the compensation for acting as a trustee or fiduciary.

Some commenters asserted that a bank should be permitted to include within its relationship compensation any per-transaction securities processing fee it charges as a directed trustee or in another fiduciary capacity even if the fee exceeds the bank's costs in processing the transaction.[178] The statute, however, expressly provides that a per-order securities processing fee may be counted towards the statute's chiefly compensated requirement only if the fee is ''equal to not more than the cost incurred by the bank in connection with executing securities transactions'' for its trust or fiduciary customers. For this reason, the Agencies have not modified the rule in the manner requested.

However, as discussed further in Part V, the Agencies have modified the custody exemption (Rule 760) to permit banks that accept securities orders as a directed trustee to do so under that exemption in lieu of the trust and fiduciary exception and related rules. In addition, as the Agencies explained in the proposal, a per order processing fee included in relationship compensation may include the fee charged by the executing broker-dealer as well as any additional fixed or variable costs incurred by the bank in processing the transaction. If a bank includes any such additional fixed or variable costs in the per order processing fees it includes in its relationship compensation, the bank should maintain appropriate policies and procedures governing the allocation of these costs to the orders processed for trust or fiduciary customers. This should help ensure that profits derived from per trade charges are not masked as costs of processing the trades and thereby included in relationship compensation.

3. Excluded Compensation

A number of commenters asserted that the revenues derived from securities transactions conducted by a bank for a trust or fiduciary customer under a *different* exception or exemption (such as the exemption provided in Rule 771 for transactions in Regulation S securities) should be excluded from the account-by-account or bank-wide compensation test completely.[179] Others asked that certain other types of fees, such as internal credits from other areas of the bank, credits received from broker-dealers for brokerage or research services in accordance with Section 28(e) of the Exchange Act, or revenues earned from providing trust or fiduciary services to mutual funds, be excluded from the chiefly compensated calculation as well.

As discussed in Part I.C *supra*, if more than one ''broker'' exception or exemption is available for a securities transaction effected by a bank for a customer, the bank may choose the exception or exemption on which it relies in effecting the transaction. In light of the comments received, the Agencies have modified Rules 721 and 722 to explicitly provide that, if a bank effects a securities transaction for a trust or fiduciary customer in accordance with the terms of an exception or exemption other than Rule 721 or Rule 722, the bank may, at its election, exclude the revenues associated with those transactions from the applicable relationship-total compensation calculation in Rule 721 or Rule 722.[180] As the rules provide, if a bank elects to exclude the revenues associated with transactions conducted under another exception or exemption, the bank must exclude such revenue from *both* the bank's relationship compensation (if the compensation would otherwise qualify as relationship compensation) and total compensation. Of course, the bank also must comply with the conditions applicable to the other available exception or exemption on which the bank chooses to rely.[181]

In addition, compensation that is not derived from the provision of trust or fiduciary services should not be

[175] The rules also do not alter or affect the ability of a nonbank registered investment adviser to receive 12b–1 fees under the federal securities laws or the rules of an SRO. The ''broker'' exceptions for banks in Section 3(a)(4)(B) of the Exchange Act, including the trust and fiduciary exception, are not available to nonbank entities such as nonbank investment advisers.

[176] Rule 721(a)(4)(i)(B), (C) and (D). Because securities lending/borrowing fees and custody fees may be charged on an assets under management basis, the rule also provides that these fees are relationship compensation when charged in this manner. Rule 721(a)(4)(iii)(E). As with other types of relationship compensation, the fees that a bank receives for effecting securities lending/borrowing transactions for a trust or fiduciary account must be consistent with applicable fiduciary principles and standards.

[177] *See* Investment Company Institute (''ICI'') Letter, Federated Investors, Inc. (''Federated Investors'') Letter.

[178] *See*, *e.g.*, Wells Fargo & Company (''Wells Fargo'') Letter, State Street Corp. Letter, Mellon Letter.

[179] *See*, *e.g.*, Institute of Int'l Bankers (''IIB'') Letter, Clearing House Ass'n Letter.

[180] Rule 721(b) and Rule 722(d).

[181] Some commenters asserted that a bank should be allowed to include in its relationship compensation *all* of the revenue from securities transactions conducted for a trust or fiduciary account under another exception or exemption, regardless of whether that revenue otherwise qualifies as relationship compensation. The Agencies have not amended the rule in this manner as it is inconsistent with the terms of the trust and fiduciary exception which sets forth the types of fees that are included in relationship compensation.

included in a bank's relationship or total compensation under either the account-by-account or bank-wide alternative. Such compensation includes, for example, (1) revenue earned by a trust or fiduciary department from providing back-office services to an affiliated or unaffiliated party,[182] (2) revenue from the sale of an office or assets of the trust department, or from the provision on a stand-alone basis of other services (such as custody services or the sale of portfolio management software to a third party that independently operates and uses the software in connection with its own business) that do not involve trust or fiduciary services as defined in section 3(a)(4)(D) of the Act; and (3) internal payments or credits allocated to a bank's trust or fiduciary department or unit from another department or unit of the bank for deposits and other similar services not involving a security. Credits received by a bank from a broker-dealer for brokerage and research services provided by a broker-dealer in accordance with section 28(e) of the Act (15 U.S.C. 78bb(e)) and the regulations issued thereunder also should be excluded from the compensation tests. The Agencies do not believe these credits constitute compensation to the bank for purposes of the exception and rules because these credits must be reasonable in relation to the value of the brokerage and research provided by the broker-dealer in connection with the bank's exercise of investment discretion for its fiduciary accounts.

4. Trust or Fiduciary Accounts

The final rules, like the proposal, define a trust or fiduciary account as an account for which the bank acts in a trustee or ''fiduciary capacity'' as that term is defined in Section 3(a)(4)(D) of the Exchange Act.[183] This definition is based on the definition of ''fiduciary capacity'' in part 9 of the OCC's regulations, which relates to the trust and fiduciary activities of national banks, in effect at the time of enactment of the GLB Act.

Section 3(a)(4)(D) identifies a number of particular situations where a bank serves in a fiduciary capacity.[184] The definition also provides that a bank acts in a ''fiduciary capacity'' if it acts ''in any other similar capacity'' to those specifically identified. Accordingly, the scope of the term ''fiduciary capacity'' is not fixed in time.

The Agencies recognize, moreover, that different nomenclature may be used to identify a fiduciary capacity in the relevant governing documents or state laws. For example, the Uniform Probate Code uses the term ''Personal representative'' and similar successor titles in place of the terms ''executor'' or ''administrator'' to identify the representative of a decedent; the Uniform Custodial Trust Act uses the terms ''Conservator'' and ''Custodial trustee'' to refer to persons that act as a fiduciary for another person who has become incapacitated; and the Uniform Transfers to Minors Act uses both the terms ''Conservator'' and ''Custodian'' to refer to fiduciaries that act on behalf of a minor.[185]

Some commenters asked whether a bank that engages in trust or fiduciary activities may conduct securities transactions under the trust and fiduciary exception and related rules even if the bank does not maintain a separate trust department or has not had to obtain formal trust powers from its appropriate federal banking agency.[186] The trust and fiduciary exception and related rules do not require that a bank effecting securities transactions for a customer in a trust or fiduciary capacity do so through a separate trust department or have obtained formal trust powers from its appropriate federal banking agency. However, securities transactions conducted for a trust or fiduciary customer under the exception and related rules must be effected in a department of the bank ''that is regularly examined for compliance with fiduciary principles and standards'' by the bank's appropriate federal or state banking supervisor.[187] As stated in the proposal, the Agencies will rely on the appropriate federal banking agency for a bank to determine whether the bank's activities are conducted in the bank's trust department or other department regularly examined by the agency's examiners for compliance with fiduciary principles and standards.[188]

5. Exemptions for Special Accounts, Foreign Branches, Transferred Accounts, and a De Minimis Number of Accounts

The Agencies also proposed a rule (Proposed Rule 723) that would permit a bank to exclude certain types of accounts for purposes of determining its compliance with the account-by-account or bank-wide compensation tests. As proposed, Rule 723 allowed a bank, in calculating its compensation under either approach, to exclude compensation received from any trust or fiduciary account open only for a short period of time (less than 3 months) or acquired within the past 12 months as part of a merger or similar transaction. In addition, the Proposed Rule allowed a bank using the account-by-account approach, subject to certain conditions, to (1) exclude the lesser of 1 percent or 500 of its trust or fiduciary accounts in a year from the chiefly compensated test, and (2) transfer any trust or fiduciary account ultimately determined to be non-conforming to a registered broker-dealer or an unaffiliated entity exempt from registration within 3 months of the end of the relevant year.

Commenters generally favored these exemptions. One commenter, however, argued that these exemptions should be eliminated because they would allow banks to manipulate the chiefly compensated test.[189] Several commenters also requested that the Agencies adopt an additional exemption

[182] On the other hand, the revenue derived from providing fiduciary services to investment companies or companies affiliated with the bank should be included in the relevant chiefly compensated calculation.

[183] Rule 721(a)(5).

[184] Section 3(a)(4)(D) of the Exchange Act provides that a bank acts in a ''fiduciary capacity'' if, among other situations, the bank has investment discretion on behalf of another. Thus, for example, if a bank has investment discretion over an escrow account on behalf of another, the bank would be acting in a ''fiduciary capacity'' with respect to the account.

[185] The text of and additional information on these Uniform Codes and Acts, which are developed under the auspices of the National Conference of Commissioners of Uniform State Laws (''NCCUSL''), may be found on NCCUSL's Web site at *http://www.nccusl.org*.

[186] *See*, *e.g.*, ACB Letter, Roundtable Letter. Federal savings associations, for example, are not required to obtain approval from their appropriate federal banking agency to act as a trustee for an individual retirement account under section 408(a) of the Internal Revenue Code. *See* 12 CFR 550.580.

[187] 15 U.S.C. 78c(a)(4)(B)(ii); Rule 722(a)(1). A bank effecting transactions for trust or fiduciary customers through a department examined for compliance with trust or fiduciary principles may use other divisions or departments of the bank, or other affiliated or unaffiliated third parties, to handle aspects of these transactions. The bank must continue to act in a trustee or fiduciary capacity with respect to the account and, accordingly, should exercise appropriate diligence in selecting persons to provide services to the bank's trust or fiduciary customers and in overseeing the services provided in accordance with the bank's fiduciary obligations. No party, other than the bank (including, without limitation, a transfer agent or investment adviser), working in conjunction with the bank may rely on the bank's exception or exemption from ''broker'' status. To the extent that any such third party performs activities that would make that entity a broker under Section 3(a)(4) of the Exchange Act that entity would be required to register as a broker (in the absence of an applicable exemption or regulatory relief) notwithstanding any written or unwritten agreement the third party may have with the bank.

[188] The OTS, for example, is in the process of revising its examination procedures to provide for the regular examination of individual retirement accounts held by a federal savings association as trustee for compliance with fiduciary principles and standards.

[189] NASAA Letter.

permitting banks to exclude trust and fiduciary accounts held at a foreign branch of a bank from the chiefly compensated tests.[190] These commenters contended that few, if any, of the trust and fiduciary accounts of a foreign branch (other than an offshore ''shell'' branch servicing U.S. branches of the bank) likely are to be held by or on behalf of a U.S. person and, accordingly, the costs of applying the chiefly compensated test to the foreign branches of a U.S. bank would significantly outweigh any potential benefits to U.S. persons. After carefully considering these comments, the Agencies have adopted, without change, the exemptions included in Proposed Rule 723. In addition, the Agencies have adopted a new conditional exemption (Rule 723(c)) for trust and fiduciary accounts held at a foreign branch of a bank.

Rule 723(a) permits a bank that uses either the account-by-account or bank-wide compensation test to exclude any trust or fiduciary account that was open for a period of less than 3 months during the relevant year.[191] Rule 723(b) permits a bank to exclude, for purposes of determining its compliance with either compensation test, any trust or fiduciary account that the bank acquired from another person as part of a merger, consolidation, acquisition, purchase of assets or similar transaction by the bank for 12 months after the date the bank acquired the account from the other person.[192] A bank that elects to use Rule 723(a) or (b) for one or more accounts must exclude both the relationship compensation and total compensation attributable to such accounts for purposes of the applicable compensation test.

Rule 723(c) provides a new exemption under which a bank using the bank-wide approach may exclude for purposes of the chiefly compensated test the trust or fiduciary accounts held at a ''non-shell'' foreign branch of the bank, provided that the bank has reasonable cause to believe that the trust or fiduciary accounts of the foreign branch held by or for the benefit of a U.S. person constitute less than 10 percent of the total trust or fiduciary accounts of the foreign branch.[193] The rule provides that a bank will be deemed to have reasonable cause to believe that less than 10 percent of the total number of trust or fiduciary accounts of the foreign branch are held by or for the benefit of a U.S. person if the principal mailing address for the accountholder(s) and beneficiary(ies) of the account is not in the United States, or the records of the foreign branch indicate that the accountholder(s) and beneficiary(ies) of the account is not a U.S. person as defined in 17 CFR 230.902(k).

The rule defines a ''non-shell foreign branch'' of a bank to mean a branch of the bank that is located outside the United States and provides banking services to residents of the foreign jurisdiction in which the branch is located, and for which the decisions relating to day-to-day operations and business of the branch are not made by an office of the bank located in the United States.[194] The Agencies believe this exemption provides appropriate relief to banks with respect to foreign branches where the records of the bank indicate that it is not significantly engaged in providing trust or fiduciary services to U.S. customers.

Rule 723(e) permits a bank using the account-by-account approach to exclude, for purposes of the chiefly compensated test, the lesser of (1) 1 percent of the total number of trust or fiduciary accounts held by the bank; or (2) 500 accounts.[195] To rely on this exemption with respect to an account, the bank must not have relied on this exemption for such account during the immediately preceding year.[196] In addition, the bank must maintain records demonstrating that the securities transactions conducted by or on behalf of the excluded account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.[197]

The Agencies believe these exclusions reduce administrative burdens and facilitate compliance. A bank, consistent with its fiduciary duties, may need to conduct a higher level of securities transactions for a trust or fiduciary account at certain times, such as shortly after the account is established or acquired from another person or shortly before the account is closed.[198] The exclusions in Rule 723(a), (b) and (d) are designed to help prevent such short-term fluctuations in the amount of securities transactions conducted for a trust or fiduciary account from distorting, or causing a bank to fail, the relevant compensation test. At the same time, these exclusions promote compliance by requiring that the bank bring the relevant accounts into compliance within a short and prescribed period of time. For this reason, the Agencies do not believe it would be appropriate to expand the Rule 723(d) to allow a bank to exclude an account from the chiefly compensated test in consecutive years as requested by some commenters. Some commenters also asked the Agencies to raise the 500 account maximum in Rule 723(d) to avoid discriminating against large banks.[199] The Agencies expect that most banks that have more than 50,000 trust and fiduciary accounts, and thus would be subject to the 500 account cap in Rule 723(d), will operate under the bank-wide test and for this reason have not made the requested change.

Rule 723(c) also provides that a bank that uses the account-by-account approach will not be considered a broker for purposes of Section 3(a)(4) of the Exchange Act solely because a particular trust or fiduciary account does not meet the ''chiefly compensated'' test if, within 3 months of the end of the year in which the account fails to meet such standard, the bank transfers the account or the securities held by or on behalf of the account to a registered broker-dealer or another unaffiliated entity (such as an unaffiliated bank) that is not required to be registered as a broker-dealer.[200]

6. Advertising Restrictions

Proposed Rule 721(b) implemented the advertising restrictions in Section 3(a)(4)(B)(ii)(II) of the Act applicable to banks conducting securities transactions under the trust and fiduciary exception. No commenters opposed the advertising restrictions of the rule and the Agencies have adopted these restrictions as proposed. The final rules provide that a bank complies with the advertising restriction applicable under either Rule

[190] *See* ABA Letter, Clearing House Ass'n Letter, Joint ABA/ABASA/Clearing House Ass'n Letter of July 16, 2007.

[191] Rule 723(a).

[192] Rule 723(b).

[193] The Agencies expect that few, if any banks, that use the account-by-account approach to the chiefly compensated test will have foreign branches engaged in trust or fiduciary services and, accordingly, have limited the exemption to banks that use the bank-wide approach.

[194] This definition is designed to exclude branches that are established in certain offshore jurisdictions primarily to provide services to U.S. customers and, for this reason, are managed on a day-to-day basis from the United States.

[195] Rule 723(d). Under the rule, if a bank has less than 100 trust or fiduciary accounts in the aggregate, the bank may exclude 1 account under the exemption in any given year.

[196] Rule 723(d)(3).

[197] Rule 723(d)(1).

[198] For example, after a trust or fiduciary account is acquired or established, the bank may need to conduct a number of securities transactions to invest or rebalance the account's holdings in accordance with the terms of the agreement establishing the account or, in cases where the bank has investment discretion, to implement the bank's investment strategy for the account.

[199] *See*, *e.g.*, ACB Letter; Clearing House Ass'n Letter.

[200] Rule 723(c).

721 or 722 if advertisements by or on behalf of the bank do not advertise that the bank provides securities brokerage services for trust or fiduciary accounts except as part of advertising the bank's broader trust or fiduciary services, and do not advertise the securities brokerage services provided by the bank to trust or fiduciary accounts more prominently than the other aspects of the trust or fiduciary services provided to such accounts.[201]

An ''advertisement'' for these purposes means any material that is published or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, blast e-mail, or telephone directories (other than routine listings).[202] Other types of material or information that is not distributed through public media, such as mailings or e-mails to a bank's own customers, are not considered an advertisement. In addition, in considering whether an advertisement advertises the securities brokerage services provided to trust or fiduciary customers more prominently than the bank's other trust or fiduciary services, the nature, context and prominence of the information presented—and not simply the length of text or information devoted to a particular subject—should be considered.

IV. Sweep Accounts and Transactions in Money Market Funds

Exchange Act Section 3(a)(4)(B)(v) (''sweep exception'') excepts a bank from the definition of ''broker'' to the extent it ''effects transactions as part of a program for the investment or re-investment of deposit funds into any no-load, open-end management investment company registered under the Investment Company Act that holds itself out as a money market fund.'' [203] To provide banks with guidance on the sweep exception, Proposed Rule 740 defined several terms used in the exception, including the terms ''money market fund'' and ''no-load.'' [204] The Agencies also requested comment on a separate exemption (Proposed Rule 741) that would permit banks, without registering as a broker, to effect transactions in securities issued by a money market fund on behalf of a customer in a broader set of circumstances, subject to certain conditions.[205]

Most commenters that addressed Proposed Rules 740 and 741 supported the rules and Rule 741 in particular.[206] One commenter objected to the exemption in Rule 741 on the basis that it would permit banks to effect transactions in money market funds that did not meet the ''no-load'' requirements of the sweep exception.[207] Another commenter asked that the Agencies clarify whether a bank may effect transactions under the rules for deposits held by another bank.

A. Rule 740: Definition of Terms Used in Sweep Exception

As under the proposal, the final rule defines a ''money market fund'' for purposes of the sweep exception to mean an open-end investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is regulated as a money market fund pursuant to 17 CFR 270.2a–7.[208] In addition, consistent with FINRA rules, the final rule provides that a class or series of securities of an investment company will be considered ''no-load'' if (1) the class or series is not subject to a sales charge or a deferred sales charge; and (2) total charges against net assets of the class or series of securities for sales or sales promotion expenses, personal service, or the maintenance of shareholder accounts do not exceed 0.0025 of average net assets annually.[209] A bank may effect transactions under the sweep exception and Rule 740 as part of a program to sweep deposit funds of, or collected by, another bank into a no-load money market fund in accordance with the exception and the Rule.

B. Exemption Regarding Money Market Fund Transactions

After carefully considering the comments, the Agencies have adopted Rule 741, which permits banks, without registering as a broker, to effect transactions on behalf of a customer in securities issued by a money market fund under certain conditions.[210] To qualify for this exemption, the bank must provide the customer, directly or indirectly, some other product or service, the provision of which would not, in and of itself, require the bank to register as a broker-dealer under Section 15(a) of the Exchange Act.[211] Examples of other products or services that may be a qualifying ''other'' product or service include an escrow, trust, fiduciary or custody account, a deposit account or a loan or other extension of credit. The Agencies have modified the rule to also permit a bank to effect transactions under the exemption on behalf of another bank as part of a program for the investment or reinvestment of the deposit funds of, or collected by, the other bank.[212] This change is designed to allow banks to provide sweep services to other banks under the exemption, as they may do under the sweep exception itself.

The final exemption continues to allow banks to effect transactions only in securities of a registered money market fund. In addition, the rule continues to provide that, if the class or series of money market fund securities is not no-load (as defined in Rule 740), the bank may not characterize or refer to the class or series of securities as no-load *and* the bank must provide the customer, not later than at the time the customer authorizes the bank to effect the transactions, a prospectus for the securities.[213] The Agencies believe these conditions and limitations provide bank customers adequate protections in light of the limited nature of the transactions

[201] Rule 721(b).

[202] Rule 721(b)(2) (referencing Rule 760(g)(2)).

[203] *See* Exchange Act Section 3(a)(4)(B)(v) (15 U.S.C. 78c(a)(4)(B)(v)).

[204] Proposed Rule 740(b) and (c).

[205] Proposed Rule 741.

[206] *See, e.g.*, Federated Investors Letter, ICBA Letter, Clearing House Ass'n Letter, ABA Letter.

[207] *See, e.g.*, NASAA Letter.

[208] Rule 740(b). One commenter requested that Rule 740(b) be modified to allow banks to sweep deposits into an unregistered investment company that operates pursuant to Rule 12d1–1 under the Investment Company Act (17 CFR 270.12d1–1). *See* State Street Corp. Letter. The statutory sweep exception, however, provides only for deposit funds to be swept into an investment company ''registered under the Investment Company Act of 1940.'' Exchange Act Section 3(a)(4)(B)(v).

[209] *See* Rule 740(c); FINRA Rule 2830. Consistent with FINRA Rule 2830, charges for the following are not be considered charges against net assets of a class or series of an investment company's securities for sales or sales promotion expenses, personal service, or the maintenance of shareholder accounts: (1) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares; (2) Aggregating and processing purchase and redemption orders for Investment company shares; (3) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company; (4) Processing dividend payments for the investment company; (5) Providing sub-accounting services to the investment company for shares held beneficially; (6) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or (7) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares.

[210] Rule 741.

[211] Rule 741(a)(1)(A).

[212] Rule 741(a)(1)(B).

[213] Rule 741(a)(2)(ii). If a bank relies on the exemption to sweep the deposits of another bank into a money market fund that is not ''no-load,'' then neither the deposit-holding bank nor the sweeping bank may characterize the fund as a ''no-load'' fund, and either the deposit-taking bank or the sweeping bank must provide the customer with a prospectus for the fund within the time prescribed by the rule. *See* Rule 741(a)(2)(ii)(A) and (B).

permitted under the exemption.[214] In addition, the exemption recognizes that banks have long offered sweeps and other services that invest customer funds in money market funds that do not qualify as ''no-load'' funds under Commission and FINRA rules.

V. Safekeeping and Custody

A. Background

Section 3(a)(4)(B)(viii) of the Exchange Act provides banks with an exception from the ''broker'' definition for certain bank custody and safekeeping activities (''custody and safekeeping exception''). In particular, this exception allows a bank to perform the following activities as part of its customary banking activities without registering as a ''broker':

- Providing safekeeping or custody services with respect to securities, including the exercise of warrants and other rights on behalf of customers;
- Facilitating the transfer of funds or securities, as a custodian or a clearing agency, in connection with the clearance and settlement of its customers' transactions in securities;
- Effecting securities lending or borrowing transactions with or on behalf of customers as part of the above described custodial services or investing cash collateral pledged in connection with such transactions;
- Holding securities pledged by a customer to another person or securities subject to purchase or resale agreements involving a customer, or facilitating the pledging or transfer of such securities by book entry or as otherwise provided under applicable law, if the bank maintains records separately identifying the securities and the customer; and
- Serving as a custodian or provider of other related administrative services to any individual retirement account, pension, retirement, profit sharing, bonus, thrift savings, incentive, or other similar benefit plan.[215]

The proposed rules included an exemption to allow banks, subject to certain conditions, to accept orders for securities transactions from employee benefit plan accounts and individual retirement and similar accounts for which the bank acts as custodian.[216] In addition, the proposed exemption allowed banks, subject to certain conditions, to accept orders for securities transactions on an accommodation basis from other types of custody accounts.[217]

Some commenters contended that an exemption for custodial order-taking activity is unnecessary because, they argued, order-taking activity is permitted directly under the statutory exception.[218] Other commenters stated that the exemption was important because it would allow banks to continue to provide order-taking services to employee benefit plans and individual retirement accounts and similar accounts, or that the restrictions in the exemption were reasonable.[219] Another commenter, however, objected to the proposed exemption arguing that permitting custodial banks to take orders for securities is inconsistent with functional regulation.[220]

B. Rule 760: Custody Exemption

After carefully considering the comments, the Agencies have adopted Rule 760. The Agencies have crafted the exemption to allow banks to continue to accept securities orders in a custodial capacity and to permit bank customers to take advantage of those order-taking services subject to important conditions designed to limit the scope of the activity and provide appropriate investor protections. In this way, the Agencies believe the exemption is consistent with functional regulation and the purposes of the GLBA.

Rule 760 and the other final rules do not implement the statutory custody and safekeeping exception.[221] A bank does not need to rely on the custody exemption in Rule 760 to the extent the bank conducts other custodial activities permitted by Section 3(a)(4)(B)(viii)(I)(aa)–(ee) (*e.g.*, exercising warrants or other rights with respect to securities or effecting securities lending or borrowing transactions on behalf of custodial customers) or another of the final rules (*e.g.*, Rule 772, which permits banks to effect securities lending or borrowing transactions on behalf of certain non-custodial customers).[222] In addition, a bank would not have to rely on Rule 760 to the extent the bank holds securities in custody for a customer and provides clearance and settlement services to the account in connection with such securities, but the bank does not accept orders for securities transactions for the account or engage in other activities with respect to the account that would require the bank to be registered as a broker.

The following discusses the scope and terms of the custody exemption.

1. Order-Taking for Employee Benefit Plan Accounts and Individual Retirement or Similar Accounts

We are adopting, largely as proposed, the sections of Rule 760 providing that a bank will not be considered a broker to the extent that, as part of its customary banking activities, the bank accepts orders to effect transactions in securities in an ''employee benefit plan account'' or an ''individual retirement account or similar account'' for which the bank acts as a custodian.[223] The rule defines an ''employee benefit plan account'' as a pension plan, retirement plan, profit sharing plan, bonus plan, thrift savings plan, incentive plan, or other similar plan, and provides a number of non-exclusive examples of plans that meet this definition.[224] The rule defines an ''individual retirement account or similar account'' to mean an

[214] Some commenters requested that the prospectus-delivery requirement be eliminated or modified so that delivery is required before a transaction is effected rather than before the customer authorizes the transaction. *See*, *e.g.*, ABA Letter, Clearing House Ass'n Letter, and HSBC Bank Letter. The final rule retains this requirement to ensure that a customer receives notice that its funds are to be invested in a fund that is not ''no-load'' before the customer authorizes the transaction(s). If a customer's funds are invested in a no-load fund and the bank is authorized, under the terms of its agreement with the customer to alter the specific fund into which the customer's balances are invested, the bank should provide the customer a prospectus for any money market fund that is not a ''no-load'' fund prior to the date on which the bank first invests the customer's balances in the fund.

[215] 15 U.S.C. 78c(a)(4)(B)(viii).

[216] Proposed Rule 760(a).

[217] Proposed Rule 760(b).

[218] *See*, *e.g.*, Union Bank Letter, Harris Bank Letter, Clearing House Ass'n Letter, ABA Letter.

[219] *See*, *e.g.*, The Charles Schwab Corp. (''Schwab'') Letter, ICBA Letter.

[220] *See* NASAA Letter.

[221] The Agencies asked for comment on whether the Agencies should adopt rules to implement the statutory custody and safekeeping exception. No commenters requested that the Agencies do so at this time.

[222] One commenter asserted that a bank would not ''accept'' a securities order if it received the order from a custodial customer and at the customer's request transmitted the order to a broker-dealer selected by the customer. *See* Union Bank Letter. Such activities, however, constitute ''accepting'' a securities order for purposes of Rule 760 and a bank engaged in such activities for a custodial customer must comply with Rule 760 unless some other exception or exemption is available for the transaction (*e.g.*, Section 3(a)(4)(B)(x) of the Act if the transaction involves municipal securities).

[223] *See* Rule 760(a).

[224] Rule 760(h)(4). The rule provides that the term ''employee benefit plan account'' includes, without limitation, an employer-sponsored plan qualified under Section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)), a governmental or other plan described in Section 457 of the Internal Revenue Code (26 U.S.C. 457), a tax-deferred plan described in Section 403(b) of the Internal Revenue Code (26 U.S.C. 403(b)), a church plan, governmental, multi-employer or other plan described in Section 414(d), (e) or (f) of the Internal Revenue Code (26 U.S.C. 414(d), (e) or (f)), an incentive stock option plan described in Section 422 of the Internal Revenue Code (26 U.S.C. 422); a Voluntary Employee Beneficiary Association Plan described in Section 501(c)(9) of the Internal Revenue Code (26 U.S.C. 501(c)(9)), a non-qualified deferred compensation plan (including a rabbi or secular trust), a supplemental or mirror plan, and a supplemental unemployment benefit plan.

individual retirement account as defined in Section 408 of the Internal Revenue Code (26 U.S.C. 408), a Roth IRA as defined in Section 408A of the Internal Revenue Code (26 U.S.C. 408A), a health savings account as defined in Section 223(d) of the Internal Revenue Code (26 U.S.C. 223(d)), an Archer medical savings account as defined in Section 220(d) of the Internal Revenue Code (26 U.S.C. 220(d)), a Coverdell education savings account as defined in Section 530 of the Internal Revenue Code (26 U.S.C. 530), or other similar account.[225]

A number of commenters supported these definitions of ''employee benefit plan account'' and ''individual retirement account or similar account.'' [226] The Agencies note that both definitions, by their terms, encompass ''other similar'' plans or accounts. So, for example, similar plans or accounts, such as ''lifetime savings accounts,'' that are established under the Internal Revenue Code in the future would be employee benefit plan accounts or individual retirement accounts or similar accounts for purposes of the rule. In addition, the term ''employee benefit plan account'' includes a non-U.S. plan that meets the definition of an employee benefit plan account.

Under the final rules, a bank relying on the employee benefit plan and individual retirement and similar account provisions must comply with the advertising and sales literature limitations in paragraphs (a)(2) and (3), the employee compensation limitations in paragraph (c), and the other conditions in the paragraph (d) of the rule. These conditions are discussed below.

Some commenters asked that the Agencies permit a bank to accept securities orders for other types of accounts that may involve custody of securities, such as accounts for which the bank acts as escrow agent, issuing and paying agent, tender agent, or disbursement agent, subject to the conditions applicable to employee benefit plan accounts and individual retirement and similar accounts, rather than the expanded set of conditions applicable to accommodation orders accepted for other types of custody accounts. The provisions in Rule 760(a) for employee benefit plan accounts and individual retirement and similar accounts are designed to reflect the extent and manner in which banks provide order-taking services for these types of accounts. In addition, these provisions take account of the special mention of these accounts in the custody and safekeeping exception [227] and the additional protections to which these accounts typically are subject under the ERISA, the Internal Revenue Code, and other applicable law. For these reasons, the Agencies have not expanded Rule 760(a) to cover accounts other than employee benefit plan accounts and individual retirement and other similar accounts. Banks may continue to accept orders from other types of accounts for which the bank acts as a custodian under the accommodation provisions of the rule.

a. Employee Compensation Restrictions

We are adopting the employee compensation restrictions in Rule 760(c) as proposed. These restrictions apply when a bank, acting in a custodial capacity, accepts a securities order for an employee benefit plan account or an individual retirement account or similar account under paragraph (a) of the rule, and when a bank accepts a securities order for another type of custodial account under paragraph (b) of the rule. Under these restrictions, if a bank accepts securities orders pursuant to Rule 760, then no employee of the bank may receive compensation (including a fee paid pursuant to a 12b–1 plan) from the bank, the executing broker-dealer, or any other person that is based on: (1) Whether a securities transaction is executed for the account; or (2) the quantity, price, or identity of the securities purchased or sold by the account. These restrictions are designed to be consistent with banking practices and reduce the financial incentives a bank employee might have to encourage a customer to submit securities orders to the bank and use a custody account as the functional equivalent of a securities brokerage account.

Only a few commenters addressed the employee compensation restrictions of the rule. For example, one commenter asserted that the rule should permit a bank to compensate its employees based on the potential revenues associated with a custodial account, including revenues received from processing securities transactions or from a mutual fund in which the account is invested.[228] In addition, a commenter expressed concern that the restrictions would prohibit employees from receiving bonuses based on the total revenues derived from the custodial accounts for which the employee is responsible.

As the Agencies noted in the proposal, the employee compensation restrictions in Rule 760(c) do not prohibit a bank employee from receiving compensation that is based on whether a customer establishes a custodial account with the bank, or that is based on the total amount of assets in a custodial account at account opening or at any other time. Moreover the rule expressly provides that the employee compensation restrictions do not prevent a bank employee from receiving payments under a bonus or similar plan that are permissible under the exception in Rule 700(b)(1) as if a referral had been made by the bank employee, or from receiving any compensation described in Rule 700(b)(2) of the networking rules.[229]

Thus, for example, the rule does prohibit a bank from directly passing on to an employee a portion or percentage of the 12b–1 fees received by the bank from a custody account's investment in a mutual fund, or a portion of a fee that is charged only when, or that varies based on whether, a securities transaction is executed for the account. A bank employee may receive payments under a bonus or similar plan rule that includes within its allocation pool the revenues generated by one or more custodial accounts if the plan meets the criteria for a discretionary, multi-factor bonus program in Rule 700(b)(1), or the bonus program is based on the overall profitability or revenues of the bank, an affiliate, or operating unit and the program complies with the requirements of the safe harbor in Rule 700(b)(2). If a bank's compensation practices are inconsistent with these limitations, the bank may not rely on the exemption to take securities orders in a custodial capacity.

b. Advertisements and Sales Literature

As under the proposed rule, final Rule 760(a)(2) provides that a bank relying on the exemption may not advertise that it accepts orders for securities transactions for employee benefit plan accounts or individual retirement accounts or similar accounts for which the bank acts as custodian, except as part of advertising the other custodial or

[225] Rule 760(h)(5).

[226] *See, e.g.,* ABA Letter, Clearing House Assn. Letter, WBA Letter.

[227] *See* Section 3(a)(4)(B)(viii)(I)(ee) of the Exchange Act.

[228] *See, e.g.,* Wells Fargo Letter.

[229] Because the employee compensation restrictions relate to securities transactions conducted in the relevant custody account, they would not prevent a bank employee from receiving a referral fee for referring the customer to a broker-dealer to engage in securities transactions at the broker-dealer that are unrelated to the custody account in accordance with the networking exception or the institutional customer and high net worth customer exemption (Rule 701) for networking arrangements.

safekeeping services the bank provides to these accounts.[230] The bank also may not advertise that such accounts are securities brokerage accounts or that the bank's safekeeping and custody services substitute for a securities brokerage account.[231] Moreover, advertisements and sales literature for individual retirement or similar accounts that are issued by or on behalf of the bank may not describe the securities order-taking services provided by the bank to these accounts more prominently than the other aspects of the custody or safekeeping services the bank provides.[232]

One commenter indicated that these advertising restrictions were reasonable.[233] Another commenter suggested that these advertising limitations should not apply to certain advertisements for which a broker-dealer takes compliance responsibility.[234] The advertising and sales literature restrictions are designed to help prevent a bank from operating a brokerage business out of its custody department and, for this reason, apply to all advertisements and sales literature issued by or on behalf of a bank, whether or not a broker-dealer has some compliance responsibility with respect to the advertisement or sales literature. These limitations would not, however, apply to the advertisements or sales literature that a registered broker-dealer may make to inform the public or others about the availability of brokerage services from the broker-dealer.

c. Other Conditions

A bank that accepts orders for a securities transaction for an employee benefit plan account or individual retirement account or similar account also must comply with the conditions set forth in paragraph (d) of the Rule.[235] These conditions are discussed below in Part V.B.3.[236]

2. Order-Taking as an Accommodation for Other Types of Accounts

The proposed rule also permitted banks to continue to accept securities orders for custodial accounts other than employee benefit plan and individual retirement and similar accounts as an accommodation to the customer, subject to certain conditions designed to help ensure that these services continue to be provided only as an accommodation to customers and that a bank does not operate as a securities broker out of its custody department. While commenters generally supported permitting banks to accept securities orders for other custodial accounts on an accommodation basis, several commenters asked the Agencies to modify or clarify the scope or terms of the exemption, including the meaning of ''accommodation'' and the prohibition on providing investment advice, research, and recommendations.

The Agencies are adopting, largely as proposed, the provisions of the rule permitting banks to accept orders as an accommodation for these other custodial accounts.[237] A bank relying on this part of the exemption must comply with the conditions discussed below.

a. Accommodation Basis

For the reasons stated in the proposing release, the final rule, like the proposal, permits a bank to accept securities orders for other types of custodial accounts only as an accommodation to the customer.[238] Some commenters suggested that the Agencies define the term ''accommodation'' in the rule to mean any trade that is effected solely on the request of the customer or on an unsolicited basis.[239] As noted in the proposal, the Banking Agencies will develop guidance to assist Banking Agency examiners in reviewing, as part of the agencies' ongoing risk-focused supervisory and examination process, the order-taking services provided to these custodial accounts. The guidance will describe the types of policies, procedures and systems that a bank should have in place to help ensure that the bank accepts securities orders for these custodial accounts only as an accommodation to the customer and in a manner consistent with the custody exemption.[240] As part of these reviews, Banking Agency examiners also will, consistent with the rule, consider the form and substance of the relevant accounts, transactions, and activities to prevent evasions of the requirements of the rule.[241] The Agencies believe this approach, rather than adopting by rule a definition of ''accommodation,'' is appropriate given the disparity in the types, characteristics and uses of other custody accounts, the size and operations of banks that provide these services and the manner in which they do so.

b. Employee Compensation Restrictions

For the reasons stated in the proposing release, final Rule 760(b)(2) continues to provide that a bank that accepts orders for other custody accounts must comply with the employee compensation limitations in paragraph (c) of the rule. These limitations were previously discussed in Part V.B.I.a., *supra.* [242]

c. Limitations on Bank Fees

The rule prohibits a bank that accepts accommodation orders for a custody account from charging or receiving any fee that varies based on (1) whether the bank accepted the order for the transaction or (2) the quantity or price of the securities to be bought or sold.[243] These restrictions do not prevent a bank from charging or receiving a fee that is based on the type of security purchased or sold by the account (*e.g.*, a foreign security), provided the fee complies with the conditions set forth in Rule 760(b)(3). Commenters did not raise concerns with these restrictions.

d. Advertising and Sales Literature Restrictions

Under the final rule, the bank's advertisements may not state that the bank accepts orders for securities transactions for a custodial account (other than an employee benefit plan or individual retirement account or similar account). In addition, the bank's sales literature: (1) May state that the bank accepts securities orders for such an account only as part of describing the other custodial or safekeeping services the bank provides to the account, and (2) may not describe the securities order-taking services provided to such an account more prominently than the other aspects of the custody or

[230] Rule 760(h)(2) defines an ''advertisement'' to mean material that is published or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).

[231] Rule 760(a)(2)(i) and (ii).

[232] Rule 760(a)(3). Rule 760(h)(6) defines ''sales literature'' to mean any written or electronic communication, other than an advertisement, that is generally distributed or made generally available to customers of the bank or the public, including circulars, form letters, brochures, telemarketing scripts, seminar texts, published articles, and press releases concerning the bank's products or services.

[233] *See* ICBA Letter.

[234] *See* UMB Bank, N.A. Letter.

[235] Rule 760(a)(1).

[236] The Agencies have made a technical change from the proposal to make clear that a bank operating under Rule 760(a) must comply with the conditions set forth in paragraph (d) as well as with the employee compensation limitations of paragraph (c). *See* Rule 760(a)(1). This should better clarify banks' responsibilities under these provisions, and the Agencies have made a conforming change to the text of Rule 760(b) relating to accommodation trades.

[237] Rule 760(b).

[238] Rule 760(b)(1).

[239] *See* Fiserv Trust Company Letter; Ass'n of Colorado Trust Companies Letter.

[240] *See* 71 FR at 77532–33.

[241] *See* Rule 760(f).

[242] Rule 760(b)(2).

[243] Rule 760(b)(3).

safekeeping services provided by the bank to the account.[244]

e. Investment Advice or Recommendations

The proposed rule imposed certain restrictions on the ability of a bank to provide investment advice or research concerning securities to an account for which it accepts accommodations orders, make recommendations concerning securities to the account, or otherwise solicit securities transactions from the account.[245]

Several commenters, expressed concerns with the proposed limitations on investment advice, research and recommendations. For example, commenters expressed concern that the restrictions would negatively affect a bank's ability to cross-market its trust, fiduciary or other services to custody customers.[246] Some expressed concern that the limitations would interfere with a bank's ability to share research with custody customers or make the bank's views concerning securities or markets available to the public through Web sites, mailings, interviews or other means.[247]

After carefully considering the comments received, the Agencies believe that no change is necessary to accommodate the cross-marketing of other bank services. Accordingly, we are adopting the provisions related to investment advice, research and recommendations without change. The Agencies note that the prohibitions do not prevent a bank from cross-marketing its trust, fiduciary or other services to its custody customers. A bank's marketing to custody account customers may—without violating the rule's general prohibition against providing advice, research or recommendations—include non-account specific information provided in media such as newsletters and websites. In addition, the advice, research, recommendation and solicitation prohibition does not prohibit a bank from providing samples of research, including stock-specific research, to custody customers that the bank provides to other persons for marketing purposes. Thus, the Agencies believe that banks will continue to be able to cross-market their products and services to their custody customers. A custody account, however, is not a fiduciary account, and a bank operating under Rule 760(b) with respect to a custodial account may not provide such samples in such a way or with such a frequency as to provide the custody account securities services that only are permissible for a trust or fiduciary customer. The bank, moreover, may not provide personalized investment advice, research or recommendations regarding particular securities to the custodial account for any reason.[248]

Some commenters questioned whether providing custody customers with a choice of investments from which to select would constitute providing investment advice.[249] Banks may use menus or other lists to make custodial customers aware of the securities available to them through the custodial account. For example, the restrictions in paragraph (b)(6) of the rule do not prevent a bank from providing its customers with an online menu of the mutual funds that the customer is able to purchase through the custody account.

The limitations and restrictions in Rule 760(b), including those relating to investment advice and recommendations, relate only to those custodial accounts for which the bank accepts securities orders on an accommodation basis. Thus, for example, these limitations would not apply to (1) an employee benefit plan account or an individual retirement account or similar account; or (2) a trust or fiduciary account maintained by a customer with a bank even if that customer also maintains a custodial account with the bank.

Commenters asked how the limitations on investment advice and research would apply when a customer has both a custody account and a separate trust or fiduciary account with a bank, and asked the Agencies to clarify that a bank would not violate the restrictions if the bank provides a trust or fiduciary customer with research or advice that the customer then uses to make orders through its custody accounts.[250] Rule 760(b)(6) prohibits banks from providing investment advice, research or recommendations concerning securities to, or soliciting securities transactions from, a custody account for which the bank accepts orders under the accommodation trade authority. The rule does not limit the types of research or other services a bank may provide to a customer's trust or fiduciary account, and the Agencies recognize that a bank may have no control over which account the customer uses to place any orders that result from such research or other services.

The final rule, like the proposal, continues to provide that, in order to prevent evasions of the custody exemption, the Agencies will consider both the form and substance of the relevant account(s), transaction(s) and activities (including advertising activities) in considering whether a bank meets the terms of the exemption.[251] For example, the Agencies will consider the content, format and frequency of any investment research provided to an accommodation custodial account in considering if such research in purpose or effect evades the restrictions in the rule or provides a custody account securities services that only are permissible for a trust or fiduciary customer. Similarly, a bank may not evade the rule's restrictions by providing an accommodation customer that has both a custody account and a trust or fiduciary account with investment advice, recommendations or research that is targeted to the securities held in the customer's custody account. For example, if a customer's custody account has a large position in a particular security and that security is not held in the customer's trust or fiduciary account, a bank may not routinely provide the customer with research focused on that security. Banks should have and maintain policies and procedures to abide by these limitations and bank examiners will review bank compliance with these limits in accordance with the risk-based supervisory and examination process, considering both the form and substance of the cross-marketing activities in applying the anti-evasion provisions of the rule.

The restrictions in Rule 760(b)(6) do not prohibit the bank from advertising its custodial services and disseminating sales literature that meets the conditions in the exemption.[252] These restrictions also will not prevent a bank employee from responding to customer inquiries regarding the bank's safekeeping and

[244] Rule 760(b)(5). One commenter urged the Agencies to abandon the prohibitions on advertising order-taking as an accommodation to other custodial accounts, arguing that the prohibition violates a bank's constitutional free speech rights. *See* CBA Letter. The Agencies believe these restrictions are appropriate to effectuate the purposes of the exemption and have tailored the restrictions to comply with the customary practices of banks and minimize potential disruptions. The Agencies specifically requested comments on the conditions of the rule, and no commenter indicated that the advertising restrictions on accommodation trade would materially disrupt their business or operations.

[245] Rule 760(b)(6).

[246] *See, e.g.,* Harris Bank Letter; U.S. Trust Letter.

[247] *See, e.g.,* PNC Letter; National City Corp. Letter.

[248] This would include providing personalized advice, research or recommendations concerning securities to the account in an effort to convert the account to another type of account, for goodwill or to obtain referrals.

[249] *See* Harris Bank Letter; PNC Letter.

[250] *See* ABA Letter; Harris Bank Letter.

[251] Rule 760(e).

[252] Rule 760(b)(6)(i).

custody services by providing advertisements or sales literature describing the safekeeping, custody and related services the bank offers (provided those advertisements and sales literature comply with the restrictions in the proposed exemption), a prospectus prepared by a registered investment company, sales literature prepared by a registered investment company or by the broker-dealer that is the principal underwriter of the registered investment company pertaining to the registered investment company's products, or information based on any of those materials.[253] The exemption allows a bank's employees to respond to customer inquiries concerning the bank's safekeeping, custodial or other services, such as inquiries concerning the customer's account or the availability of sweep or other services, so long as the bank does not provide investment advice or research concerning securities to the account or make a recommendation to the account concerning securities.[254]

3. Other Conditions Applicable to Order-Taking for All Custody Accounts

The proposed exemption provided that a bank may accept orders for a securities transaction for a custody account under the exemption only if the bank (1) does not act in a trustee or fiduciary capacity (as defined in section 3(a)(4)(D) of the Exchange Act) with respect to the account; (2) complies with section 3(a)(4)(C) of the Act in handling any order for a securities transaction for the account; and (3) complies with section 3(a)(4)(B)(viii)(II) of the Act regarding carrying broker activities.

a. Directed Trustees

Some commenters requested that the Agencies modify the exemption to allow a bank that acts as a directed trustee for an account to accept orders and effect transactions for the account under the custody exemption in Rule 760 in lieu of relying on the trust and fiduciary rules (Rule 721 to 723) for the transaction.[255] In light of the comments and the protections included in Rule 760, the Agencies have modified the final rule to provide that a bank that acts as a directed trustee for an account may rely on the custody exception to accept orders for, and effect transactions in, securities for the account.[256] If a bank acting as directed trustee relies on the rule to effect transactions for an employee benefit plan account or an individual retirement account or similar account, the bank must comply with the conditions in Rule 760(a). If a bank acting as directed trustee relies on the rule to effect transactions for another type of account, the bank must comply with the conditions governing accommodation accounts in Rule 760(b).

The rule defines a directed trustee as ''a trustee that does not exercise investment discretion with respect to the account.'' [257] The Agencies also have modified the definition of ''an account for which the bank acts as a custodian'' to include an account for which a bank acts as a directed trustee.[258] Although a bank acting as directed trustee for an account may effect transactions under the custody exemption, the bank's trustee relationship with the account remains a trust and fiduciary relationship and, as such, the bank must continue to comply with applicable fiduciary principles and standards in its relationships with the account.

b. Broker Execution Requirement

Consistent with the requirements of the custody and safekeeping exception, Rule 760(d)(2) requires a bank that accepts orders for a custody account under the rule to comply with Section 3(a)(4)(C) of the Exchange Act [259] in handling any order for a securities transaction for the account.[260] Under this provision, (i) the bank must direct the trade to a registered broker-dealer for execution, or (ii) the trade must be a cross trade or other substantially similar trade of a security that is made by the bank or between the bank and an affiliated fiduciary and is not in contravention of fiduciary principles established under applicable Federal or State law, or (iii) the trade must be conducted in some other manner permitted under rules, regulations, or orders as the Commission may prescribe or issue.

c. Carrying Broker Provisions

A number of commenters addressed the proposed provision limiting the availability of the custody exemption to banks that comply with Section 3(a)(4)(B)(viii)(II) of the Exchange Act [261] relating to carrying broker activities.[262] Some stated that the Agencies should define the term ''carrying broker'' by rule rather than by interpretation.[263] One commenter requested that we interpret the term based on the view that the essence of a carrying broker relationship is ''complete dependence'' of a broker-dealer on another entity for back office functions and execution.[264] Another commenter took the position that a custodian bank should not be deemed a carrying broker so long as ''it is not enabling'' broker-dealers to avoid the net capital requirements applicable to carrying brokers.[265] One commenter generally suggested that we either eliminate the carrying broker limitation from the proposed rules, or amend it to avoid affecting the ability of banks to undertake traditional banking activities.[266]

Section 3(a)(4)(B)(viii)(II) of the Exchange Act provides that a bank relying on the custody exception may not act as a ''carrying broker,'' as that term and different formulations of the term are used in Section 15(c)(3) of the Act and the underlying rules and regulations, for a broker-dealer other than with respect to government securities. Section 15(c)(3) of the Act in relevant part requires broker-dealers to comply with the Commission's regulations with respect to financial responsibility and related customer protection practices of broker-dealers.[267] The Commission's financial responsibility and customer protection rules expand on what it means to carry

[253] Rule 760(b)(6)(ii). ''Principal underwriter'' has the same meaning as in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)). Rule 760(h)(7).

[254] Rule 760(b)(6)(iii).

[255] *See* Teachers Insurance and Annuity Association of America and College Retirement Equities Fund (''TIAA–CREF'') Letter; ACB Letter; Roma Bank Letter. Commenters asserted, for example, that a bank acting as a directed trustee provides services that are functionally similar to those provided as a custodian and in either case does not have investment discretion with respect to the account.

[256] *See* Rule 760(d)(1). Alternatively, the bank may continue to effect transactions for the account under the rules relating to trust or fiduciary accounts.

[257] Rule 760(h)(3).

[258] *See* Rule 760(h)(1).

[259] 15 U.S.C. 78c(a)(4)(C).

[260] *See* Rule 760(d)(2).

[261] 15 U.S.C. 78c(a)(4)(B)(viii)(II). This provision prohibits a custodian bank from acting as a carrying broker (as such term, and different formulations thereof, are used in Exchange Act Section 15(c)(3) and the rules and regulations under that Section) for any broker-dealer, unless such carrying broker activities are engaged in with respect to government securities.

[262] Rule 760(d)(3).

[263] *See* ABA Letter; State Street Corp. Letter; PNC Letter.

[264] *See* Clearing House Ass'n Letter.

[265] *See* U.S. Trust Letter.

[266] *See* HSBC Bank Letter. In addition, a few commenters asserted that the description of potential carrying broker activity in prior rulemakings under the GLB Act would, if adopted, be highly problematic and disruptive for banks and broker-dealers. *See* Clearing House Ass'n Letter; ABA Letter.

[267] Exchange Act Section 15(c)(3)(A), 15 U.S.C. 78o(c)(3)(A).

customer securities.[268] In general, broker-dealers establish carrying arrangements in which other broker-dealers carry their accounts to permit the non-carrying broker-dealer to be subject to lesser financial responsibility requirements under the Exchange Act. A broker-dealer entering into such an agreement with a carrying entity that is not a registered broker-dealer, however, may not take advantage of those lesser requirements.[269]

After carefully considering the comments, the Agencies have retained this limitation as a condition of the custody exemption without change as it is a term of the statutory custody exception. Banks may look to certain key factors to help distinguish permissible custodial activity from impermissible carrying broker activity. In particular, key factors in considering whether the existence of shared customers between a broker-dealer and a bank may entail impermissible carrying broker activity by the bank are the broker-dealer's own regulatory obligations and whether the broker-dealer either makes formal or informal arrangements with the bank or structures its operations or offerings to cause the broker-dealer's customers generally (or one or more broad segments of the broker-dealer's customers) to use the bank's custody accounts instead of maintaining funds and securities in accounts at the broker-dealer (thereby avoiding the broker-dealer's financial and related responsibilities). The existence of a substantial number of common customers between a broker-dealer and a bank's custody department in the absence of such an arrangement or structure would not cause the bank to act as a carrying broker for the broker-dealer.

Similarly, a bank may perform or share systems that perform limited back-office functions on behalf of a broker-dealer without becoming a carrying broker for the broker-dealer. A broker-dealer, for example, may contract with an unregistered party such as a bank to send out transaction confirmations on behalf of the broker-dealer or have an arrangement with an affiliated bank to provide customers with combined statements, with the broker-dealer remaining responsible for the accuracy and completeness of those confirmations and the broker-dealer aspects of the statements. A bank and an affiliated broker-dealer also may share or coordinate risk management systems such as, for example, those relating to Bank Secrecy Act and anti-money laundering compliance.[270] A broker-dealer, however, may not delegate core functions to a bank or other unregistered entity or functions that would require an individual to pass a qualification examination or register with an SRO.[271] A broker-dealer also must maintain possession or control over the broker-dealer's proprietary cash or securities and its customers' cash or securities in accordance with the Commission's financial responsibility rules.[272] Of course, a bank may serve as custodian for proprietary or customer cash or securities of the broker-dealer and may accept and use in the ordinary course of its banking business cash deposited with the bank by the broker-dealer or its customers.[273]

4. Custodians, Subcustodians and Administrators/Recordkeepers

a. ''Account for which a bank acts as a custodian''

As a general matter, the exemption in Rule 760 is available only for an ''account for which the bank acts as a custodian.'' The proposed rule defined this term to mean an account that is: (i) An employee benefit plan account for which the bank acts as a custodian; (ii) an individual retirement account or similar account for which the bank acts as a custodian; or (iii) an account established by a written agreement between the bank and the customer that sets forth the terms that will govern the fees payable to, and rights and obligations of, the bank regarding the safekeeping or custody of securities.[274] As discussed in Part V.B.3.a *supra,* the Agencies have amended this definition in the final rule also to include an account for which a bank acts as a directed trustee.

A few commenters asked whether a bank performing custodial functions in a non-trustee and non-fiduciary capacity (such as escrow agent, fiscal agent or paying agent) may use the custody exemption even if it is not formally designated as ''custodian'' by the bank-customer agreement.[275] Whether a bank serves as custodian for the securities or other assets of an account depends on the services the bank provides to the account with respect to such securities or assets, not the label used to identify the account or the bank's services in the agreement between the bank and the customer. Thus, for example, a bank that acts as an escrow agent, fiscal agent or paying agent with respect to an account, and that provides safekeeping or custody services for the securities or other assets in the account, is considered to be a custodian for the account for purpose of the rule regardless of whether the account agreement uses the term ''custodian'' or any other particular language.

b. Administrators/Recordkeepers and Subcustodians

The proposed exemption permitted a bank acting as a non-fiduciary and non-custodial administrator or recordkeeper for an employee benefit plan to accept securities orders for the plan on behalf of a custodian bank.[276] Under the proposed exemption, both the administrator/recordkeeper bank and the custodial bank had to comply with the requirements relating to employee

[268] The Commission's net capital rule specifies that a broker-dealer shall be deemed to carry customer or broker-dealer accounts ''if, in connection with its activities as a broker or dealer, it receives checks, drafts, or other evidences of indebtedness made payable to itself or persons other than the requisite registered broker or dealer carrying the account of a customer, escrow agent, issuer, underwriter, sponsor, or other distributor of securities'' or ''if it does not promptly forward or promptly deliver all of the securities of customers or of other brokers or dealers received by the firm in connection with its activities as a broker or dealer.'' Exchange Act Rule 15c3–1(a)(2)(i)

The Commission's customer protection rule governing reserves and custody of securities defines the term ''securities carried for the account of a customer'' to mean ''securities received by or on behalf of a broker or dealer for the account of any customer and securities carried long by a broker or dealer for the account of any customer,'' as well as securities sold to, or bought for, a customer by a broker-dealer. Exchange Act Rule 15c3–3(a)(2).

[269] Within common securities industry usage, the terms ''carrying broker'' and ''clearing broker'' are virtually identical and often are used interchangeably. In certain instances, the terms mean a broker that, as part of an arrangement with a second broker (an ''introducing'' or ''corresponding'' broker), allows the second broker to be subject to lesser regulatory requirements (*e.g.*, under the net capital provisions of Exchange Act Rule 15c3–1 and the customer protection provisions of Exchange Act Rule 15c3–3). Technically, however, a ''carrying broker'' is a broker that holds funds and securities on behalf of customers, whether its own customers or customers introduced by another broker-dealer, and a ''clearing broker'' is a member of a registered clearing agency.

[270] Other examples of current permissible coordination arrangements between banks and broker-dealers include legal and compliance functions, accounting and finance functions (such as payroll and expense account reporting), information technology, operations functions (such as disaster recovery services), and administration functions (such as human resources and internal audits). *See* NASD Notice to Members 05–48 (July 2005) at 2.

[271] NASD Notice to Members 05–48 (July 2005), ''Outsourcing,'' provides guidance to member firms regarding the outsourcing activities and functions that, if performed directly by members, would be required to be the subject of a supervisory system and written supervisory procedures pursuant to NASD Rule 3010.

[272] *See e.g.*, Rules 15c3–1 and 15c3–3 [17 CFR 240.15c3–1, 15c3–3]. This is true even if the broker-dealer is not ''completely dependent'' on the bank for all back office functions and execution.

[273] *See* Rule 15c3–3(c)(5).

[274] Proposed Rule 760(g)(1).

[275] *See* Union Bank Letter, Wells Fargo Letter.

[276] Proposed Rule 760(e).

benefit plan accounts.[277] In addition, the proposed rule prohibited an administrator/recordkeeper bank from executing a cross-trade with or for the employee benefit plan or from netting orders for securities for the plan, other than orders for shares of open-end investment companies not traded on an exchange.[278]

A few commenters supported these provisions, but opposed the restrictions on cross-trading and netting.[279] One commenter maintained that the administrator/recordkeeper provisions should also be available to banks providing administrative services to individual retirement accounts.[280]

Some commenters also questioned whether or how the proposed exemption would apply to a bank that acts as a subcustodian for the trust or fiduciary or custody accounts of another bank. For example, some commenters asserted that a bank acting as a subcustodian for another bank's trust or fiduciary accounts should be permitted to accept orders for those accounts under the less restrictive conditions in Rule 760(a) regardless of the type of accounts actually involved.[281] Other commenters suggested that a subcustodian bank be permitted to effect trades for the accounts of the other bank with a direct custodial relationship with the customer under the same rules (*e.g.,* trust and fiduciary or custody), and subject to the same conditions, that would apply to the other bank if it conducted the transactions directly.[282] Commenters also noted that banks, and particularly smaller banks, at times use subcustodian arrangements with other banks to provide their customers custodial services more efficiently and at lower cost than they may be able to do on their own.

After carefully considering the comments, the Agencies have adopted Rule 760(e), which permits a bank that acts as a non-fiduciary and non-custodial administrator or recordkeeper for an employee benefit plan for which another bank acts as a custodian to accept orders for the account under Rule 760.[283] In addition, the Agencies have adopted a new paragraph (f) of the rule that permits a bank that acts as a subcustodian for any type of account for which another bank acts as custodian to accept orders for the account under Rule 760. This change was made in response to comments that greater flexibility and clarity was needed for banks that use, and banks that provide, subcustodial services. Under these provisions of the final rule, the administrator/recordkeeper bank or subcustodian bank, as well as the initial custodian bank for the account, must comply with the provisions of Rule 760 applicable to the type of account involved (*i.e.* employee benefit plan account, individual retirement account or similar account, or other types of accounts).[284]

The final rule generally prohibits a recordkeeper/administrator bank or subcustodian bank relying on the exemption from executing a cross-trade or netting orders with or for the relevant account.[285] However, the Agencies have expanded the exceptions to this general prohibition in light of the comments received. In particular, the final rule permits the administrator/recordkeeper bank or subcustodian bank to cross or net orders for shares of open-end investment companies not traded on an exchange.[286] In addition, the final rule permits the administrator/recordkeeper bank or subcustodian bank to cross orders between or net orders for accounts of the custodian bank that contracted with the administrator/recordkeeper bank or subcustodian bank for services.[287] Permitting this additional type of cross-trade and netting activity is consistent with the exceptions to broker execution requirement in section 3(a)(4)(C) of the Exchange Act and should allow cost-savings for the customer by eliminating the need for a broker intermediary. At the same time, by prohibiting an administrator/recordkeeper bank or subcustodian bank operating under the rule from executing cross-trades or netting orders among the accounts of *different* custodian banks to which it provides services will help prevent banks from establishing a market for securities under the exemption.

The Agencies note that these provisions do not apply to a bank that provides custody and order-taking services to the *trust or fiduciary* accounts of another bank. In these circumstances, the bank providing custodial services is treated as a custodian, and not a subcustodian, for purposes of the rule and may provide order-taking services to the account in accordance with the provisions of Rule 760(a) or (b) applicable to the type of account involved.

5. Evasions

The Agencies are adopting, as proposed, the provision that states the Agencies will consider both the form and substance of the relevant accounts, transactions and activities (including advertising activities) in considering whether a bank meets the terms of the exemption, to prevent evasions of the exemption.[288] We received no comments on this anti-evasion provision. As part of the regular risk-focused examination process, the Banking Agencies will monitor the securities transactions in custodial accounts. If the appropriate Banking Agency were to find that a bank is evading the terms of the custody exemption to run a brokerage business out of its custody department, the agency would take appropriate action to address the problem.

VI. Other Exemptions

The Agencies also are adopting certain other exemptions relating to the securities ''broker'' activities of banks. These are discussed below.

A. Exemption for Regulation S Transactions With Non-U.S. Persons and Broker-Dealers

We are adopting Rule 771 of Regulation R to exempt banks from the definition of ''broker'' under the Exchange Act for certain agency transactions involving Regulation S securities.[289] As with Rule 3a5–2 under

[277] Proposed Rule 760(e)(1).

[278] Proposed Rule 760(e)(2).

[279] *See* ABA Letter; Clearing House Ass'n Letter; CBA Letter. The commenters asserted that the cross-trading and netting restrictions were too restrictive and noted that section 3(a)(4)(C) of the Exchange Act permits bank custodians to engage in a broader range of cross-trade and netting activities.

[280] *See* CBA Letter.

[281] *See, e.g.,* ABA Letter, CBA Letter, PNC Letter, Schwab Letter.

[282] *See* TIAA–CREF Letter.

[283] The Agencies understand that the type of administrator/recordkeeper arrangements described in Rule 760(e) are not typically used with respect to accounts other than employee benefit plan accounts and, for this reason, have not expanded the paragraph to cover other types of accounts.

[284] *See* Rule 760(e)(1) and (f)(1) and (2). The Agencies made a technical change to Rule 760(e) to clarify that the administrator/recordkeeper bank and the custodial bank for employee benefit accounts need to comply only with the requirements in the rule applicable to employee benefit plan accounts and do not need to comply with the conditions applicable to accommodation trades.

[285] Rule 760(e)(2) and (f)(3).

[286] *See* Rule 760(e)(2)(i) and (f)(3)(i).

[287] *See* Rule 760(e)(2)(ii) and (f)(3)(ii).

[288] Rule 760(g).

[289] The Commission's Regulation S (17 CFR 230.901 *et seq.*) provides that offers and sales of securities conducted in accordance with the terms of the regulation will not be deemed to constitute an offer, offer to sell, sale or offer to buy within the United States for purposes of the securities registration requirements of Section 5 of the Securities Act. *See* 17 CFR 230.901. Specifically, Rule 903 of Regulation S provides that an offer or sale of securities by the issuer, a distributor, or an affiliate or a person acting on their behalf shall be deemed to occur outside the U.S. within the meaning of Rule 901 if the offer or sale is made in an offshore transaction (as defined in Rule 901), and no directed selling efforts are made in the U.S. by the issuer, a distributor, affiliate, or person acting

the Exchange Act, which the Commission separately is adopting to permit banks to engage in certain Regulation S transactions on a riskless principal basis without being ''dealers,'' Rule 771 recognizes that non-U.S. persons located outside the United States generally will not rely on the protections of the U.S. securities laws when purchasing Regulation S securities from U.S. banks, and that those persons may purchase the same securities from foreign banks located outside the U.S. without subjecting the foreign bank to U.S. broker-dealer registration.

Commenters generally supported the proposal while suggesting certain modifications and clarifications.[290] For example, commenters requested that the Agencies clarify that the exemption is available to banks both during and after any applicable distribution compliance period for the securities required by Regulation S, and allow banks to conduct resales of eligible securities for either non-U.S. persons or registered broker-dealers if the bank has a reasonable belief that the securities were initially sold in compliance with Regulation S.[291] In addition, some commenters argued that the exemption should not require a bank to comply with the resale restrictions in Rule 904 of Regulation S if the bank effects a resale of an eligible security in accordance with Rule 903 of Regulation S prior to the end of any applicable distribution compliance period for the security.[292] Commenters also urged the Agencies to make the proposed ''broker'' exemption in Regulation R and the ''dealer'' exemption proposed by the Commission as consistent as possible and to make both exemptions as consistent as possible with Regulation S.

The Agencies have modified the rule in several respects in light of the comments, to enhance its clarity and to better conform it to Regulation S. The final rule, like the proposed rule, continues to have three parts. The first part permits a bank to effect a sale of an eligible security in compliance with the requirements of Rule 903 of Regulation S to a purchaser who is not in the United States.[293] The term ''purchaser'' is defined to mean a person who purchases an eligible security and who is not a U.S. person under Rule 902(k) of Regulation S.[294]

The second part permits a bank to effect, by or on behalf of a person who is not a U.S. person under Rule 902(k) of Regulation S, a resale of an eligible security after its initial sale to a purchaser who is not in the United States or to a registered broker-dealer.[295] To take advantage of this second exemption, the bank (1) must have a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with Rule 903 of Regulation S, and (2) if the resale is made prior to any applicable distribution compliance period specified in Rules 903(b)(2) or (b)(3) of Regulation S, the resale must be made in compliance with the requirements of Rule 904 of Regulation S.[296]

The third part of the exemption permits a bank to effect, by or on behalf of a registered broker-dealer, a resale of an eligible security after its initial sale to a purchaser who is not in the United States.[297] As under the second part, the bank must have a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with Rule 903 of Regulation S and, if the resale is made prior to the expiration of any applicable distribution compliance period in Rules 903(b)(2) or (b)(3) of Regulation S, the bank must effect the resale in compliance with the requirements of Rule 904 of Regulation S. The proposed rule would have allowed a bank to rely on a reasonable belief that the security was sold in compliance with Regulation S only when it purchases a security from a non-U.S. person but not when it purchases a security from a broker-dealer. In light of comments received, the reasonable belief standard is also available under the final rule for a bank's transactions with a broker-dealer because the process of determining whether a security initially was issued in compliance with Regulation S should be similar whether the purchase is from a broker-dealer or a non-U.S. person.[298] As the rule makes clear, a bank effecting a resale of an eligible security under the exemption must effect the transaction in accordance with the conditions of Rule 904 if the transaction occurs during, but not after, any applicable distribution compliance period for the security under Rule 903(b)(2) or (b)(3) of Regulation S.

The final rule continues to require, however, that any sale effected under paragraph (b)(1) of the Rule, or resale effected under paragraphs (b)(2) or (b)(3) of the Rule (other than one to a registered broker-dealer), be to a ''purchaser who is not in the United States.'' This is true even if the applicable distribution compliance period for the overseas offering of the security under Regulation S has expired. Consistent with Regulation S, which permits the offshore resale of securities, the purpose of the exemption in Rule 771 is to permit U.S. banks to sell Regulation S securities to customers outside the United States. It does not permit banks to sell those securities domestically (other than to a registered

on their behalf. Other conditions may also apply depending on the place of incorporation and reporting status of the issuer, and the amount of U.S. market interest in the securities.

Rule 904 of Regulation S provides that an offer or sale of securities by any person other than the issuer, a distributor, an affiliate (except an officer or director who is an affiliate solely by virtue of that position) or person acting on their behalf will be deemed to occur outside the U.S. within the meaning of Rule 901 if the offer or sale is made in an offshore transaction (as defined in Rule 901), and no directed selling efforts are made in the U.S. by the seller, an affiliate or person acting on their behalf. Additional conditions apply in the case of resales of certain types of securities by dealers and persons receiving selling concessions, and in the case of resales by certain affiliates of the issuer or a distributor.

[290] *See* IIB Letter; ABA Letter; Clearing House Ass'n Letter.

[291] *See* IIB Letter; Clearing House Ass'n Letter. Rules 903(b)(2) and (b)(3) of Regulation S subject Category 2 securities and Category 3 debt securities to a 40-day distribution compliance period, and subject Category 3 equity securities to a one-year distribution compliance period, during which certain restrictions apply to offers or sales of the securities in order to preserve the foreign nature of the transactions. Under Rule 903 of Regulation S, Category 1 encompasses certain securities: (i) Issued by a foreign issuer, for which there is no substantial U.S. market interest, (ii) that are offered and sold in an overseas directed offering, (iii) that are backed by the full faith and credit of a foreign government, or (iv) that are offered and sold to employees of the issuer or its affiliates pursuant to certain foreign employee benefit plans. Category 2 encompasses securities, not eligible for Category 1, that are equity securities of a reporting foreign issuer, or debt securities of a reporting issuer or of a non-reporting foreign issuer. Category 3 applies to all offerings of securities that do not fall within Category 1 or 2.

[292] *See* IIB Letter.

[293] Rule 771(a)(1).

[294] Rule 771(b)(3). Rule 902(k) of Regulation S defines the term ''U.S. person'' to mean: (i) Any natural person resident in the U.S.; (ii) any partnership or corporation organized or incorporated under the laws of the U.S.; (iii) any estate of which any executor or administrator is a U.S. person; (iv) any trust of which any trustee is a U.S. person; (v) any agency or branch of a foreign entity located in the U.S.; (vi) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person; and (vii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the U.S., and (viii) any partnership or corporation if (A) organized or incorporated under the laws of any foreign jurisdiction, and (B) formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a) under the Securities Act) who are not natural persons, estates or trusts.

[295] Rule 771(a)(2).

[296] Rule 771(a)(2).

[297] Rule 771(a)(3).

[298] *See* IIB Letter and Clearing House Ass'n Letter.

broker-dealer).[299] For purposes of the exemption, an ''eligible security'' means any security other than a security that is being sold from the inventory of the bank or an affiliate of the bank or that is being underwritten by the bank or an affiliate of the bank on a firm-commitment basis unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.[300] Commenters requested that the Agencies clarify that the definition of ''eligible security'' would not prohibit a bank from effecting transactions under the exemption in securities that have been issued by the bank or an affiliate.[301] A security that is issued by a bank or an affiliate of a bank, such as a structured note or share in a pooled investment vehicle, may be an eligible security if it otherwise meets the terms of paragraph (b)(2) of Rule 771.

B. Exemption for Non-Custodial Securities Lending Transactions

The Agencies are adopting, as proposed, Rule 772 of Regulation R to provide banks engaged in certain securities lending transactions with a conditional exemption from the definition of ''broker.'' The exemption allows a bank to engage in securities lending transactions as agent in circumstances where the bank does not have custody of the securities or has custody of such securities for less than the entire period of the transaction. This exemption reinstates, without modification, an exemption that the Commission adopted previously.[302]

Most commenters that addressed the exemption supported its adoption.[303] One commenter opposed the exemption, arguing that securities lending and borrowing transactions should be conducted only by broker-dealers or, alternatively, banks providing such services should be subject to additional disclosure and customer approval requirements.[304] The Agencies continue to believe that the exemption is appropriate and necessary. The exemption enables sizable and sophisticated customers to divide custody and securities lending management between two expert entities when the customer decides such actions are in the customer's interest, and permits banks to continue to provide the types of non-custodial securities lending services that they currently provide without disruption. The Agencies note, moreover, that the statutory custody and safekeeping exception permits banks to effect securities lending transactions (and provide related securities lending services) when the bank has custody of the securities. A bank need not rely on the exemption in Rule 772 to engage in securities lending transactions when acting in this capacity.

Rule 772 provides that a bank is exempt from the broker definition to the extent that, as agent, it engages in or effects certain ''securities lending transactions'' [305] and ''securities lending services'' [306] in connection with such transactions.[307] The exemption applies only to securities lending activities with or on behalf of a person that the bank reasonably believes to be: (1) A qualified investor as defined in Section 3(a)(54)(A) of the Exchange Act;[308] or (2) any employee benefit plan that owns and invests, on a discretionary basis, not less than $25 million in investments. One commenter requested that the Agencies modify the rule to allow banks to engage in securities lending transactions under the exemption as agent for institutional customers that have less than $25 million in investments.[309] We have not amended the investment requirements, however, as we believe they are consistent with the nature of customers that utilize banks for non-custodial securities lending transactions.[310]

Another commenter suggested that the Agencies exempt banks involved, as agent, in securities repurchase and reverse repurchase transactions in non-exempt securities from the ''broker'' definition, stating that repurchase and reverse repurchase activities are functionally equivalent to securities lending.[311] As discussed in the accompanying release, moreover, a number of commenters also requested that banks be exempted from the ''dealer'' definition for repurchase and reverse repurchase agreement activities involving non-exempt securities they undertake in a principal capacity.[312] The Agencies have not acted on these requests at this time because we believe additional information from banks and other interested parties would be helpful in understanding the issues raised by these requests. For this reason, we invite comment on the following matters, as well as any other matters that interested parties believe may be relevant to the Agencies' consideration of the issues posed by the requests: (1) The nature, structure (including term and type of security involved), and purpose of repurchase and reverse repurchase agreements currently conducted with respect to non-exempt securities; (2) the types of customers

[299] The Agencies recognize that the ''offshore transaction'' condition in Rules 903 and 904 of Regulation S also require that the offer not be made to a person in the United States. *See* 17 CFR 230.902(h), 230.903(a)(1) and 230.904(a)(1). For this reason, one commenter stated that the rule simply should refer to sales to a ''purchaser,'' rather than to a purchaser who is outside the United States. *See* IIB Letter. The Agencies have retained the ''purchaser who is not in the United States'' language in the final rule, even for those transactions that must be conducted in accordance with Rule 903 or 904 of Regulation S, to highlight and reaffirm that these transactions must be with persons outside the United States.

[300] Rule 771(b)(1). For purposes of the rule, the term ''distributor'' has the same meaning as in Rule 902(k) of Regulation S (17 CFR 230.902(k)).

[301] *See* IIB Letter, ABA Letter.

[302] *See* Exchange Act Release No. 47364 (Feb. 13, 2003), 68 FR 8686 (Feb. 24, 2003) (adopting Exchange Act Rule 15a–11 to provide an exemption from the definitions of both ''broker'' and ''dealer'' for banks engaging in securities lending transactions). The broker provisions of the Rule 15a–11 exemption, which never became operable due to the temporary exemption applicable to all bank broker activities, will become void under the Regulatory Relief Act with the Agencies' adoption of a single set of final ''broker'' rules. *See* Pub. L. No. 109–351, § 101(a)(3), 120 Stat. 1968 (1999). In light of this, the Commission separately has amended Rule 15a–11 to remove the ''broker'' aspects of that rule. As discussed in the accompanying release, the Commission is re-adopting, without modification, the ''dealer'' portions of Rule 15a–11, as Exchange Act Rule 3a5–3. *See* Exchange Act Release No. 56502 (Sept. 24, 2007).

[303] *See, e.g.*, State Street Corp. Letter, PNC Letter, Mellon Letter, and ABA Letter.

[304] *See* NASAA Letter.

[305] Rule 772(b) defines the term ''securities lending transaction'' to mean a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

[306] Rule 772(c) defines the term ''securities lending services'' to mean: (1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower; (2) receiving, delivering, or directing the receipt or delivery of loaned securities; (3) receiving, delivering, or directing the receipt or delivery of collateral; (4) providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction; (5) investing, or directing the investment of, cash collateral; or (6) indemnifying the lender of securities with respect to various matters.

[307] Rule 772(a).

[308] 15 U.S.C. 78c(a)(54)(A). In part, this definition encompasses corporations and partnerships with at least $25 million in investments.

[309] *See* Union Bank Letter.

[310] *See, e.g.* Letter from Edward J. Rosen, Cleary, Gottlieb, Stein & Hamilton, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated Oct. 9, 2002 (requesting that the exemption encompass banks' securities lending activity involving any entity that owns and invests on a discretionary basis at least $25 million in investments).

[311] *See* Clearing House Ass'n Letter. Banks are permitted by statutory exception to engage in repurchase and reverse repurchase activities with respect to exempt securities such as government securities. Exchange Act Section 3(a)(5)(C)(i)(II).

[312] *See* Exchange Act Release No. [_____] (Sept. ____, 2007).

and financial institutions currently involved in repurchase and reverse repurchase agreements with respect to non-exempt securities; (3) the extent to and manner in which banks currently engage, as agent or principal, in repurchase and reverse repurchase agreements with respect to non-exempt securities; (4) recent developments or trends in the market for repurchase and reverse repurchase agreements with respect to non-exempt securities; (5) any material similarities or differences in the use, structure, customer base, or legal, regulatory, tax or accounting treatment of repurchase and reverse repurchase agreements with respect to non-exempt securities, on the one hand, and repurchase or reverse repurchase agreements with respect to exempt securities or securities lending transactions involving exempt or non-exempt securities. The information we receive through this process should help inform any future actions the Agencies may take in this area.

C. Exemption for Banks Effecting Certain Excepted or Exempted Transactions in Investment Company Securities and Variable Insurance Products

The Agencies are adopting Rule 775 of Regulation R to allow banks to take advantage of certain exceptions and exemptions to the broker definition for transactions involving mutual funds, variable annuity contracts and variable life insurance policies without having to comply with the broker-execution requirement of Exchange Act Section 3(a)(4)(C)(i).[313] The rule as proposed permitted banks to effect transactions in open-end mutual funds through the National Securities Clearing Corporation (''NSCC'') or the fund's transfer agent, rather than through a broker-dealer.

A number of commenters stated, however, that the exemption should be broadened to also encompass variable annuities and variable life insurance, with some commenters noting that only variable annuities and mutual funds are permissible investments for 403(b) plans.[314] Commenters noted that transactions in variable annuity and variable life products typically are effected directly with the relevant insurance company.[315]

In light of these comments, the Agencies have expanded the rule to cover transactions involving variable annuities and variable life insurance policies, as well as transactions involving mutual funds. Applying the exemption to transactions in variable insurance products, as well as to transactions involving mutual funds, will avoid needless disruptions and costs with respect to banks' transactions with customers in which interposing an executing broker-dealer would be inefficient, inconsistent with market practice and unnecessary for investor protection.

Specifically, Rule 775 as modified is available for transactions involving securities issued by an open-end company, as defined by Section 5(a)(1) of the Investment Company Act,[316] that is registered under that Act,[317] as well as variable insurance contracts funded by any separate account, as defined by Section 2(a)(37) of the Investment Company Act, that is registered under that Act. To take advantage of the exemption, the security must not be traded on a national securities exchange or traded through the facilities of a national securities association or an interdealer quotation system.[318] In addition, the securities must be distributed by a registered broker-dealer, or the sales charge must be no more than the amount permissible for a security sold by a registered broker-dealer pursuant to any applicable rules of a registered securities association.[319] Finally, the transaction must be effected through the NSCC, or directly with a transfer agent or with an insurance company or a separate account that is excluded from the definition of transfer agent in Section 3(a)(25) of the Exchange Act.[320]

D. Exemption for Certain Transactions involving a Company's Securities for its Employee Benefit Plans and Participants

In response to issues raised by a commenter, the Agencies are adopting an additional exemption (Rule 776) to permit banks that rely on certain exceptions and exemptions to effect certain transactions involving the securities of a company for the company's employee benefit plans and participants without complying with the broker-execution requirements of Exchange Act Section 3(a)(4)(C)(i).[321] The commenter stated that banks that act as trustee or custodian for the defined benefit or defined contribution plans of a company at times effect in-kind contributions, purchases and sales, and distribution transactions for the plan involving the securities of the company without the involvement of a broker-dealer. The commenter indicated that these transactions are effected through the company's transfer agent and that no commission is charged in connection with the transaction.[322]

In light of these comments, Rule 776 permits a bank utilizing particular exceptions and exemptions to effect a transaction in the securities of a company to do so directly with a transfer agent acting for the company, subject to four conditions. First, no commission may be charged with respect to the transaction.[323] Second, the transaction must be conducted solely for the benefit of an employee benefit plan.[324] Third, the security must be obtained directly from the company or an employee benefit plan of the company.[325] And fourth, the security must be transferred only to the company or an employee benefit plan of the company.[326] Securities obtained from, or transferred to, a participant in an employee benefit plan on behalf of the

[313] As discussed above, Section 3(a)(4)(C) generally provides that a bank effecting a transaction in any ''publicly traded security'' in the United States under the trust and fiduciary, stock purchase plan, or custody and safekeeping exception must direct the resulting trade to a broker-dealer for execution unless the trade is a cross trade or similar trade or the trade otherwise is permitted by Commission rule, regulation or order. 15 U.S.C. 78c(a)(4)(C). Rule 760, the exemption for order-taking by banks acting as custodians, also requires banks to comply with Section 3(a)(4)(C). *See* Rule 760(d)(2).

[314] *See* ABA Letter; TIAA–CREF Letter; American Council of Life Insurers Letters of March 26 (''ACLI March 26 Letter'') and August 2, 2007, Roundtable Letter, Business Law Section Letter, The Depository Trust & Clearing Corp. (''DTCC'') Letter.

[315] *See* ACLI March 26 Letter, DTCC Letter.

[316] Rule 775(b)(1). We note that banks may effect transactions in securities that meet the conditions to be an ''exempted security'' under Exchange Act Section 3(a)(12)(A)(iv) without complying with the exemption provided by Rule 775. Exchange Act Section 3(a)(4)(B)(iii)(II) permits banks to effect transactions involving ''exempted securities'' without registering as a broker and without effecting the transaction through a registered broker-dealer.

[317] Rule 775(b)(2).

[318] Rule 775(a)(1).

[319] Rule 775(a)(2). FINRA currently is the only registered securities association. FINRA Rule 2830 limits the sales charges associated with open-end mutual funds. Currently, there are no FINRA rules limiting the sales charges associated with the insurance securities subject to Rule 775. Therefore currently, in all cases, these insurance securities would satisfy the condition under Rule 775(a)(2) that the sales charge be no more than the amount permissible under applicable registered securities association rules.

[320] Rule 775(a)(3).

[321] *See* note 313 supra for a listing of the relevant exceptions and exemptions.

[322] *See* The Northern Trust Company Letter. The commenter further stated that ERISA effectively prohibits a commission from being charged in connection with in-kind contributions by a company of its stock to the company's benefit plans and direct purchases and sales by the company of its stock with the company's plans.

[323] Rule 776(a)(1).

[324] Rule 776(a)(2). For these purposes, an ''employee benefit plan'' is defined to mean any pension plan, retirement plan, profit sharing plan, bonus plan, thrift savings plan, incentive plan, or other similar plan. Rule 776(b).

[325] Rule 776(a)(3).

[326] Rule 776(d).

plan are considered to be obtained from, or transferred to, the plan.

We are adopting this rule because we believe that requiring banks to send these types of transactions to a broker-dealer for execution—as would be required to comply with Section 3(a)(4)(C)(i) of the Exchange Act—at times would preclude plans from engaging in these transactions, would disrupt existing practices and otherwise would introduce cost and complexity to those transactions without materially promoting functional regulation and investor protection.[327]

E. Temporary and Permanent Exemption for Contracts Entered Into by Banks From Being Considered Void or Voidable

The Agencies are adopting as proposed Rule 780, which grants one temporary and one permanent exemption from section 29(b) of the Exchange Act, which addresses inadvertent failures by banks that could trigger rescission of contracts between a bank and a customer.[328] Under the temporary exemption, no contract entered into before 18 months after the effective date of the exemption would be void or considered voidable by reason of Section 29 of the Exchange Act because any bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act, any other applicable provision of that Act, or the rules and regulations adopted under the Exchange Act based solely on the bank's status as a broker when the contract was created.[329]

Under the permanent exemption, no contract entered into is void or considered voidable by reason of Section 29(b) of the Exchange Act because any bank that is a party to the contract violated the registration requirements of Section 15(a) of the Exchange Act or the rules and regulations adopted thereunder based solely on the bank's status as a broker when the contract was created if two conditions are met. First, at the time the contract was created, the bank must have acted in good faith and had reasonable policies and procedures in place to comply with Section 3(a)(4)(B) of the Exchange Act, and the rules and regulations, thereunder. Second, any violation of the registration requirements by the bank must not have resulted in any significant harm, financial loss or cost to the person seeking to void the contract. This exemption is provided because a bank that is acting in good faith and has reasonable policies and procedures in effect at the time a securities contract is created should not be subject to rescission claims as a result of an inadvertent failure to comply with the requirements under Section 3(c)(4) of the Exchange Act if customers are not significantly harmed. One commenter supported the exemptions,[330] and no commenters objected to their adoption.

F. Extension of Time and Transition Period

The Agencies are further extending the time that banks have to come into compliance with the Exchange Act provisions relating to the definition of ''broker.'' Under the final rule, a bank is exempt from the definition of ''broker'' under Section 3(a)(4) of the Exchange Act until the first day of its first fiscal year commencing after September 30, 2008. This is an additional calendar quarter beyond the date (June 30, 2008) provided in the proposed rule. A bank that has a fiscal year based on the calendar year, for example, must comply with the new exceptions for banks and these rules beginning on January 1, 2009. Some commenters noted that banks and broker-dealers would need sufficient time to make the changes necessary to come into compliance with the statute and these rules.[331] The Agencies believe that the extension granted by the rule, which is a minimum of one year, should provide banks a reasonable period of time to come into compliance with these provisions.

The Administrative Procedure Act (''APA'') permits an agency to issue a rule without delaying its effective date for 30 days from the date of publication if, among other reasons, the rule is a substantive rule which grants or recognizes an exemption or relieves a restriction, or if the agency finds good cause and publishes its finding with the rule.[332] The Agencies find that this Rule 781 grants or recognizes an exemption or relieves a restriction and also that there is good cause for adopting Rule 781 without a delayed effective date because it is in the public interest that banks not unnecessarily incur costs to comply with the statutory exceptions and related rules before such exceptions and rules would become effective in accordance with Rule 781.[333]

VII. Finding That the Exemptions are Appropriate in the Public Interest and Consistent With the Protection of Investors

Section 36(a)(1) of the Exchange Act generally provides that the Commission may conditionally or unconditionally exempt any person or class of persons from any provision of the Exchange Act to the extent that an exemption is necessary or appropriate in the public interest and consistent with the protection of investors.[334] Taken as a whole, the exemptions will implement the bank broker provisions of the GLBA while providing banks with flexibility to structure their business models under conditions designed to preserve key investor protections, and therefore, as discussed above more fully, are appropriate in the public interest and consistent with the protection of investors.

VIII. Withdrawal of Proposed Regulation B and Removal of Exchange Act Rules 3a4–2 Through 3a4–6, and 3b–17

Under the Regulatory Relief Act, a final single set of rules or regulations jointly adopted by the Board and Commission in accordance with that Act shall supersede any other proposed or final rule issued by the Commission on or after the date of enactment of Section 201 of the GLBA with regard to the definition of ''broker'' under Exchange Act Section 3(a)(4).[335] Moreover, the law states that ''[n]o such other rule, whether or not issued in final form, shall have any force or effect on or after that date of enactment.''

In 2001, the Commission adopted Interim Rules discussing the way in

[327] The commenter also stated that banks acting as trustees and custodians at times directly effect transactions with and for different employee benefit plans involved in a corporate spin-off transaction with respect to company stock of both companies involved in the spin-off transaction. *See* Northern Trust letter. We understand that the same bank typically is the trustee or custodian for the different plans in such transactions and conducts such transactions through cross-trades within the bank. Accordingly, no additional exemption is required for these transactions.

[328] 15 U.S.C. 78cc(b). Exchange Act Section 29(b) provides, in pertinent part, that every contract made in violation of the Exchange Act or of any rule or regulation adopted under the Exchange Act (with certain exceptions) shall be void.

[329] Rule 780(a).

[330] ICBA Letter.

[331] *See, e.g.,* HSBC Securities Letter.

[332] The APA provides that publication of a substantive rule must be made not less than 30 days prior to its effective date, except ''(1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d).

[333] This finding also satisfies the requirements of 5 U.S.C. Section 808(2), which allows a rule to become effective immediately notwithstanding the requirements of 5 U.S.C. Section 801 if an agency ''for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''

[334] 15 U.S.C. 78mm(a)(1).

[335] President Clinton signed the GLBA into law on November 12, 1999.

which the Commission would interpret the GLBA.[336] The rules that address the definition of ''broker'' under Section 3(a)(4) of the Exchange Act (and applicable exemptions) are Exchange Act Rules 3a4–2 through 3a4–6 and Rule 3b–17.[337] In 2004, the Commission proposed to revise and restructure the ''broker'' provisions of the Interim Rules and codify them in a new regulation, proposed Regulation B, which would consist of proposed new Exchange Act Rules 710 through 781.[338] By operation of the Regulatory Relief Act, the joint adoption of these final rules by the Board and the Commission supersedes Exchange Act Rules 3a4–2 through 3a4–6, 3b–17, and proposed Rules 710 through 781. Any discussion or interpretation of these prior rules in their accompanying releases does not apply to this single set of rules adopted by the Agencies.

IX. Administrative Law Matters

A. Paperwork Reduction Act Analysis

Certain provisions of Rules 701, 723, and 741, contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[339] The Commission has submitted these information collections to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Board has reviewed the rules under authority delegated by OMB.[340]

The collections of information under Rules 701, 723, and 741 are new. The Commission's title for the new collection of information under Rule 701 is ''Rule 701: Exemption from the definition of 'broker' for certain institutional referrals.'' The Commission's title for the new collection of information under Rule 723 is ''Rule 723: Exemptions for special accounts, foreign branches, transferred accounts, and a *de minimis* number of accounts.'' The Commission's title for the new collection of information under Rule 741 is ''Rule 741: Exemption for banks effecting transactions in money market funds.'' The Commission's OMB control number for the three rules is 3235–0624. The Board's title for the new collection of information under Rules 701, 723, and 741 is ''Recordkeeping and Disclosure Requirements Associated with Regulation R'' (FR 4025). The Board's OMB control number will be 7100–0316. 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.[341] We received no comments on the paperwork reduction analysis in the proposal.

1. Rule 701

Rule 701 provides a conditional exemption from the requirements under the networking exception under the Exchange Act. This exemption permits bank employees to receive payment of more than a nominal amount for referring institutional customers and high net worth customers to a broker-dealer and permits such payments to be contingent on whether the customer effects a securities transaction with the broker-dealer.

a. Collection of Information

Rules 701(a)(2)(i), (a)(3)(i) and (b) require banks or their broker-dealer partners that utilize the exemption provided in this rule to make certain disclosures to high net worth or institutional customers. Specifically, these disclosures must clearly and conspicuously disclose (1) the name of the broker-dealer; and (2) that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker-dealer and payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer.[342] These requirements were modified from the proposal to permit timely oral disclosure of this information, followed by written disclosure, to better accommodate the variety of circumstances in which referrals may occur.

In addition, one of the conditions of the exemption is that the broker-dealer and the bank need to have a contractual or other written arrangement containing certain elements, including notification and information requirements.[343] Rule 701(a)(3)(v) requires the written agreement to obligate a broker-dealer to notify its bank partner if the broker-dealer determines that (1) the customer referred under the exemption is not a high net worth or institutional customer, as applicable; or (2) the bank employee making the referral is subject to statutory disqualification (as defined in Section 3(a)(39) of the Exchange Act).[344] In addition, Rule 701(a)(3)(iv) requires the written agreement to obligate the broker-dealer to notify the customer if the securities transaction(s) to be conducted by the customer or the customer do not meet the applicable suitability or sophistication determination standards set forth in the rule.[345] Similarly, the bank is required to provide its broker-dealer partner with the name of the bank employee receiving the referral fee and certain other identifying information.[346]

b. Use of Information

The purpose of the collection of information in Rules 701(a)(2)(i), (a)(3)(i) and (b) is to provide a customer of a bank relying on the exemption with information to assist the customer in identifying and assessing any conflict of interest on the part of the bank employee making a referral to a broker-dealer and for which the bank employee may receive a higher-than-nominal and/or contingent referral fee. The collection of information in Rule 701(a)(2)(iii) and (a)(3)(v) is designed to help a bank determine whether it is acting in compliance with the exemption. The collection of information in Rule 701(a)(3)(iv) is designed to provide the customer with information that may be helpful to the customer in deciding whether to engage in a securities transaction with the broker-dealer.

c. Respondents

The collections of information in Rule 701 will apply to banks that wish to utilize the exemption provided in this rule and broker-dealers with which those banks enter into networking arrangements.

d. Disclosure Burden

The Agencies estimate that approximately 1,000 banks annually will use the exemption in Rule 701 and that each bank, individually or working with its partner broker-dealer, will on average make the required referral fee disclosures to 200 customers annually. In addition, we estimate that each bank will provide one notice annually to its broker-dealer partner regarding names and other identifying information about bank employees. The Agencies also estimate that broker-dealers will, on average, notify each of the 1,000 banks approximately twice a year about a determination regarding a customer's high net worth or institutional status as well as a bank employee's statutory

[336] Exchange Act Release No. 44291 (May 11, 2001), 66 FR 27760 (May 18, 2001).

[337] 17 CFR 240.3a4–2 through 3a4–6 and 17 CFR 240.3b–17.

[338] 17 CFR 242.710 through 781. *See* Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682 (June 30, 2004).

[339] 44 U.S.C. 3501, *et seq.*

[340] 5 CFR 1320.16; Appendix A.1.

[341] 44 U.S.C. 3512.

[342] *See* Rules 701(a)(2)(i), (a)(3)(i) and (b).

[343] *See* Rule 701(a) and (a)(3).

[344] *See* Rule 701(a)(3)(v). The latter requirement does not apply to subparagraph (E) of Section 3(a)(39) of the Exchange Act ((15 U.S.C. 78c(a)(39)).

[345] *See* Rule 701(a)(3)(iv).

[346] *See* Rule 701(a)(2)(iii).

disqualification status. The Agencies further estimate that each broker-dealer will notify three customers of each partner bank per year concerning transaction suitability or the customer's financial sophistication.

Based on these estimates, the Agencies anticipate that Rule 701 will result in approximately 200,000 disclosures to customers, 1,000 notices to broker-dealers about bank employees, 2,000 notices to banks about customer status, and 3,000 notices to customers per year about suitability or sophistication. The Agencies further estimate (based on the level of difficulty and complexity of the applicable activities) that a bank or broker-dealer will spend approximately 5 minutes per customer to comply with the disclosure requirement, and that a bank will spend approximately 15 minutes per notice to a broker-dealer. The Agencies also estimate that a broker-dealer will spend approximately 15 minutes per notice to a bank or customer. Thus, the estimated total annual disclosure burden for these requirements in Rule 701 is approximately 8,583 hours for banks and approximately 9,583 hours for broker-dealers.[347]

e. Collection of Information Is Mandatory

This collection of information is mandatory for banks relying on Rule 701 and their broker-dealer partners.

f. Confidentiality

A bank relying on the exemption provided in Rule 701 or its partner broker-dealer is required to provide certain referral fee disclosures to the customers referred by the bank under this rule. Banks relying on the exemption provided in Rule 701 are required also to enter into agreements with a broker-dealer obligating the broker-dealer to notify the bank upon becoming aware of certain information with respect to the customer or the bank employee, and to notify the customer upon becoming aware of certain information concerning the customer or the nature of a securities transaction.[348] Similarly, a bank is required to notify a broker-dealer about the name of the bank employee receiving a referral fee and certain other identifying information.

g. Record Retention Period

Rule 701 does not include a specific record retention requirement. Banks, however, are required to retain the records in compliance with any existing or future recordkeeping or disclosure requirements established by the Banking Agencies. Broker-dealers are also required to retain records in compliance with existing or future recordkeeping or disclosure requirements established by the Commission or any self-regulatory organization.

2. Rule 723

a. Collection of Information

Rule 723(e)(1) requires a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test, pursuant to a de minimis exclusion,[349] to maintain records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.[350]

b. Use of Information

The collection of information in Rule 723 is designed to help ensure that a bank relying on the de minimis exclusion is able to demonstrate that it was acting in a trust or fiduciary capacity with respect to an account excluded from the chiefly compensated test in Rule 721(a)(1).

c. Respondents

The collection of information in Rule 723 will apply to banks relying on the de minimis exclusion from the chiefly compensated test.

d. Recordkeeping Burden

Because the Agencies expect a small number of banks may use the account-by-account approach in monitoring their compliance with the chiefly compensated test, the Agencies estimate that approximately 50 banks annually will use the de minimis exclusion in Rule 723 and each such bank will, on average, need to maintain records with respect to 10 trust or fiduciary accounts annually conducted in the exercise of the banks' trust or fiduciary responsibilities. Therefore, the Agencies estimate that Rule 723 will result in approximately 500 accounts annually for which records are required to be maintained. The Agencies anticipate that these records will consist of records that are generally created as part of the securities transaction and the account relationship and minimal additional time will be required in maintaining these records. Based on this analysis, the Agencies estimate that a bank will spend approximately 15 minutes per account to comply with the record maintenance requirement of Rule 723. Thus, the estimated total annual recordkeeping burden for Rule 723 is 125 hours.

e. Collection of Information Is Mandatory

This collection of information is mandatory for banks desiring to rely on *de minimis* exclusion contained in Rule 723.

f. Confidentiality

Rule 723 does not address or restrict the confidentiality of the documentation prepared by banks under the rule. Accordingly, banks will have to make the information available to regulatory authorities or other persons to the extent otherwise provided by law.

g. Record Retention Period

Rule 723 will include a requirement to maintain records related to certain securities transactions. Banks will be required to retain these records in compliance with any existing or future recordkeeping requirements established by the Banking Agencies.

3. Rule 741

a. Collection of Information

Rule 741(a)(2)(ii)(A) requires a bank relying on this exemption (*i.e.*, the exemption from the definition of the term ''broker'' under Section 3(a)(4) of the Exchange Act for effecting transactions on behalf of a customer in securities issued by a money market fund) to provide customers with a prospectus of the money market fund securities, not later than the time the customer authorizes the bank to effect the transaction in such securities, if they are not no-load. In situations where a bank effects transactions under the exemption as part of a program for the investment or reinvestment of deposits funds of, or collected by, another bank, the rule permits either the effecting bank or deposit-taking bank to provide the customer a prospectus for the money market fund securities.

b. Use of Information

The purpose of the collection of information in Rule 741 is to help ensure that a customer of a bank whose

[347] Because banks and broker-dealers will share the disclosure obligation under the final rule, these estimates attribute 50 percent of that disclosure burden to banks and 50 percent to broker-dealers.

[348] These requirements are discussed in more detail in section 1.d (Rule 701, Disclosure Burden), *supra*.

[349] *See* Rule 723(e)(2), which requires that the total number of accounts excluded by the bank, under the exclusion from the chiefly compensated test in Rule 721(a)(1), do not exceed the lesser of 1 percent of the total number of trust or fiduciary accounts held by the bank (if the number so obtained is less than 1, the amount will be rounded up to 1) or 500.

[350] *See* Rule 723(e)(1).

funds or deposits are invested into a money market fund that is not a no-load fund under the exemption will have sufficient information upon which to make an informed investment decision, in particular, regarding the fees the customer will pay with respect to the securities.

c. Respondents

The collection of information in Rule 741 applies to banks that directly or indirectly rely on the exemption provided in the rule in the manner described above.

d. Disclosure Burden

The Agencies believe that banks generally sweep or invest their customer funds into no-load money market funds. Accordingly, the Agencies estimate that approximately 500 banks annually will use the exemption in Rule 741 and each bank (or its partner bank), on average, will deliver the prospectus required by the rule to approximately 1,000 customers annually. Therefore, the Agencies estimate that Rule 741 will result in approximately 500,000 disclosures per year. The Agencies estimate further that a bank will spend approximately 5 minutes per response to comply with the delivery requirement of Rule 741. Thus, the estimated total annual disclosure burden for Rule 741 is 41,667 hours.

e. Collection of Information Is Mandatory

This collection of information is mandatory for banks relying on the exemption.

f. Confidentiality

The collection of information delivered pursuant to Rule 741 must be provided by banks relying on the exemption in this rule (or in the case of programs involving deposits of another bank, the other bank) to customers that are engaging in transactions in securities issued by a money market fund that is not a no-load fund.

g. Record Retention Period

Rule 741 does not include a record retention requirement.

B. Consideration of Benefits and Costs

1. Introduction

Prior to enactment of the GLBA, banks were exempted from the definition of ''broker'' in Section 3(a)(4) of the Exchange Act. Therefore, notwithstanding the fact that banks may have conducted activities that will have brought them within the scope of the broker definition, they were not required by the Exchange Act to register as such. The GLBA replaced banks' historic exemption from the definition of ''broker'' with eleven exceptions.[351]

While banks' efforts to comply with the GLBA and the exemptions will result in certain costs, the Agencies have sought to minimize these burdens to the extent possible consistent with the language and purposes of the GLBA. For example, the Agencies are adopting exemptions and interpretations that are expected to provide banks with increased options and flexibility and help to reduce overall costs. Some commenters noted that the rules as proposed will give banks flexibility in structuring their operations, and one bank trade association stated that small banks will be able to comply with the proposed rules without significantly altering their activities.[352] Two commenters stated that the Agencies had underestimated the costs associated with coming into compliance with Regulation R and also provided estimates of ongoing compliance costs.[353]

2. Discussion of Rule Interpretations and Exemptions

The benefits and costs of the principal exemptions and interpretations in the rules are discussed below.

a. Networking Exception

Exchange Act Section 3(a)(4)(B)(i) excepts banks from the definition of ''broker'' if they enter into a contractual or other written arrangement with a registered broker-dealer under which the broker-dealer offers brokerage services to bank customers. This networking exception is subject to several conditions. The Section also prohibits banks from paying unregistered bank employees—such as tellers, loan officers, and private bankers—''incentive compensation'' for any brokerage transaction, except that bank employees may receive a ''nominal'' referral fee for referring bank customers to their broker-dealer networking partners.[354]

Under the rule, a ''nominal'' referral fee is defined as a fee that does not exceed any of the following standards: (1) Twice the average of the minimum and maximum hourly wage established by the bank for the current or prior year for the job family that includes the employee or 1/1000th of the average of the minimum and maximum annual base salary established by the bank for the current or prior year for the job family that includes the employee; (2) twice the employee's actual base hourly wage or 1/1000th of the employee's actual annual base salary; or (3) twenty-five dollars ($25), as adjusted for inflation pursuant to Rule 700(f).

The Agencies believe these alternatives likely will provide banks appropriate flexibility while being consistent with the statute. For example, some banks, and particularly small banks, may find it most useful to establish a flat fee or inflation-adjusted fee for securities referrals as this method is easy to understand and requires no complicated calculations. In addition, permitting banks to pay referral fees based on either an employee's base hourly or annual rate of pay or the average hourly or annual rate of pay for a job family gives banks objective and easily calculable approaches to paying their employees referrals while remaining consistent with the requirements of the GLBA that such fees be ''nominal'' in relation to the overall compensation of the referring employees. While some start-up costs may be incurred by banks in the process of developing a fee structure in line with the requirements of the GLBA, the ability to choose among alternative methods (as reflected in the rules) is expected to enable banks to minimize their overall costs based on their individual referral programs and cost structures. Several commenters supported these alternatives, or stated that the rules implementing the networking exception as a whole struck an appropriate balance.[355]

In light of the statutory provision allowing banks to pay a ''nominal one-time cash fee,'' the rule requires that all referral fees paid under the exception be paid in cash. At the same time, the Agencies have clarified that banks have the flexibility to use cash-equivalent points, paid no less often than quarterly, in paying nominal referral fees under the exception.

Rule 700(b) also contains a definition of ''incentive compensation'' and excludes from this definition compensation paid by a bank under a bonus or similar plan that meets certain criteria. The bonus or similar program must be paid on a discretionary basis and based on multiple factors or variables. These factors or variables must include multiple, significant factors or variables that are not related to securities transactions at the broker-

[351] *See* Exchange Act Section 3(a)(4)(B)(i)–(xi).

[352] *See* Citigroup Letter, ACB Letter, ICBA Letter.

[353] *See* Fiserv Letter, Colorado Trust Letter.

[354] Exchange Act Section 3(a)(4)(B)(i)(VI) limits such referral fees to a ''nominal one-time cash fee of a fixed dollar amount'' and requires that the payment of the fees not be contingent on whether the referral results in a transaction.

[355] *See* ABA Letter, Roundtable Letter, ACB Letter.

dealer. Moreover, a referral made by the employee may not be a factor or variable in determining the employee's compensation under the plan and the employee's compensation under the plan may not be determined by reference to referrals made by any other person. Rule 700(b) also provides a conditional safe harbor from the definition of ''incentive compensation'' for certain bonus or similar plans that are based on any measure of the overall profitability of a bank; an affiliate of a bank (other than a broker-dealer); an operating unit of a bank or of an affiliate of a bank (other than a broker-dealer); or a broker-dealer (if the bonus plan meets certain criteria designed to ensure, among other things, that the plan includes other factors or variables). The final definition has been revised from the proposal to give banks more flexibility in using their existing bonus plans within the framework required by the GLBA.

The rules also include a conditional exemption to permit a bank to pay an employee a contingent referral fee of more than a nominal amount for referring an institutional customer or high net worth customer to a broker-dealer with which the bank has a contractual or other written networking arrangement. This exemption provides a benefit to banks by expanding the types of referral fees that banks may utilize with respect to institutional customers and high net worth customers. A number of commenters supported granting an exemption for such referrals.[356] There likely will be costs associated with complying with the conditions in the exemption (such as the requirement for banks to make certain disclosures to high net worth or institutional customers and the requirement for broker-dealers to make certain determinations and provide certain notifications to banks or a customer)[357] as well as the other terms and conditions in the statutory networking exception. These costs, however, will be either a result of the statutory requirements or costs voluntarily incurred by banks because they want to take advantage of the exemption.

b. Trust and Fiduciary Activities Exception

Exchange Act Section 3(a)(4)(B)(ii) permits a bank, under certain conditions, to effect transactions in a trustee or fiduciary capacity in its trust department or other department that is regularly examined by bank examiners for compliance with fiduciary principles and standards without registering as a broker. To qualify for the trust and fiduciary activities exception, Exchange Act Section 3(a)(4)(B)(ii) requires that the bank be ''chiefly compensated'' for such transactions on the basis of the types of fees specified in the GLBA and comply with certain advertising restrictions set forth in the statute.

The Agencies believe that the rules dealing with the trust and fiduciary activities exception will provide a number of benefits to banks and their customers without imposing significant costs on either group.[358] The provisions regarding the ''chiefly compensated'' condition and related exemptions, while imposing some costs related to systems necessary to perform the calculations and track compensation, are expected to reduce banks' compliance costs and make the trust and fiduciary activities exception more useful. For example, the rules permit a bank to follow an alternate test to the account-by-account approach to the ''chiefly compensated'' condition. Under this exemption, a bank may calculate the compensation it receives from its trust and fiduciary business as a whole on a bank-wide basis, subject to certain conditions.[359] This alternative is designed to provide banks with a potentially less costly approach for determining compliance with the trust and fiduciary activities exception. Some commenters noted that this alternative approach was workable.[360] Similarly, the Agencies' exemptions from the ''chiefly compensated'' condition for certain short-term accounts, accounts acquired as part of a business combination or asset acquisition, accounts held at a non-shell foreign branch, accounts transferred to a broker-dealer or other unaffiliated entity, and a *de minimis* number of accounts are expected also to reduce banks' compliance costs by facilitating banks' ability to comply with the ''chiefly compensated'' condition.[361] While compliance with the conditions in these exemptions likely will result in some costs, such as the recordkeeping requirement associated with the *de minimis* exclusion, these costs are likely more than justified by the benefits associated with the exemptions given that banks could individually determine whether they wish to utilize the exemptions.

As previously noted, banks are likely to incur some costs to comply with the GLBA. The rules, however, include a number of exemptions which are intended to help to reduce overall costs. As a result, the Agencies do not believe that banks will incur significant additional costs to comply with the liberalized exemptions of Rules 722 through 723 or the definitional guidance of Rule 721.

c. Sweep Accounts and Transactions in Money Market Funds

Section 3(a)(4)(B)(v) of the Exchange Act provides a bank with an exception from the definition of ''broker'' to the extent it effects transactions as part of a program for the investment or re-investment of deposit funds for a customer or on behalf of another bank into any no-load, open-end management investment company registered under the Investment Company Act that holds itself out as a money market fund. The rules provide guidance, consistent with FINRA rules,[362] regarding the definition of ''no-load'' as used in the exception. This guidance likely will benefit banks by clarifying the types of charges that are permissible and by providing greater legal certainty.

The rules also contain an exemption that permits banks to effect transactions on behalf of a customer, or for the deposit funds of another bank, in securities issued by a money market fund, subject to certain conditions.[363] While compliance with the conditions associated with this exemption, such as the prospectus delivery requirement in certain circumstances, may require banks to incur some costs, these costs are likely to be more than justified by the investor protection benefits enjoyed by the banks' customers and the enhanced flexibility granted banks by the exemption. Furthermore, because banks are free to determine whether to incur these costs, the exemption is expected to provide a net benefit for banks that wish to utilize the exemption.

d. Safekeeping and Custody Exception

Section 3(a)(4)(B)(viii) of the Exchange Act provides banks with an exception from the definition of ''broker'' for certain bank custody and safekeeping activities. The rules contain an exemption that permits a bank, subject to certain conditions, to accept orders to effect transactions in securities for accounts for which the bank acts as a custodian (including an account for which a bank acts as directed trustee),

[356] *See* State Street Letter, SIMFA Letter, U.S. Trust Letter, BISA Letter.

[357] Rule 701(a)(2)(i), (a)(3)(iii)–(v), and 701(b).

[358] The trust and fiduciary exception is addressed in Rules 721–723.

[359] *See* Rule 722.

[360] *See, e.g.*, ABA Letter, WBA Letter, U.S. Trust Letter, PNC Letter.

[361] *See* Rule 723.

[362] *See* FINRA Rule 2830.

[363] *See* Rule 741.

or, in some cases, for which the bank acts as a subcustodian or a non-fiduciary administrator or recordkeeper. Specifically, this custody exemption (Rule 760) allows banks, subject to certain conditions, to accept orders for securities transactions from employee benefit plan accounts and individual retirement and similar accounts for which the bank acts as a custodian. In addition, the exemption allows banks, subject to certain conditions, to accept orders for securities transactions on an accommodation basis from other types of custodial accounts. This exemption allows banks to accept orders from custody accounts while imposing conditions designed to prevent a bank from operating a brokerage business out of its custody department.

The exemption is designed to benefit banks by permitting certain order-taking activities for securities transactions. While banks may incur some costs in complying with the conditions contained in the exemption, such as developing systems for making determinations regarding compliance with advertising and compensation restrictions, the Agencies believe the conditions contained in the rules are consistent with the practices of banks and any costs will only be imposed on banks that choose to utilize the exemption.

e. Other Rules

The Agencies are also adopting certain special purpose exemptions. Specifically, we are adopting an exemption that permits banks to effect transactions in Regulation S securities with non-U.S. persons or registered broker-dealers.[364] Another exemption also allows, under certain conditions, a bank to effect transactions in investment company securities and variable life insurance and variable annuities through the National Securities Clearing Corporation or directly with a transfer agent or insurance company or separate account that is excluded from the definition of transfer agent, instead of through a broker-dealer.[365] In addition, an exemption permits banks that rely on certain exceptions and exemptions to effect certain transactions involving the securities of a company for the company's employee benefit plans and participants through the National Securities Clearing Corporation or directly with a transfer agent or insurance company or separate account that is excluded from the definition of transfer agent, instead of through a broker-dealer. An additional exemption permits a bank, as agent, to effect securities lending transactions (and engage in related securities lending services) for securities that they do not hold in custody with or on behalf of a person the bank reasonably believes is a qualified investor (as defined in Section 3(a)(54)(A) of the Exchange Act) or any employee benefit plan that owns and invests on a discretionary basis at least $25 million in investments.[366] We also are extending the exemption from rescission liability under Exchange Act Section 29 to contracts entered into by banks acting in a broker capacity until a date that is 18 months after the effective date of the final rule.[367] This exemption also provides, under certain circumstances, protections from rescission liability under Exchange Act Section 29 resulting solely from a bank's status as a broker, if the bank has acted in good faith, adopted reasonable policies and procedures, and any violation of broker registration requirements did not result in significant harm or financial loss to the person seeking to void the contract.[368] Finally, we are issuing a temporary general exemption from the definition of ''broker'' under Section 3(a)(4) of the Exchange Act until the first day of a bank's first fiscal year commencing after September 30, 2008.[369]

The Agencies believe these provisions offer a number of benefits to banks and their customers. In particular, the Regulation S exemption helps ensure that U.S. banks that effect transactions in Regulation S securities with non-U.S. customers will be more competitive with foreign banks or other entities that offer those services without being registered as broker-dealers. The exemption from rescission liability under Exchange Act Section 29 also provides banks some legal certainty, both temporarily and on a permanent basis, as they conduct their securities activities. The exemption related to securities lending services enables banks to engage in the types of services in which they currently engage thereby minimizing compliance costs, while providing the banks' customers with continuity of service. The temporary general exemption from the definition of ''broker'' also benefits banks by providing them with an adequate period of time to transition to the requirements under the statute and the rules.

The Agencies estimate that the costs of these exemptions will be minimal and are justified by the benefits the exemptions offer. For example, the Regulation S exemption may impose certain costs on banks that are designed to ensure that they remain in compliance with the conditions under the exemption. In particular, the exemption permits banks to rely on the exemption only for transactions in ''eligible securities'' and with either broker-dealers or purchasers who are not U.S. persons within the meaning of Section 903 of Regulation S. Banks may incur certain administrative costs to ensure that a transaction meets these requirements. Nevertheless, the exemption is an accommodation to banks that wish to effect transactions in Regulation S securities and, as a result, the compliance costs will be imposed only on those banks that believe that it is in their best business interests to take advantage of the exemption.

Given that Exchange Act Section 29 is rarely used as a remedy, we do not anticipate that this exemption will impose significant costs on the industry or on investors.

3. General Costs and Benefits

Based on the burden hours discussed in the Paperwork Reduction Act Analysis section, *supra,* the Agencies expect the ongoing requirements of the rules to result in a total of 50,375 annual burden hours for banks and 9583 annual burden hours for broker-dealers, for a grand total of 59,958 annual burden hours.[370] The Agencies estimate that the hourly costs for these burden hours will be approximately $68 per hour.[371] Therefore, the annual total costs will be approximately $4,077,144.

In addition to the costs associated with burden hours discussed in the Paperwork Reduction Act Analysis section, supra, the Agencies expect that many banks also could incur start-up costs for legal and other professional services.[372] Many banks will utilize their in-house counsel, accountants, compliance officers, and programmers in an effort to achieve compliance with the rules. Industry sources indicate the

[364] *See* Rule 771.

[365] *See* Rule 775.

[366] *See* Rule 772.

[367] *See* Rule 780.

[368] *Id.*

[369] *See* Rule 781.

[370] *See infra* at VIII.A.1.d., VIII.A.2.d., and VIII.A.3.d.

[371] $68/hour figure for a clerk (e.g. compliance clerk) is from the Securities Industry Association (now SIFMA) *Report on Office Salaries in the Securities Industry 2005,* modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead.

[372] For example, banks may incur start-up costs in the process of reviewing or developing their networking arrangements in line with the requirements of the rules. *See supra* at VIII.B.2.a. In addition, there likely will be costs for developing systems for making determinations regarding compliance with advertising and compensation restrictions pursuant to the rules regarding safekeeping and custody. *See supra* at VIII.B.2.d.

following hourly labor costs: Attorneys—$324 per hour, intermediate accountants—$162 per hour, compliance manager—$205 per hour, and senior programmer—$268.[373] Taking an average of these professional costs, the Agencies estimate a general hourly in-house labor cost of $240 per hour for professional services.

Based on our expectation that most start-up costs will involve bringing systems into compliance and that many banks will be able to do so either using existing systems or by slightly modifying existing systems, the Agencies estimate that the rules will require banks to utilize an average of 30 hours of professional services. The Agencies expect that most banks affected by the rules will either use in-house counsel or employees resulting in an average total cost of $7,200 per affected bank.[374] The Agencies estimate that the rules will apply to approximately 9,475 banks and approximately 25 percent of these banks will incur more than a de minimis cost. Using these values, the Agencies estimate total start-up costs of $17,055,000 (9,475 × .25 × $7,200). As previously discussed, the Agencies have sought to minimize these costs to the extent possible consistent with the language and purposes of the GLBA.

Two commenters stated that the Agencies' estimates of hourly rates in the proposal were fair, but that the estimates of the time requirements were too low. These commenters estimated startup costs of between $43,000 and $55,000.[375] In addition, these commenters estimated ongoing costs to be between $60,000 and $95,000 per year. Based on these commenters' estimates, startup costs would range from $101.9 million (9475 banks × 0.25 affected × $43,000) to $130.3 million (9475 × 0.25 × $55,000), and a range of annual ongoing costs of $142.1 million (9475 × 0.25 × $60,000) to $225 million (9475 × 0.25 × $95,000). The Agencies, however, believe that these cost estimates are not representative of the costs for the majority of banks affected by Regulation R. The Agencies received approximately 60 comments, primarily from banks and banking industry groups, and the comments generally were favorable. Only these two commenters stated that the Agencies had underestimated start-up and continuing compliance costs. The Agencies therefore believe that the estimates in the proposal reflect the costs that the majority of the banks affected by the rules are likely, on average, to incur, and are appropriately used to estimate the overall compliance costs of Regulation R.

The Agencies believe that the rules will provide greater legal certainty for banks in connection with their determination of whether they meet the terms and conditions for an exception to the definition of broker under the Exchange Act as well as provide additional relief through the exemptions. Without the rules, banks may have difficulty planning their businesses and determining whether their operations are in compliance with the GLBA. This, in turn, could hamper their business. The Agencies anticipate these benefits will be useful to banks in a number of ways.

The Agencies expect that one component of the benefits to banks will be savings in legal fees, given that difficulties in interpreting the GLBA absent any regulatory guidance could result in the need for greater input from outside counsel. Based on the number of interpretive issues raised by the GLBA, the Agencies estimate that, absent any regulatory guidance, banks on average will use the services of outside counsel for approximately 25 more hours for the initial year and 5 more hours per year thereafter, than with the existence of the rules. Industry sources indicate that the hourly costs for hiring outside counsel are approximately $400 per hour. The rules will therefore result in an average total cost savings of approximately $10,000 per affected bank per year during the initial year and $2,000 per affected bank per year thereafter. The Agencies estimate that the rules will apply to approximately 9,475 banks and approximately 25 percent of these banks will enjoy more than a de minimis cost savings benefit. Using these values, the Agencies estimate a cost savings related to reduced legal fees of $23,687,500 (9,475 × 0.25 × $10,000) for the initial year and $4,737,500 (9,475 × 0.25 × $2,000) per year thereafter.

The Agencies believe that the benefits of Regulation R justify the costs.

C. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation

Exchange Act Section 3(f) requires the Commission, whenever it engages in rulemaking and is required to consider or determine if an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[376] Exchange Act Section 23(a)(2) requires the Commission, in adopting rules under that Act, to consider the impact that any such rule will have on competition. This Section also prohibits the Commission from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[377]

The Agencies have designed the interpretations, definitions, and exemptions to minimize any burden on competition. Indeed, the Agencies believe that by providing legal certainty to banks that conduct securities activities, by clarifying the GLBA requirements, and by exempting a number of activities from those requirements, the rules allow banks to continue to conduct securities activities consistent with the GLBA.

The rules define terms in the statutory exceptions to the definition of broker added to the Exchange Act by Congress in the GLBA, and provide guidance to banks as to the appropriate scope of those exceptions. In addition, the rules contain a number of exemptions that provide banks flexibility in conducting their securities activities, which will promote competition and reduce costs.

D. Final Regulatory Flexibility Analysis

The Agencies have prepared a Final Regulatory Flexibility Analysis (''FRFA''), in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[378] regarding the rules.

1. Reasons for the Action

Section 201 of the GLBA amended the definition of ''broker'' in Section 3(a)(4) of the Exchange Act to replace a blanket exemption from that term for ''banks,'' as defined in Section 3(a)(6) of the Exchange Act. Congress replaced this blanket exemption with eleven specific exceptions for securities activities conducted by banks.[379] On October 13, 2006, President Bush signed into law

[373] The hourly figures for an attorney, intermediate account, and compliance manager is from the SIA *Report on Management & Professional Earnings in the Securities Industry 2005,* modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

[374] Some banks may choose to utilize outside counsel, either exclusively or as a supplement to in-house resources. The Agencies estimate these costs as being similar to the in-house costs (Industry sources indicate the following hourly costs for hiring external workers: Attorneys—$400, accountant—$250, auditor—$250, and programmer—$160.).

[375] *See* Fiserv Letter, Colorado Trust Letter.

[376] 15 U.S.C. 78c(f).

[377] 15 U.S.C. 78w(a)(2).

[378] 5 U.S.C. 604.

[379] 15 U.S.C. 78c(a)(4).

the Regulatory Relief Act.[380] Section 101 of that Act, among other things, requires the Agencies jointly to issue a single set of rules implementing the bank broker exceptions in Section 3(a)(4) of the Exchange Act.[381] These rules are being adopted by the Agencies to fulfill this requirement. The rules are designed generally to provide guidance on the GLBA's bank exceptions from the definition of broker in Exchange Act Section 3(a)(4) and to provide conditional exemptions from the broker definition consistent with the purposes of the Exchange Act and the GLBA.

2. Objectives

The rules provide guidance to the industry with respect to the GLBA requirements. The rules also provide certain conditional exemptions from the broker definition to allow banks to perform certain securities activities. The Supplementary Information section, *supra,* contains more detailed information on the objectives of the rules.

3. Legal Basis

Pursuant to Section 101 of the Regulatory Relief Act, the Agencies are issuing the rules.

4. Small Entities Subject to the Rule

The rules apply to ''banks,'' which is defined in Section 3(a)(6) of the Exchange Act to include banking institutions organized in the United States, including members of the Federal Reserve System, Federal savings associations, as defined in Section 2(5) of the Home Owners' Loan Act, and other commercial banks, savings associations, and nondepository trust companies that are organized under the laws of a state or the United States and subject to supervision and examination by state or federal authorities having supervision over banks and savings associations.[382] Congress did not exempt small entity banks from the application of the GLBA. Moreover, because the rules are intended to provide guidance to, and exemptions for, all banks that are subject to the GBLA, the Agencies determined that it would not be appropriate or necessary to exempt small entity banks from the operation of the rules. The rules generally apply to all banks, including banks that would be considered small entities (i.e., banks with total assets of $165 million or less) for purposes of the RFA.[383] The Agencies, however, have adopted several interpretations or exceptions that likely will be particularly useful for small banks such as, for example, the fixed inflation-adjusted dollar alternative to the ''nominal'' requirement in the networking exception and the exception in Rule 723 from the chiefly compensated test for a de minimis number of trust or fiduciary accounts.

The Agencies estimate that the rules will apply to approximately 9,475 banks, approximately 5,816 of which could be considered small banks with assets of $165 million or less. Moreover, we do not anticipate any significant costs to small entity banks as a result of the rules. We note that a trade association whose membership consists primarily of small banking organizations indicated that small banks would be able to comply with the rules as proposed without significantly altering their activities.[384]

5. Reporting, Recordkeeping and Other Compliance Requirements

The rules will not impose any significant reporting, recordkeeping, or other compliance requirements on banks that are small entities.[385]

6. Duplicative, Overlapping, or Conflicting Federal Rules

The Agencies believe that no other rules duplicate, overlap, or conflict with the final rules.

7. Significant Alternatives

Pursuant to Section 3(a) of the RFA,[386] the Agencies must consider the following types of alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rules, or any part thereof, for small entities.

As discussed above, the GLBA does not exempt small entity banks from the Exchange Act broker registration requirements and because the rules are intended to provide guidance to, and exemptions for, all banks that are subject to the GLBA and are designed to accommodate the business practices of all banks (including small entity banks), the Agencies determined that it would not be appropriate or necessary to exempt small entity banks from the operation of the rules. Moreover, providing one or more special exemptions for small banks could place broker-dealers, including small broker-dealers, or larger banks at a competitive disadvantage versus small banks.

The rules are intended to clarify and simplify compliance with the GLBA by providing guidance with respect to exceptions and by providing additional exemptions. As such, the rules are expected to facilitate compliance by banks of all sizes, including small entity banks.

The Agencies do not believe that it is necessary to consider whether small entity banks should be permitted to use performance rather than design standards to comply with the rules because the rules already use performance standards. Moreover, the rules do not dictate for entities of any size any particular design standards (e.g., technology) that must be employed to achieve the objectives of the rules.

E. Plain Language

Section 722 of the GLBA (12 U.S.C. 4809) requires the Board to use plain language in all proposed and final rules published by the Board after January 1, 2000. The Board believes the rules, to the maximum extent possible, are presented in a simple and straightforward manner.

X. Statutory Authority

Pursuant to authority set forth in the Exchange Act and particularly Sections 3(a)(4), 3(b), 15, 17, 23(a), and 36 thereof (15 U.S.C. 78c(a)(4), 78c(b), 78*o*, 78q, 78w(a), and 78mm, respectively) the Commission is repealing by operation of statute current Rules 3a4–2, 3a4–3, 3a4–4, 3a4–5, 3a4–6, and 3b–17 (§§ 240.3a4–2, 240.3a4–3, 240.3a4–4, 240.3a4–5, 240.3a4–6, and 240.3b–17, respectively). The Commission is repealing Exchange Act Rules 15a–7 and 15a–8 (§ 240.15a–7 and § 240.15a–8, respectively). The Commission, jointly with the Board of Governors of the Federal Reserve System, is also adopting new Rules 700, 701, 721, 722, 723, 740, 741, 760, 771, 772, 775, 776, 780, and 781 under the Exchange Act (§§ 247.700, 247.701, 247.721, 247.722, 247.723, 247.740,

[380] Pub. L. No. 109–351, 120 Stat. 1966 (2006).

[381] *See* Exchange Act Section 3(a)(4)(F), as added by Section 101 of the Regulatory Relief Act. The Regulatory Relief Act also requires that the Board and SEC consult with, and seek the concurrence of, the OCC, FDIC and OTS prior to jointly adopting final rules. As noted above, the Board and the SEC also have consulted extensively with the OCC, FDIC and OTS in developing these joint rules.

[382] *See* 15 U.S.C. 78c(a)(6); Pub. L. No. 109–351, 120 Stat. 1966 (2006).

[383] Small Business Administration regulations define ''small entities'' to include banks and savings associations with total assets of $165 million or less. 13 CFR 121.201.

[384] *See* ICBA Letter.

[385] The Agencies' estimates related to recordkeeping and disclosure are detailed in the ''Paperwork Reduction Act Analysis'' Section of this Release.

[386] 5 U.S.C. 604(a).

247.741, 247.760, 247.771, 247.772, 247.775, 247.776, 247.780, and 247.881, respectively).

XI. Text of Rules and Rule Amendment

List of Subjects

12 CFR Part 218

Banks, Brokers, Securities.

17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

17 CFR Part 247

Banks, Brokers, Securities.

Federal Reserve System

Authority and Issuance

■ For the reasons set forth in the preamble, the Board amends Title 12, Chapter II of the Code of Federal Regulations by adding a new Part 218 as set forth under Common Rules at the end of this document:

PART 218—EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER IN THE SECURITIES EXCHANGE ACT OF 1934 (REGULATION R)

Sec.
218.100 Definition.
218.700 Defined terms relating to the networking exception from the definition of ''broker.''
218.701 Exemption from the definition of ''broker'' for certain institutional referrals.
218.721 Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker.''
218.722 Exemption allowing banks to calculate trust and fiduciary compensation on a bank-wide basis.
218.723 Exemptions for special accounts, transferred accounts, and a de minimis number of accounts.
218.740 Defined terms relating to the sweep accounts exception from the definition of ''broker.''
218.741 Exemption for banks effecting transactions in money market funds.
218.760 Exemption from definition of ''broker'' for banks accepting orders to effect transactions in securities from or on behalf of custody accounts.
218.771 Exemption from the definition of ''broker'' for banks effecting transactions in securities issued pursuant to Regulation S.
218.772 Exemption from the definition of ''broker'' for banks engaging in securities lending transactions.
218.775 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in investment company securities.
218.776 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in a company's securities for its employee benefit plans.
218.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.
218.781 Exemption from the definition of ''broker'' for banks for a limited period of time.

Authority: 15 U.S.C. 78c(a)(4)(F).

Securities and Exchange Commission

Authority and Issuance

■ For the reasons set forth in the preamble, the Commission amends Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

§§ 240.3a4–2 through 240.3a4–6, 240.3b–17, 240.15a–7, and 240.15a–8 [Removed and Reserved]

■ 2. Sections 240.3a4–2 through 240.3a4–6, 240.3b–17, 240.15a–7, and 240.15a–8 are removed and reserved.

■ 3. Part 247 is added as set forth under Common Rules at the end of this document:

PART 247—REGULATION R—EXEMPTIONS AND DEFINITIONS RELATED TO THE EXCEPTIONS FOR BANKS FROM THE DEFINITION OF BROKER

Sec.
247.100 Definition.
247.700 Defined terms relating to the networking exception from the definition of ''broker.''
247.701 Exemption from the definition of ''broker'' for certain institutional referrals.
247.721 Defined terms relating to the trust and fiduciary activities exception from the definition of ''broker.''
247.722 Exemption allowing banks to calculate trust and fiduciary compensation on a bank-wide basis.
247.723 Exemptions for special accounts, transferred accounts, and a *de minimis* number of accounts.
247.740 Defined terms relating to the sweep accounts exception from the definition of ''broker.''
247.741 Exemption for banks effecting transactions in money market funds.
247.760 Exemption from definition of ''broker'' for banks accepting orders to effect transactions in securities from or on behalf of custody accounts.
247.771 Exemption from the definition of ''broker'' for banks effecting transactions in securities issued pursuant to Regulation S.
247.772 Exemption from the definition of ''broker'' for banks engaging in securities lending transactions.
247.775 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in investment company securities.
247.776 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in a company's securities for its employee benefit plans.
247.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.
247.781 Exemption from the definition of ''broker'' for banks for a limited period of time.

Authority: 15 U.S.C. 78c, 78*o*, 78q, 78w, and 78mm.

Common Rules

The common rules that are adopted by the Commission as Part 247 of Title 17, Chapter II of the Code of Federal Regulations and by the Board as Part 218 of Title 12, Chapter II of the Code of Federal Regulations follow:

§ ___.100 Definition.

For purposes of this part the following definition shall apply: *Act* means the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

§ ___.700 Defined terms relating to the networking exception from the definition of ''broker.''

When used with respect to the Third Party Brokerage Arrangements (''Networking'') Exception from the definition of the term ''broker'' in section 3(a)(4)(B)(i) of the Act (15 U.S.C. 78c(a)(4)(B)(i)) in the context of transactions with a customer, the following terms shall have the meaning provided:

(a) *Contingent on whether the referral results in a transaction* means dependent on whether the referral results in a purchase or sale of a security; whether an account is opened with a broker or dealer; whether the referral results in a transaction involving a particular type of security; or whether it results in multiple securities transactions; provided, however, that a referral fee may be contingent on whether a customer:

(1) Contacts or keeps an appointment with a broker or dealer as a result of the referral; or

(2) Meets any objective, base-line qualification criteria established by the bank or broker or dealer for customer referrals, including such criteria as minimum assets, net worth, income, or

marginal federal or state income tax rate, or any requirement for citizenship or residency that the broker or dealer, or the bank, may have established generally for referrals for securities brokerage accounts.

(b)(1) *Incentive compensation* means compensation that is intended to encourage a bank employee to refer customers to a broker or dealer or give a bank employee an interest in the success of a securities transaction at a broker or dealer. The term does not include compensation paid by a bank under a bonus or similar plan that is:

(i) Paid on a discretionary basis; and

(ii) Based on multiple factors or variables and:

(A) Those factors or variables include multiple significant factors or variables that are not related to securities transactions at the broker or dealer;

(B) A referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and

(C) The employee's compensation under the plan is not determined by reference to referrals made by any other person.

(2) Nothing in this paragraph (b) shall be construed to prevent a bank from compensating an officer, director or employee under a bonus or similar plan on the basis of any measure of the overall profitability or revenue of:

(i) The bank, either on a stand-alone or consolidated basis;

(ii) Any affiliate of the bank (other than a broker or dealer), or any operating unit of the bank or an affiliate (other than a broker or dealer), if the affiliate or operating unit does not over time predominately engage in the business of making referrals to a broker or dealer; or

(iii) A broker or dealer if:

(A) Such measure of overall profitability or revenue is only one of multiple factors or variables used to determine the compensation of the officer, director or employee;

(B) The factors or variables used to determine the compensation of the officer, director or employee include multiple significant factors or variables that are not related to the profitability or revenue of the broker or dealer;

(C) A referral made by the employee is not a factor or variable in determining the employee's compensation under the plan; and

(D) The employee's compensation under the plan is not determined by reference to referrals made by any other person.

(c) *Nominal one-time cash fee of a fixed dollar amount* means a cash payment for a referral, to a bank employee who was personally involved in referring the customer to the broker or dealer, in an amount that meets any of the following standards:

(1) The payment does not exceed:

(i) Twice the average of the minimum and maximum hourly wage established by the bank for the current or prior year for the job family that includes the employee; or

(ii) 1/1000th of the average of the minimum and maximum annual base salary established by the bank for the current or prior year for the job family that includes the employee; or

(2) The payment does not exceed twice the employee's actual base hourly wage or 1/1000th of the employee's actual annual base salary; or

(3) The payment does not exceed twenty-five dollars ($25), as adjusted in accordance with paragraph (f) of this section.

(d) *Job family* means a group of jobs or positions involving similar responsibilities, or requiring similar skills, education or training, that a bank, or a separate unit, branch or department of a bank, has established and uses in the ordinary course of its business to distinguish among its employees for purposes of hiring, promotion, and compensation.

(e) *Referral* means the action taken by one or more bank employees to direct a customer of the bank to a broker or dealer for the purchase or sale of securities for the customer's account.

(f) *Inflation adjustment*—(1) *In general.* On April 1, 2012, and on the 1st day of each subsequent 5-year period, the dollar amount referred to in paragraph (c)(3) of this section shall be adjusted by:

(i) Dividing the annual value of the Employment Cost Index For Wages and Salaries, Private Industry Workers (or any successor index thereto), as published by the Bureau of Labor Statistics, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2006; and

(ii) Multiplying the dollar amount by the quotient obtained in paragraph (f)(1)(i) of this section.

(2) *Rounding.* If the adjusted dollar amount determined under paragraph (f)(1) of this section for any period is not a multiple of $1, the amount so determined shall be rounded to the nearest multiple of $1.

§ ____.701 Exemption from the definition of ''broker'' for certain institutional referrals.

(a) *General.* A bank that meets the requirements for the exception from the definition of ''broker'' under section 3(a)(4)(B)(i) of the Act (15 U.S.C. 78c(a)(4)(B)(i)), other than section 3(a)(4)(B)(i)(VI) of the Act (15 U.S.C. 78c(a)(4)(B)(i)(VI)), is exempt from the conditions of section 3(a)(4)(B)(i)(VI) of the Act solely to the extent that a bank employee receives a referral fee for referring a high net worth customer or institutional customer to a broker or dealer with which the bank has a contractual or other written arrangement of the type specified in section 3(a)(4)(B)(i) of the Act, if:

(1) *Bank employee.* (i) The bank employee is:

(A) Not registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization;

(B) Predominantly engaged in banking activities other than making referrals to a broker or dealer; and

(C) Not subject to statutory disqualification, as that term is defined in section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)), except subparagraph (E) of that section; and

(ii) The high net worth customer or institutional customer is encountered by the bank employee in the ordinary course of the employee's assigned duties for the bank.

(2) *Bank determinations and obligations*—(i) *Disclosures.* The bank provides the high net worth customer or institutional customer the information set forth in paragraph (b) of this section

(A) In writing prior to or at the time of the referral; or

(B) Orally prior to or at the time of the referral and

(*1*) The bank provides such information to the customer in writing within 3 business days of the date on which the bank employee refers the customer to the broker or dealer; or

(*2*) The written agreement between the bank and the broker or dealer provides for the broker or dealer to provide such information to the customer in writing in accordance with paragraph (a)(3)(i) of this section.

(ii) *Customer qualification.* (A) In the case of a customer that is a not a natural person, the bank has a reasonable basis to believe that the customer is an institutional customer before the referral fee is paid to the bank employee.

(B) In the case of a customer that is a natural person, the bank has a reasonable basis to believe that the customer is a high net worth customer prior to or at the time of the referral.

(iii) *Employee qualification information.* Before a referral fee is paid to a bank employee under this section,

the bank provides the broker or dealer the name of the employee and such other identifying information that may be necessary for the broker or dealer to determine whether the bank employee is registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization or is subject to statutory disqualification, as that term is defined in section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)), except subparagraph (E) of that section.

(iv) *Good faith compliance and corrections.* A bank that acts in good faith and that has reasonable policies and procedures in place to comply with the requirements of this section shall not be considered a ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely because the bank fails to comply with the provisions of this paragraph (a)(2) with respect to a particular customer if the bank:

(A) Takes reasonable and prompt steps to remedy the error (such as, for example, by promptly making the required determination or promptly providing the broker or dealer the required information); and

(B) Makes reasonable efforts to reclaim the portion of the referral fee paid to the bank employee for the referral that does not, following any required remedial action, meet the requirements of this section and that exceeds the amount otherwise permitted under section 3(a)(4)(B)(i)(VI) of the Act (15 U.S.C. 78c(a)(4)(B)(i)(VI)) and § ____.700.

(3) *Provisions of written agreement.* The written agreement between the bank and the broker or dealer shall require that:

(i) *Broker-dealer written disclosures.* If, pursuant to paragraph (a)(2)(i)(B)(*2*) of this section, the broker or dealer is to provide the customer in writing the disclosures set forth in paragraph (b) of this section, the broker or dealer provides such information to the customer in writing:

(A) Prior to or at the time the customer begins the process of opening an account at the broker or dealer, if the customer does not have an account with the broker or dealer; or

(B) Prior to the time the customer places an order for a securities transaction with the broker or dealer as a result of the referral, if the customer already has an account at the broker or dealer.

(ii) *Customer and employee qualifications.* Before the referral fee is paid to the bank employee:

(A) The broker or dealer determine that the bank employee is not subject to statutory disqualification, as that term is defined in section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)), except subparagraph (E) of that section; and

(B) The broker or dealer has a reasonable basis to believe that the customer is a high net worth customer or an institutional customer.

(iii) *Suitability or sophistication determination by broker or dealer*—(A) *Contingent referral fees.* In any case in which payment of the referral fee is contingent on completion of a securities transaction at the broker or dealer, the broker or dealer, before such securities transaction is conducted, perform a suitability analysis of the securities transaction in accordance with the rules of the broker or dealer's applicable self-regulatory organization as if the broker or dealer had recommended the securities transaction.

(B) *Non-contingent referral fees.* In any case in which payment of the referral fee is not contingent on the completion of a securities transaction at the broker or dealer, the broker or dealer, before the referral fee is paid, either:

(*1*) Determine that the customer:

(*i*) Has the capability to evaluate investment risk and make independent decisions; and

(*ii*) Is exercising independent judgment based on the customer's own independent assessment of the opportunities and risks presented by a potential investment, market factors and other investment considerations; or

(*2*) Perform a suitability analysis of all securities transactions requested by the customer contemporaneously with the referral in accordance with the rules of the broker or dealer's applicable self-regulatory organization as if the broker or dealer had recommended the securities transaction.

(iv) *Notice to the customer.* The broker or dealer inform the customer if the broker or dealer determines that the customer or the securities transaction(s) to be conducted by the customer does not meet the applicable standard set forth in paragraph (a)(3)(iii) of this section.

(v) *Notice to the bank.* The broker or dealer promptly inform the bank if the broker or dealer determines that:

(A) The customer is not a high net worth customer or institutional customer, as applicable; or

(B) The bank employee is subject to statutory disqualification, as that term is defined in section 3(a)(39) of the Act (15 U.S.C. 78c(a)(39)), except subparagraph (E) of that section.

(b) *Required disclosures.* The disclosures provided to the high net worth customer or institutional customer pursuant to paragraphs (a)(2)(i) or (a)(3)(i) of this section shall clearly and conspicuously disclose

(1) The name of the broker or dealer; and

(2) That the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker or dealer and payment of this fee may be contingent on whether the referral results in a transaction with the broker or dealer.

(c) *Receipt of other compensation.* Nothing in this section prevents or prohibits a bank from paying or a bank employee from receiving any type of compensation that would not be considered incentive compensation under § ____.700(b)(1) or that is described in § ____.700(b)(2).

(d) *Definitions.* When used in this section:

(1) *High net worth customer*—(i) *General. High net worth customer* means:

(A) Any natural person who, either individually or jointly with his or her spouse, has at least $5 million in net worth excluding the primary residence and associated liabilities of the person and, if applicable, his or her spouse; and

(B) Any revocable, inter vivos or living trust the settlor of which is a natural person who, either individually or jointly with his or her spouse, meets the net worth standard set forth in paragraph (d)(1)(i)(A) of this section.

(ii) *Individual and spousal assets.* In determining whether any person is a high net worth customer, there may be included in the assets of such person

(A) Any assets held individually;

(B) If the person is acting jointly with his or her spouse, any assets of the person's spouse (whether or not such assets are held jointly); and

(C) If the person is not acting jointly with his or her spouse, fifty percent of any assets held jointly with such person's spouse and any assets in which such person shares with such person's spouse a community property or similar shared ownership interest.

(2) *Institutional customer* means any corporation, partnership, limited liability company, trust or other non-natural person that has, or is controlled by a non-natural person that has, at least:

(i) $10 million in investments; or

(ii) $20 million in revenues; or

(iii) $15 million in revenues if the bank employee refers the customer to the broker or dealer for investment banking services.

(3) *Investment banking services* includes, without limitation, acting as

an underwriter in an offering for an issuer; acting as a financial adviser in a merger, acquisition, tender offer or similar transaction; providing venture capital, equity lines of credit, private investment-private equity transactions or similar investments; serving as placement agent for an issuer; and engaging in similar activities.

(4) *Referral fee* means a fee (paid in one or more installments) for the referral of a customer to a broker or dealer that is:

(i) A predetermined dollar amount, or a dollar amount determined in accordance with a predetermined formula (such as a fixed percentage of the dollar amount of total assets placed in an account with the broker or dealer), that does not vary based on:

(A) The revenue generated by or the profitability of securities transactions conducted by the customer with the broker or dealer; or

(B) The quantity, price, or identity of securities transactions conducted over time by the customer with the broker or dealer; or

(C) The number of customer referrals made; or

(ii) A dollar amount based on a fixed percentage of the revenues received by the broker or dealer for investment banking services provided to the customer.

(e) *Inflation adjustments*—(1) *In general.* On April 1, 2012, and on the 1st day of each subsequent 5-year period, each dollar amount in paragraphs (d)(1) and (d)(2) of this section shall be adjusted by:

(i) Dividing the annual value of the Personal Consumption Expenditures Chain-Type Price Index (or any successor index thereto), as published by the Department of Commerce, for the calendar year preceding the calendar year in which the adjustment is being made by the annual value of such index (or successor) for the calendar year ending December 31, 2006; and

(ii) Multiplying the dollar amount by the quotient obtained in paragraph (e)(1)(i) of this section.

(2) *Rounding.* If the adjusted dollar amount determined under paragraph (e)(1) of this section for any period is not a multiple of $100,000, the amount so determined shall be rounded to the nearest multiple of $100,000.

§ ____.721 Defined terms relating to the trust and fiduciary activities exception from the definition of "broker."

(a) *Defined terms for chiefly compensated test.* For purposes of this part and section 3(a)(4)(B)(ii) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)), the following terms shall have the meaning provided:

(1) *Chiefly compensated—account-by-account test. Chiefly compensated* shall mean the *relationship-total compensation percentage* for each *trust or fiduciary account* of the bank is greater than 50 percent.

(2) The *relationship-total compensation percentage* for a *trust or fiduciary account* shall be the mean of the *yearly compensation percentage* for the account for the immediately preceding year and the *yearly compensation percentage* for the account for the year immediately preceding that year.

(3) The *yearly compensation percentage* for a *trust or fiduciary account* shall be

(i) Equal to the relationship compensation attributable to the *trust or fiduciary account* during the year divided by the total compensation attributable to the *trust or fiduciary account* during that year, with the quotient expressed as a percentage; and

(ii) Calculated within 60 days of the end of the year.

(4) *Relationship compensation* means any compensation a bank receives attributable to a trust or fiduciary account that consists of:

(i) An administration fee, including, without limitation, a fee paid—

(A) For personal services, tax preparation, or real estate settlement services;

(B) For disbursing funds from, or for recording receipt of payments to, a trust or fiduciary account;

(C) In connection with securities lending or borrowing transactions;

(D) For custody services; or

(E) In connection with an investment in shares of an investment company for personal service, the maintenance of shareholder accounts or any service described in paragraph (a)(4)(iii)(C) of this section;

(ii) An annual fee (payable on a monthly, quarterly or other basis), including, without limitation, a fee paid for assessing investment performance or for reviewing compliance with applicable investment guidelines or restrictions;

(iii) A fee based on a percentage of assets under management, including, without limitation, a fee paid

(A) Pursuant to a plan under § 270.12b–1;

(B) In connection with an investment in shares of an investment company for personal service or the maintenance of shareholder accounts;

(C) Based on a percentage of assets under management for any of the following services—

(I) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares;

(II) Aggregating and processing purchase and redemption orders for investment company shares;

(III) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company;

(IV) Processing dividend payments for the investment company;

(V) Providing sub-accounting services to the investment company for shares held beneficially;

(VI) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or

(VII) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares;

(D) Based on the financial performance of the assets in an account; or

(E) For the types of services described in paragraph (a)(4)(i)(C) or (D) of this section if paid based on a percentage of assets under management;

(iv) A flat or capped per order processing fee, paid by or on behalf of a customer or beneficiary, that is equal to not more than the cost incurred by the bank in connection with executing securities transactions for trust or fiduciary accounts; or

(v) Any combination of such fees.

(6) *Trust or fiduciary account* means an account for which the bank acts in a trustee or fiduciary capacity as defined in section 3(a)(4)(D) of the Act (15 U.S.C. 78c(a)(4)(D)).

(7) *Year* means a calendar year, or fiscal year consistently used by the bank for recordkeeping and reporting purposes.

(b) *Revenues derived from transactions conducted under other exceptions or exemptions.* For purposes of calculating the *yearly compensation percentage* for a *trust or fiduciary account*, a bank may at its election exclude the compensation associated with any securities transaction conducted in accordance with the exceptions in section 3(a)(4)(B)(i) or sections 3(a)(4)(B)(iii)–(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(i) or 78c(a)(4)(B)(iii)–(xi)) and the rules issued thereunder, including any exemption related to such exceptions jointly adopted by the Commission and the Board, *provided that* if the bank elects to exclude such compensation, the bank must exclude the compensation from both the relationship compensation (if applicable) and total compensation for the account.

(c) *Advertising restrictions*—

(1) *In general.* A bank complies with the advertising restriction in section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II)) if advertisements by or on behalf of the bank do not advertise—

(i) That the bank provides securities brokerage services for trust or fiduciary accounts except as part of advertising the bank's broader trust or fiduciary services; and

(ii) The securities brokerage services provided by the bank to trust or fiduciary accounts more prominently than the other aspects of the trust or fiduciary services provided to such accounts.

(2) *Advertisement.* For purposes of this section, the term advertisement has the same meaning as in § ____.760(g)(2).

§ ____.722 Exemption allowing banks to calculate trust and fiduciary compensation on a bank-wide basis.

(a) *General.* A bank is exempt from meeting the ''chiefly compensated'' condition in section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) to the extent that it effects transactions in securities for any account in a trustee or fiduciary capacity within the scope of section 3(a)(4)(D) of the Act (15 U.S.C. 78c(a)(4)(D)) if:

(1) The bank meets the other conditions for the exception from the definition of the term ''broker'' under sections 3(a)(4)(B)(ii) and 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(B)(ii) and 15 U.S.C. 78c(a)(4)(C)), including the advertising restrictions in section 3(a)(4)(B)(ii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(II) as implemented by § __.721(c); and

(2) The aggregate relationship-total compensation percentage for the bank's trust and fiduciary business is at least 70 percent.

(b) *Aggregate relationship-total compensation percentage.* For purposes of this section, the *aggregate relationship-total compensation percentage* for a bank's trust and fiduciary business shall be the mean of the bank's *yearly bank-wide compensation percentage* for the immediately preceding year and the bank's *yearly bank-wide compensation percentage* for the year immediately preceding that year.

(c) *Yearly bank-wide compensation percentage.* For purposes of this section, a bank's *yearly bank-wide compensation percentage* for a year shall be

(1) Equal to the *relationship compensation* attributable to the bank's trust and fiduciary business as a whole during the year divided by the total compensation attributable to the bank's trust and fiduciary business as a whole during that year, with the quotient expressed as a percentage; and

(2) Calculated within 60 days of the end of the year.

(d) *Revenues derived from transactions conducted under other exceptions or exemptions.* For purposes of calculating the *yearly compensation percentage* for a *trust or fiduciary account,* a bank may at its election exclude the compensation associated with any securities transaction conducted in accordance with the exceptions in section 3(a)(4)(B)(i) or sections 3(a)(4)(B)(iii)–(xi) of the Act (15 U.S.C. 78c(a)(4)(B)(i) or 78c(a)(4)(B)(iii)–(xi)) and the rules issued thereunder, including any exemption related to such sections jointly adopted by the Commission and the Board, *provided that* if the bank elects to exclude such compensation, the bank must exclude the compensation from both the relationship compensation (if applicable) and total compensation of the bank.

§ ____.723 Exemptions for special accounts, transferred accounts, foreign branches and a *de minimis* number of accounts.

(a) *Short-term accounts.* A bank may, in determining its compliance with the chiefly compensated test in § ____.721(a)(1) or § ____.722(a)(2), exclude any trust or fiduciary account that had been open for a period of less than 3 months during the relevant year.

(b) *Accounts acquired as part of a business combination or asset acquisition.* For purposes of determining compliance with the chiefly compensated test in § ____.721(a)(1) or § ____.722(a)(2), any *trust or fiduciary account* that a bank acquired from another person as part of a merger, consolidation, acquisition, purchase of assets or similar transaction may be excluded by the bank for 12 months after the date the bank acquired the account from the other person.

(c) *Non-shell foreign branches*—(1) *Exemption.* For purposes of determining compliance with the chiefly compensated test in § ____.722(a)(2), a bank may exclude the trust or fiduciary accounts held at a non-shell foreign branch of the bank if the bank has reasonable cause to believe that trust or fiduciary accounts of the foreign branch held by or for the benefit of a U.S. person as defined in 17 CFR 230.902(k) constitute less than 10 percent of the total number of trust or fiduciary accounts of the foreign branch.

(2) *Rules of construction.* Solely for purposes of this paragraph (c), a bank will be deemed to have reasonable cause to believe that a trust or fiduciary account of a foreign branch of the bank is not held by or for the benefit of a U.S. person if

(i) The principal mailing address maintained and used by the foreign branch for the accountholder(s) and beneficiary(ies) of the account is not in the United States; or

(ii) The records of the foreign branch indicate that the accountholder(s) and beneficiary(ies) of the account is not a U.S. person as defined in 17 CFR 230.902(k).

(3) *Non-shell foreign branch.* Solely for purposes of this paragraph (c), a non-shell foreign branch of a bank means a branch of the bank

(i) That is located outside the United States and provides banking services to residents of the foreign jurisdiction in which the branch is located; and

(ii) For which the decisions relating to day-to-day operations and business of the branch are made at that branch and are not made by an office of the bank located in the United States.

(d) *Accounts transferred to a broker or dealer or other unaffiliated entity.* Notwithstanding section 3(a)(4)(B)(ii)(I) of the Act (15 U.S.C. 78c(a)(4)(B)(ii)(I)) and § ____.721(a)(1) of this part, a bank operating under § ____.721(a)(1) shall not be considered a broker for purposes of section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) solely because a *trust or fiduciary account* does not meet the chiefly compensated standard in § ____.721(a)(1) if, within 3 months of the end of the year in which the account fails to meet such standard, the bank transfers the account or the securities held by or on behalf of the account to a broker or dealer registered under section 15 of the Act (15 U.S.C. 78o) or another entity that is not an affiliate of the bank and is not required to be registered as a broker or dealer.

(e) *De minimis exclusion.* A bank may, in determining its compliance with the chiefly compensated test in § ____.721(a)(1), exclude a *trust or fiduciary account* if:

(1) The bank maintains records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account;

(2) The total number of accounts excluded by the bank under this paragraph (d) does not exceed the lesser of—

(i) 1 percent of the total number of trust or fiduciary accounts held by the bank, *provided that* if the number so obtained is less than 1 the amount shall be rounded up to 1; or

(ii) 500; and

(3) The bank did not rely on this paragraph (d) with respect to such account during the immediately preceding year.

§ ____.740 Defined terms relating to the sweep accounts exception from the definition of ''broker.''

For purposes of section 3(a)(4)(B)(v) of the Act (15 U.S.C. 78c(a)(4)(B)(v)), the following terms shall have the meaning provided:

(a) *Deferred sales load* has the same meaning as in 17 CFR 270.6c–10.

(b) *Money market fund* means an open-end company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) that is regulated as a money market fund pursuant to 17 CFR 270.2a–7.

(c)(1) *No-load*, in the context of an investment company or the securities issued by an investment company, means, for securities of the class or series in which a bank effects transactions, that:

(i) That class or series is not subject to a sales load or a deferred sales load; and

(ii) Total charges against net assets of that class or series of the investment company's securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts do not exceed 0.25 of 1% of average net assets annually.

(2) For purposes of this definition, charges for the following will not be considered charges against net assets of a class or series of an investment company's securities for sales or sales promotion expenses, for personal service, or for the maintenance of shareholder accounts:

(i) Providing transfer agent or sub-transfer agent services for beneficial owners of investment company shares;

(ii) Aggregating and processing purchase and redemption orders for investment company shares;

(iii) Providing beneficial owners with account statements showing their purchases, sales, and positions in the investment company;

(iv) Processing dividend payments for the investment company;

(v) Providing sub-accounting services to the investment company for shares held beneficially;

(vi) Forwarding communications from the investment company to the beneficial owners, including proxies, shareholder reports, dividend and tax notices, and updated prospectuses; or

(vii) Receiving, tabulating, and transmitting proxies executed by beneficial owners of investment company shares.

(d) *Open-end company* has the same meaning as in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)).

(e) *Sales load* has the same meaning as in section 2(a)(35) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(35)).

§ ____.741 Exemption for banks effecting transactions in money market funds.

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that it effects transactions on behalf of a customer in securities issued by a money market fund, provided that:

(1) The bank either

(A) Provides the customer, directly or indirectly, any other product or service, the provision of which would not, in and of itself, require the bank to register as a broker or dealer under section 15(a) of the Act (15 U.S.C. 78o(a)); or

(B) Effects the transactions on behalf of another bank as part of a program for the investment or reinvestment of deposit funds of, or collected by, the other bank; and

(2)(i) The class or series of securities is no-load; or

(ii) If the class or series of securities is not no-load

(A) The bank or, if applicable, the other bank described in paragraph (a)(1)(B) of this section provides the customer, not later than at the time the customer authorizes the securities transactions, a prospectus for the securities; and

(B) The bank and, if applicable, the other bank described in paragraph (a)(1)(B) of this section do not characterize or refer to the class or series of securities as no-load.

(b) *Definitions*. For purposes of this section:

(1) *Money market fund* has the same meaning as in § ____.740(b).

(2) *No-load* has the same meaning as in § ____.740(c).

§ ____.760 Exemption from definition of ''broker'' for banks accepting orders to effect transactions in securities from or on behalf of custody accounts.

(a) *Employee benefit plan accounts and individual retirement accounts or similar accounts*. A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that, as part of its customary banking activities, the bank accepts orders to effect transactions in securities for an employee benefit plan account or an individual retirement account or similar account for which the bank acts as a custodian if:

(1) *Employee compensation restriction and additional conditions.* The bank complies with the employee compensation restrictions in paragraph (c) of this section *and the other conditions in paragraph (d) of this section*;

(2) *Advertisements*. Advertisements by or on behalf of the bank do not:

(i) Advertise that the bank accepts orders for securities transactions for employee benefit plan accounts or individual retirement accounts or similar accounts, except as part of advertising the other custodial or safekeeping services the bank provides to these accounts; or

(ii) Advertise that such accounts are securities brokerage accounts or that the bank's safekeeping and custody services substitute for a securities brokerage account; and

(3) *Advertisements and sales literature for individual retirement or similar accounts*. Advertisements and sales literature issued by or on behalf of the bank do not describe the securities order-taking services provided by the bank to individual retirement accounts or similar accounts more prominently than the other aspects of the custody or safekeeping services provided by the bank to these accounts.

(b) *Accommodation trades for other custodial accounts*. A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) to the extent that, as part of its customary banking activities, the bank accepts orders to effect transactions in securities for an account for which the bank acts as custodian other than an employee benefit plan account or an individual retirement account or similar account if:

(1) *Accommodation*. The bank accepts orders to effect transactions in securities for the account only as an accommodation to the customer;

(2) *Employee compensation restriction and additional conditions*. The bank complies with the employee compensation restrictions in paragraph (c) of this section and the other conditions in paragraph (d) of this section;

(3) *Bank fees*. Any fee charged or received by the bank for effecting a securities transaction for the account does not vary based on:

(i) Whether the bank accepted the order for the transaction; or

(ii) The quantity or price of the securities to be bought or sold;

(4) *Advertisements.* Advertisements by or on behalf of the bank do not state that the bank accepts orders for securities transactions for the account;

(5) *Sales literature.* Sales literature issued by or on behalf of the bank:

(i) Does not state that the bank accepts orders for securities transactions for the account except as part of describing the other custodial or safekeeping services the bank provides to the account; and

(ii) Does not describe the securities order-taking services provided to the account more prominently than the other aspects of the custody or safekeeping services provided by the bank to the account; and

(6) *Investment advice and recommendations.* The bank does not provide investment advice or research concerning securities to the account, make recommendations to the account concerning securities or otherwise solicit securities transactions from the account; provided, however, that nothing in this paragraph (b)(6) shall prevent a bank from:

(i) Publishing, using or disseminating advertisements and sales literature in accordance with paragraphs (b)(4) and (b)(5) of this section; and

(ii) Responding to customer inquiries regarding the bank's safekeeping and custody services by providing:

(A) Advertisements or sales literature consistent with the provisions of paragraphs (b)(4) and (b)(5) of this section describing the safekeeping, custody and related services that the bank offers;

(B) A prospectus prepared by a registered investment company, or sales literature prepared by a registered investment company or by the broker or dealer that is the principal underwriter of the registered investment company pertaining to the registered investment company's products;

(C) Information based on the materials described in paragraphs (b)(6)(ii)(A) and (B) of this section; or

(iii) Responding to inquiries regarding the bank's safekeeping, custody or other services, such as inquiries concerning the customer's account or the availability of sweep or other services, so long as the bank does not provide investment advice or research concerning securities to the account or make a recommendation to the account concerning securities.

(c) *Employee compensation restriction.* A bank may accept orders pursuant to this section for a securities transaction for an account described in paragraph (a) or (b) of this section only if no bank employee receives compensation, including a fee paid pursuant to a plan under 17 CFR 270.12b–1, from the bank, the executing broker or dealer, or any other person that is based on whether a securities transaction is executed for the account or that is based on the quantity, price, or identity of securities purchased or sold by such account, provided that nothing in this paragraph shall prohibit a bank employee from receiving compensation that would not be considered incentive compensation under § ____.700(b)(1) as if a referral had been made by the bank employee, or any compensation described in § ____.700(b)(2).

(d) *Other conditions.* A bank may accept orders for a securities transaction for an account for which the bank acts as a custodian under this section only if the bank:

(1) Does not act in a trustee or fiduciary capacity (as defined in section 3(a)(4)(D) of the Act (15 U.S.C. 78c(a)(4)(D)) with respect to the account, other than as a directed trustee;

(2) Complies with section 3(a)(4)(C) of the Act (15 U.S.C. 78c(a)(4)(C)) in handling any order for a securities transaction for the account; and

(3) Complies with section 3(a)(4)(B)(viii)(II) of the Act (15 U.S.C. 78c(a)(4)(B)(viii)(II)) regarding carrying broker activities.

(e) *Non-fiduciary administrators and recordkeepers.* A bank that acts as a non-fiduciary and non-custodial administrator or recordkeeper for an employee benefit plan account for which another bank acts as custodian may rely on the exemption provided in this section if:

(1) Both the custodian bank and the administrator or recordkeeper bank comply with paragraphs (a), (c) and (d) of this section; and

(2) The administrator or recordkeeper bank does not execute a cross-trade with or for the employee benefit plan account or net orders for securities for the employee benefit plan account, other than:

(i) Crossing or netting orders for shares of open-end investment companies not traded on an exchange, or

(ii) Crossing orders between or netting orders for accounts of the custodian bank that contracted with the administrator or recordkeeper bank for services.

(f) *Subcustodians.* A bank that acts as a subcustodian for an account for which another bank acts as custodian may rely on the exemptions provided in this section if:

(1) For employee benefit plan accounts and individual retirement accounts or similar accounts, both the custodian bank and the subcustodian bank meet the requirements of paragraphs (a), (c) and (d) of this section;

(2) For other custodial accounts, both the custodian bank and the subcustodian bank meet the requirements of paragraphs (b), (c) and (d) of this section; and

(3) The subcustodian bank does not execute a cross-trade with or for the account or net orders for securities for the account, other than:

(i) Crossing or netting orders for shares of open-end investment companies not traded on an exchange, or

(ii) Crossing orders between or netting orders for accounts of the custodian bank.

(g) *Evasions.* In considering whether a bank meets the terms of this section, both the form and substance of the relevant account(s), transaction(s) and activities (including advertising activities) of the bank will be considered in order to prevent evasions of the requirements of this section.

(h) *Definitions.* When used in this section:

(1) *Account for which the bank acts as a custodian* means an account that is:

(i) An employee benefit plan account for which the bank acts as a custodian;

(ii) An individual retirement account or similar account for which the bank acts as a custodian;

(iii) An account established by a written agreement between the bank and the customer that sets forth the terms that will govern the fees payable to, and rights and obligations of, the bank regarding the safekeeping or custody of securities; or

(iv) An account for which the bank acts as a directed trustee.

(2) *Advertisement* means any material that is published or used in any electronic or other public media, including any Web site, newspaper, magazine or other periodical, radio, television, telephone or tape recording, videotape display, signs or billboards, motion pictures, or telephone directories (other than routine listings).

(3) *Directed trustee* means a trustee that does not exercise investment discretion with respect to the account.

(4) *Employee benefit plan account* means a pension plan, retirement plan, profit sharing plan, bonus plan, thrift savings plan, incentive plan, or other similar plan, including, without limitation, an employer-sponsored plan qualified under section 401(a) of the Internal Revenue Code (26 U.S.C. 401(a)), a governmental or other plan described in section 457 of the Internal Revenue Code (26 U.S.C. 457), a tax-deferred plan described in section 403(b) of the Internal Revenue Code (26 U.S.C. 403(b)), a church plan, governmental, multiemployer or other plan described in section 414(d), (e) or (f) of the Internal Revenue Code (26 U.S.C. 414(d), (e) or (f)), an incentive

stock option plan described in section 422 of the Internal Revenue Code (26 U.S.C. 422); a Voluntary Employee Beneficiary Association Plan described in section 501(c)(9) of the Internal Revenue Code (26 U.S.C. 501(c)(9)), a non-qualified deferred compensation plan (including a rabbi or secular trust), a supplemental or mirror plan, and a supplemental unemployment benefit plan.

(5) *Individual retirement account or similar account* means an individual retirement account as defined in section 408 of the Internal Revenue Code (26 U.S.C. 408), Roth IRA as defined in section 408A of the Internal Revenue Code (26 U.S.C. 408A), health savings account as defined in section 223(d) of the Internal Revenue Code (26 U.S.C. 223(d)), Archer medical savings account as defined in section 220(d) of the Internal Revenue Code (26 U.S.C. 220(d)), Coverdell education savings account as defined in section 530 of the Internal Revenue Code (26 U.S.C. 530), or other similar account.

(6) *Sales literature* means any written or electronic communication, other than an advertisement, that is generally distributed or made generally available to customers of the bank or the public, including circulars, form letters, brochures, telemarketing scripts, seminar texts, published articles, and press releases concerning the bank's products or services.

(7) *Principal underwriter* has the same meaning as in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(29)).

§ __.771 Exemption from the definition of ''broker'' for banks effecting transactions in securities issued pursuant to Regulation S.

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)), to the extent that, as agent, the bank:

(1) Effects a sale in compliance with the requirements of 17 CFR 230.903 of an eligible security to a purchaser who is not in the United States;

(2) Effects, by or on behalf of a person who is not a U.S. person under 17 CFR 230.902(k), a resale of an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903 to a purchaser who is not in the United States or a registered broker or dealer, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904; or

(3) Effects, by or on behalf of a registered broker or dealer, a resale of an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903 to a purchaser who is not in the United States, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904.

(b) *Definitions.* For purposes of this section:

(1) *Distributor* has the same meaning as in 17 CFR 230.902(d).

(2) *Eligible security* means a security that:

(i) Is not being sold from the inventory of the bank or an affiliate of the bank; and

(ii) Is not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis, unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

(3) *Purchaser* means a person who purchases an eligible security and who is not a U.S. person under 17 CFR 230.902(k).

§ ____.772 Exemption from the definition of ''broker'' for banks engaging in securities lending transactions.

(a) A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)), to the extent that, as an agent, it engages in or effects securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be:

(1) A qualified investor as defined in section 3(a)(54)(A) of the Act (15 U.S.C. 78c(a)(54)(A)); or

(2) Any employee benefit plan that owns and invests on a discretionary basis, not less than $ 25,000,000 in investments.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) *Securities lending services* means:

(1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower;

(2) Receiving, delivering, or directing the receipt or delivery of loaned securities;

(3) Receiving, delivering, or directing the receipt or delivery of collateral;

(4) Providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction;

(5) Investing, or directing the investment of, cash collateral; or

(6) Indemnifying the lender of securities with respect to various matters.

§ ____.775 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in investment company securities.

(a) A bank that meets the conditions for an exception or exemption from the definition of the term ''broker'' except for the condition in section 3(a)(4)(C)(i) of the Act (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition to the extent that it effects a transaction in a *covered security,* if:

(1) Any such security is neither traded on a national securities exchange nor through the facilities of a national securities association or an interdealer quotation system;

(2) The security is distributed by a registered broker or dealer, or the sales charge is no more than the amount permissible for a security sold by a registered broker or dealer pursuant to any applicable rules adopted pursuant to section 22(b)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–22(b)(1)) by a securities association registered under section 15A of the Act (15 U.S.C. 78o–3); and

(3) Any such transaction is effected:

(i) Through the National Securities Clearing Corporation; or

(ii) Directly with a transfer agent or with an insurance company or separate account that is excluded from the definition of transfer agent in Section 3(a)(25) of the Act.

(b) *Definitions.* For purposes of this section:

(1) *Covered security* means:

(i) Any security issued by an open-end company, as defined by section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a5(a)(1)), that is registered under that Act; and

(ii) Any variable insurance contract funded by a separate account, as defined by section 2(a)(37) of the Investment Company Act (15 U.S.C. 80a–2(a)(37)), that is registered under that Act.

(2) *Interdealer quotation system* has the same meaning as in 17 CFR 240.15c2–11.

(3) *Insurance company* has the same meaning as in 15 U.S.C. 77b(a)(13).

§ ____.776 Exemption from the definition of ''broker'' for banks effecting certain excepted or exempted transactions in a company's securities for its employee benefit plans.

(a) A bank that meets the conditions for an exception or exemption from the definition of the term ''broker'' except for the condition in section 3(a)(4)(C)(i) of the Act (15 U.S.C. 78c(a)(4)(C)(i)), is exempt from such condition to the extent that it effects a transaction in the securities of a company directly with a transfer agent acting for the company that issued the security, if:

(1) No commission is charged with respect to the transaction;

(2) The transaction is conducted by the bank solely for the benefit of an employee benefit plan account;

(3) Any such security is obtained directly from:

(i) The company; or

(ii) An employee benefit plan of the company; and

(4) Any such security is transferred only to:

(i) The company; or

(ii) An employee benefit plan of the company.

(b) For purposes of this section, the term *employee benefit plan account* has the same meaning as in § ____.760(h)(4).

§ ____.780 Exemption for banks from liability under section 29 of the Securities Exchange Act of 1934.

(a) No contract entered into before March 31, 2009, shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)), any other applicable provision of the Act, or the rules and regulations thereunder based solely on the bank's status as a broker when the contract was created.

(b) No contract shall be void or considered voidable by reason of section 29(b) of the Act (15 U.S.C. 78cc(b)) because any bank that is a party to the contract violated the registration requirements of section 15(a) of the Act (15 U.S.C. 78o(a)) or the rules and regulations thereunder based solely on the bank's status as a broker when the contract was created, if:

(1) At the time the contract was created, the bank acted in good faith and had reasonable policies and procedures in place to comply with section 3(a)(4)(B) of the Act (15 U.S.C. 78c(a)(4)(B)) and the rules and regulations thereunder; and

(2) At the time the contract was created, any violation of the registration requirements of section 15(a) of the Act by the bank did not result in any significant harm or financial loss or cost to the person seeking to void the contract.

§ ____.781 Exemption from the definition of ''broker'' for banks for a limited period of time.

A bank is exempt from the definition of the term ''broker'' under section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)) until the first day of its first fiscal year commencing after September 30, 2008.

By order of the Board of Governors of the Federal Reserve System, September 24, 2007.

Jennifer J. Johnson,

Secretary of the Board.

Dated: September 24, 2007.

By the Securities and Exchange Commission.

Nancy M. Morris,

Secretary.

[FR Doc. 07–4769 Filed 9–28–07; 8:45 am]

BILLING CODE 8011–01–P; 6210–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–56502; File No. S7–23–06]

RIN 3235–AJ77

Exemptions for Banks Under Section 3(a)(5) of the Securities Exchange Act of 1934 and Related Rules

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rules and rule amendments regarding exemptions from the definitions of ''broker'' and ''dealer'' under the Securities Exchange Act of 1934 (''Exchange Act'') for banks' securities activities. In particular, the Commission is adopting a conditional exemption that will allow banks to effect riskless principal transactions with non-U.S. persons pursuant to Regulation S under the Securities Act of 1933 (''Securities Act''). The Commission also is amending and redesignating an existing exemption from the definition of ''dealer'' for banks' securities lending activities as a conduit lender. In addition, the Commission is conforming a rule that grants a limited exemption from U.S. broker-dealer registration for foreign broker-dealers to the amended definitions of ''broker'' and ''dealer'' under the Exchange Act. Finally, the Commission is withdrawing three rules under the Exchange Act: A rule defining the term ''bank'' for purposes of the Exchange Act's definitions of ''broker'' and ''dealer,'' due to judicial invalidation; a time-limited exemption for banks' securities activities, due to the passage of time; and an exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks, as the exemption no longer necessary in light of subsequent legislation.

DATES: *Effective Date:* The final rules are effective on November 2, 2007.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, Linda Stamp Sundberg, Senior Special Counsel, Joshua Kans, Senior Special Counsel, John Fahey, Branch Chief, or Elizabeth K. MacDonald, Special Counsel, at (202) 551–5550, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is adopting new Rules 3a5–2 [17 CFR 240.3a5–2] and 3a5–3 [17 CFR 3a5–3], amending Rule 15a–6 [17 CFR 240.15a–6], and withdrawing Rules 3b–9 [17 CFR 240.3b–9], 15a–8 [17 CFR 240.15a–8], 15a–9 [17 CFR 240.15a–9] and 15a–11 [17 CFR 15a–11] under the Exchange Act.

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I. Introduction and Background

The rules and rule amendments discussed below complement Regulation R, which we are adopting jointly with the Board of Governors of the Federal Reserve System (''Board'').[1] These rules and rule amendments in large part reflect changes that the

[1] Exchange Act Release No. 56501 (Sept. 24, 2007).

Gramm-Leach-Bliley Act (''GLBA'') made to the Exchange Act with respect to the status of banks as ''dealers.'' [2]

As discussed below, we are adopting Exchange Act Rule 3a5–2 to provide a conditional exemption from the definition of ''dealer'' to allow banks to engage in certain transactions involving securities exempted from registration by Regulation S.[3] We also are adopting a clarifying amendment to Exchange Act Rule 15a–6,[4] which provides a conditional exemption from U.S. broker-dealer registration for certain foreign broker-dealers. In addition, we are redesignating, as new Exchange Act Rule 3a5–3, the dealer provisions of current Exchange Act Rule 15a–11[5] pertaining to banks' securities lending activities.

Finally, we are withdrawing three rules under the Exchange Act: Rule 3b–9,[6] which defined the term ''bank'' for purposes of the Exchange Act definitions of ''broker'' and ''dealer,'' due to judicial invalidation; Rule 15a–8,[7] which provided a time-limited exemption for banks' securities activities, due to the passage of time; and Rule 15a–9,[8] which provided an exemption from the Exchange Act definitions of ''broker'' and ''dealer'' for savings associations and savings banks, as this no longer is necessary given the passage of the Financial Services Regulatory Relief Act of 2006 (''Regulatory Relief Act'').

II. Adopted Rules and Rule Amendments

A. Regulation S Transactions With Non-U.S. Persons

We are adopting Rule 3a5–2, which exempts banks from the definition of ''dealer'' under Section 3(a)(5) of the Exchange Act for certain principal transactions involving Regulation S securities. As with Rule 771 of Regulation R, which will permit banks to engage in certain Regulation S transactions on an agency basis without being ''brokers,'' this rule recognizes that non-U.S. persons generally will not rely on the protections of the U.S. securities laws when purchasing Regulation S securities from U.S. banks, and that non-U.S. persons can purchase the same securities from banks located outside of the U.S.[9] Commenters generally supported the proposal while suggesting certain modifications and clarifications.[10] The rule, as adopted, incorporates changes that respond to some of these comments.

The exemption will apply only to purchases and sales of ''eligible securities''—securities that are not in the inventory of the bank or an affiliate, and that are not underwritten by the bank or an affiliate on a firm commitment basis (apart from securities acquired from an unaffiliated distributor).[11] In addition, this dealer exemption will apply only to Regulation S transactions that a bank makes on a ''riskless principal'' basis.[12] This focus will permit U.S. banks to sell, overseas, securities that foreign banks also sell, thus helping to avoid placing U.S. banks at a competitive disadvantage with respect to eligible securities, while also helping to safeguard against investor protection risks associated with unregistered entities distributing eligible securities.

The exemption is available when a bank purchases a newly issued eligible security from an issuer or a broker-dealer and sells that security in compliance with the requirements of Rule 903 of Regulation S [13] to a purchaser who is not in the U.S.[14] The exemption also is available when a bank purchases, from a person who is not a U.S. person under Rule 902(k) of Regulation S,[15] an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the U.S. within the meaning of and in compliance with the requirements of Rule 903, and resells that security to a purchaser who is not in the U.S. or to a registered broker-dealer.[16] If that resale is made prior to any applicable distribution compliance period specified in Rules 903(b)(2) or (b)(3) of Regulation S,[17] the resale must be made in compliance with the

[2] *See* Exchange Act Release No. 54947 (Dec. 18, 2006), 71 FR 77550 (Dec. 26, 2006) (''Proposing Release'').

[3] 17 CFR 230.901 *et seq.*

[4] 17 CFR 240.15a–6.

[5] 17 CFR 240.15a–11.

[6] 17 CFR 240.3b–9.

[7] 17 CFR 240.15a–8.

[8] 17 CFR 240.15a–9.

[9] *See* Proposing Release, 71 FR at 77552. When we proposed an earlier version of this rule as part of Regulation B, we explained that these securities are not intended to be sold within the U.S. *See* Exchange Act Release No. 49879 (June 17, 2004), 69 FR 39682, 39720 (June 30, 2004) (explaining that although we generally believe that U.S. broker-dealers should be subject to the same standards of conduct when dealing with non-U.S. persons, this principle is less compelling when the foreign person has chosen to deal with a U.S. bank with respect to Regulation S securities that are designed to be sold to non-U.S. persons offshore).

[10] *See* Institute of Int'l Bankers Letter (''IIB Letter''); American Bankers Ass'n Letter (''ABA Letter''); The Clearing House Association Letter (''Clearing House Ass'n Letter'').

[11] Rule 3a5–2(b)(2) specifically defines an ''eligible security'' as a security that is not being sold from the inventory of the bank or an affiliate of the bank, and not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

Rule 3a5–2(b)(i) defines the term ''distributor'' to have the same meaning as in 17 CFR 230.902(d). That provision of Regulation S defines ''distributor'' to mean any underwriter, dealer, or other person who participates, pursuant to a contractual arrangement, in the distribution of the securities offered or sold in reliance on Regulation S.

[12] Rule 3a5–2(b)(4) defines a ''riskless principle transaction'' as a transaction in which, after receiving an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

[13] 17 CFR 230.903. Rule 903 of Regulation S provides that an offer or sale of securities by the issuer, a distributor, or an affiliate or a person acting on their behalf shall be deemed to occur outside the U.S. within the meaning of Rule 901 if the offer or sale is made in an offshore transaction, and no directed selling efforts are made in the U.S. by the issuer, a distributor, affiliate, or person acting on their behalf. Other conditions may also apply depending on the place of incorporation and reporting status of the issuer, and the amount of U.S. market interest in the securities. (Rule 901 of Regulation S generally provides that for the purposes of Section 5 of the Securities Act, the terms ''offer,'' ''offer to sell,'' ''sell,'' ''sale'' and ''offer to buy'' include offers and sales that occur within the U.S., but not those that occur outside the U.S.)

[14] Rule 3a5–2(a)(1).

[15] Rule 902(k) of Regulation S defines the term ''U.S. person'' to mean: (i) Any natural person resident in the U.S.; (ii) any partnership or corporation organized or incorporated under the laws of the U.S.; (iii) any estate of which any executor or administrator is a U.S. person; (iv) any trust of which any trustee is a U.S. person; (v) any agency or branch of a foreign entity located in the U.S.; (vi) any non-discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary for the benefit or account of a U.S. person; and (vii) any discretionary account or similar account (other than an estate or trust) held by a dealer or other fiduciary organized, incorporated, or (if an individual) resident in the U.S., and (viii) any partnership or corporation if (A) organized or incorporated under the laws of any foreign jurisdiction, and (B) formed by a U.S. person principally for the purpose of investing in securities not registered under the Act, unless it is organized or incorporated, and owned, by accredited investors (as defined in Rule 501(a)) who are not natural persons, estates or trusts.

[16] Rule 3a5–2(a)(2).

[17] Under Rule 903 of Regulation S, Category 1 encompasses certain securities: (i) Issued by a foreign issuer, for which there is no substantial U.S. market interest, (ii) that are offered and sold in an overseas directed offering, (iii) that are backed by the full faith and credit of a foreign government, or (iv) that are offered and sold to employees of the issuer or its affiliates pursuant to certain foreign employee benefit plans. Category 2 encompasses securities, not eligible for Category 1, that are equity securities of a reporting foreign issuer, or debt securities of a reporting issuer or of a non-reporting foreign issuer. Category 3 applies to all offerings of securities that do not fall within Category 1 or 2.

Rules 903(b)(2) and (b)(3) of Regulation S subject Category 2 securities and Category 3 debt securities to a 40-day distribution compliance period, and subject Category 3 equity securities to a one-year distribution compliance period.

requirements of Rule 904 of Regulation S.[18]

Finally, the exemption is available when a bank purchases, from a registered broker-dealer, an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the U.S. within the meaning of and in compliance with the requirements of Rule 903, and resells that security to a purchaser who is not in the U.S.[19] This provision also requires compliance with Rule 904 if the resale is made prior to the expiration of the security's distribution compliance period.

In adopting Rule 3a5–2, we have modified the proposed rule to address concerns raised by commenters and to clarify the exemption. As revised, each section of Rule 3a5–2 specifically addresses a bank's purchase of a Regulation S security and the bank's subsequent sale or resale of the security—a structure that reflects the nature of banks' riskless principal transactions involving Regulation S securities[20] and helps Rule 3a5–2 better parallel the equivalent provisions of Rule 771 of Regulation R regarding banks' Regulation S transactions as agent.[21]

In adopting Rule 3a5–2, we have modified the proposal to provide that when the bank purchases an eligible security from a broker-dealer after the security's initial sale (for resale to a non-U.S. person), the bank may rely on its reasonable belief that the eligible security was initially sold outside of the U.S. consistent with Rule 903. The proposed rule would have allowed a bank to rely on its reasonable belief only when it purchases a security from a non-U.S. person, but not when it purchases a security from a broker-dealer. We have made this change in light of comments we have received, as we are persuaded that the process of determining whether a security initially was issued in compliance with Regulation S would require banks to obtain the same information whether the purchase is from a broker-dealer or a non-U.S. person.[22]

As revised, the provisions of Rule 3a5–2 that apply to a bank's resale of previously issued Regulation S securities (but not the provision related to a bank's sale of a newly issued security) require compliance with Rule 904 of Regulation S if the resale is made prior to the expiration of the security's distribution compliance period.[23] We also have revised the rule to enhance its clarity and to better conform it to Regulation S.[24]

Commenters requested that we state that this exemption would continue to be available after the expiration of the applicable Regulation S distribution compliance period.[25] Commenters also questioned whether it is necessary for the rule to condition the exemption on a bank's compliance with Rule 904 of Regulation S if the resale is made prior to the end of the Rule 903 distribution period.[26] We can clarify that this rule (like Rule 771) requires the bank to meet the conditions of Rule 904 during, but not after, the distribution compliance period. During the distribution compliance period, a bank thus will have to comply with Regulation S to take advantage of the exception. Even after the end of the distribution compliance period, however, a bank may rely on this exemption from the dealer definition so long as it satisfies the other requirements of Rule 3a5–2. After the expiration of the applicable distribution compliance period, although the securities may be offered and sold in the U.S. pursuant to registration of the securities under the Securities Act or pursuant to an available exemption from the registration requirements of that Act, the bank will not be permitted to sell them to persons other than a broker-dealer or a person who is not in the United States.

One commenter stated that Rule 3a5–2 (as well as Rule 771) simply should refer to sales to a ''purchaser,'' rather than, as proposed, being specifically limited to sales to a purchaser who is outside the U.S.[27] We decline, however, to expand the exemption beyond offshore sales or sales to registered broker-dealers. Consistent with Regulation S, which permits the offshore resale of securities, the purpose of the exemption is to permit U.S. banks to sell Regulation S securities to their foreign customers. It does not permit banks to sell those securities domestically.

Commenters also requested that we clarify that the definition of ''eligible security'' in Rule 3a5–2 (as well as in Rule 771)—which excludes any security sold from the inventory of an affiliate or that is underwritten by an affiliate on a firm-commitment basis—would not prohibit a bank from effecting Regulation S exempt transactions in securities that have been issued by an affiliate.[28] The ''eligible security'' definition in general does not exclude proprietary products such as structured

[18] Rule 904 of Regulation S provides that an offer or sale of securities by any person other than the issuer, a distributor, an affiliate (except an officer or director who is an affiliate solely by virtue of that position) or person acting on their behalf will be deemed to occur outside the U.S. within the meaning of Rule 901 if the offer or sale are made in an offshore transaction, and no directed selling efforts are made in the U.S. by the seller, an affiliate or person acting on their behalf. Additional conditions apply in the case of resales of Category 2 or 3 securities by dealers and persons receiving selling concessions, and in the case of resales by certain affiliates of the issuer or a distributor.

[19] Rule 3a5–2(a)(3).

[20] Paragraph (a)(1) addresses a bank's sale of newly issued Regulation S securities, paragraph (a)(2) addresses a bank's riskless principal transaction with a customer who wants to reduce or unwind a position in a Regulation S security, and paragraph (a)(3) addresses a riskless principal transaction with a customer who wants to increase or establish a position in a Regulation S security.

[21] As proposed, paragraph (a)(1) of the rule would have addressed a bank's sale of an eligible security, paragraph (a)(2) would have addressed a bank's purchase of an eligible security from a non-U.S. person, and paragraph (a)(3) would have addressed a bank's purchase of an eligible security from a broker-dealer together with the bank's subsequent resale.

One commenter requested that we clarify the relationship between provisions of proposed Rule 3a5–2 and proposed Rule 771. *See* IIB Letter (suggesting that there may be a discrepancy between Rule 771(a)(2) and Rule 3a5–2(a)(2) and asking for clarification as to whether paragraph (a)(2) of Rule 3a5–2 was intended to apply to resales).

[22] *See* IIB Letter (''In both cases * * * a Bank is required to make a determination regarding the manner in which the eligible security that is the subject of the transaction was initially issued.''); Clearing House Ass'n Letter. Those comments also addressed the agency provisions of Rule 771, which has been revised in a similar way.

[23] Specifically, the condition requiring compliance with Rule 904 is included in paragraphs (a)(2) and (a)(3) of the rule, related to a bank's resale of previously issued securities. While the condition is not included in paragraph (a)(1), related to a bank's sale of newly issued securities, because the requirements of Rule 904 are targeted to resales of Regulation S securities, a bank's sale of a newly issued security would still have to comply with Rule 903 of Regulation S.

[24] We are replacing the phrase ''purchaser who is outside of the United States within the meaning of 17 CFR 230.903'' with ''purchaser who is not in the United States'' to better conform to Regulation S. We also are making other technical changes, such as removing references to ''broker'' and Section 3(a)(4) under the Exchange Act, together with conforming changes.

[25] *See* IIB Letter (stating that the Proposing Release contained language suggesting that would not be the case); Clearing House Ass'n Letter.

[26] *See* IIB Letter (stating that it assumed this provision merely required compliance with Regulation S to the extent applicable, and requested that we confirm that understanding, or delete the provision as unnecessary and potentially confusing).

[27] *See* IIB Letter (maintaining that the provision would be unduly restrictive by ''supporting the erroneous view that the Regulation S Exemption expires once an eligible security has been seasoned,'' and that the provision is unnecessary given that Rule 904 of Regulation S specifically imposes an offshore transaction requirement on resales effected prior to expiration of the applicable seasoning period).

[28] *See* IIB Letter (''Thus, for example, a Bank could sell a structured note or other investment product (whether or not customized for the particular customer) that is issued by the Bank or an affiliate of the Bank, or shares in an offshore mutual fund controlled by the Bank or an affiliate of the Bank.''); ABA Letter.

notes and mutual funds that are issued by affiliates but not underwritten on a firm commitment basis. The exclusion of inventory securities and securities underwritten on a firm-commitment basis is intended to prevent banks from dumping third-party securities overseas. It is not intended to extend to all proprietary products issued by a bank affiliate. Proprietary products are sold by foreign banks, and permitting U.S. banks to sell comparable products will avoid placing U.S. banks at a competitive disadvantage with respect to those foreign banks.[29]

B. Amendment to Exchange Act Rule 15a–6

We are adopting, without change, a clarifying amendment to Exchange Act Rule 15a–6(a)(4)(i).[30] This amendment conforms Rule 15a–6—which in general permits foreign broker-dealers to engage in certain transactions involving U.S. persons without having to register as broker-dealers—to revisions to the Exchange Act and its underlying regulations resulting from GLBA. We received no comment on the proposed amendment.

This amendment updates Rule 15a–6 to reflect the current Exchange Act definitions of ''broker'' and ''dealer'' [31] and their underlying rules. While the ''broker'' and ''dealer'' definitions completely excluded banks prior to GLBA, now they provide that banks engaging in the activities permitted by the conditional exceptions in those definitions ''shall not be considered to be'' brokers or dealers. Currently, paragraph (a)(4)(i) of Rule 15a–6 permits a foreign broker-dealer to engage in certain securities activities with a registered broker-dealer or with ''a bank acting in a broker or dealer capacity as permitted by U.S. law.'' As amended, that paragraph will refer to ''a bank acting pursuant to an exception or exemption from the definition of 'broker' or 'dealer' in sections 3(a)(4)(B), 3(a)(4)(E) or 3(a)(5)(C) of the Act * * * or the rules thereunder.'' [32] This amendment does not change the substance of Rule 15a–6.[33]

C. Securities Lending by Bank Dealers

We are adopting, as proposed, Rule 3a5–3 under the Exchange Act to provide banks engaged in certain securities lending transactions with a conditional exemption from the definition of ''dealer.'' Rule 3a5–3 incorporates the dealer provisions of Exchange Act Rule 15a–11, which we are withdrawing.[34]

The rule provides that a bank is exempt from the dealer definition to the extent that, as a ''conduit lender,'' [35] it engages in or effects certain ''securities lending transactions'' [36] and ''securities lending services'' [37] in connection with such transactions.[38] The exemption applies only to securities lending activities with or on behalf of a person that the bank reasonably believes to be: (1) A qualified investor as defined in Section 3(a)(54)(A) of the Exchange Act; [39] or (2) any employee benefit plan that owns and invests, on a discretionary basis, not less than $25 million in investments.

We are adopting the rule as proposed to permit banks to continue to engage in securities lending as conduit lenders, under the conditions they have followed since Rule 15a–11 became effective in 2003.[40] One commenter took the position—in the parallel context of banks' agency activities—that banks should be able to engage in securities lending services for institutional customers that have less than $25 million in investments.[41] We have, however, not expanded the group of persons with or on behalf of which a bank may rely on the securities lending exemption, inasmuch as we believe that the parameters of the exemption reflect banks' existing securities lending businesses.[42]

[29] Although there could be higher fees associated with proprietary securities than with independent investment company securities, this also is true with respect to proprietary securities sold by foreign banks. Accordingly, we do not believe that these potentially higher fees provide a sufficient reason to exclude proprietary securities from these exemptions.

[30] 17 CFR 240.15a–6(a)(4)(i).

[31] Exchange Act Sections 3(a)(4) and 3(a)(5), 15 U.S.C. 78c(a)(4) and (a)(5).

[32] Sections 3(a)(4)(B) of the Exchange Act provide exceptions from the ''broker'' definition for certain bank activities, while Section 3(a)(4)(E) provides an exception from that definition for banks that, prior to the enactment of GLBA, were subject to Exchange Act Section 15(e), 15 U.S.C. 78o(e), which requires certain non broker-dealer members of national security exchanges to comply with the rules that govern broker-dealers. Section 3(a)(5)(C) provides exceptions from the ''dealer'' definition for certain bank activities.

[33] A U.S. bank's foreign affiliate could rely on Rule 15a–6(a)(4)(i) for transactions with the bank, and the bank could rely on the statutory exception regarding affiliate transactions (Exchange Act 3(a)(4)(B)(vi), 15 U.S.C. 78c(a)(4)(B)(vi)) for transactions with the foreign affiliate. Exchange Act Rule 15a–6(a)(4)(i), however, does not permit a foreign broker-dealer or bank to have direct contact with customers of the U.S. bank. Exchange Act Release No. 44291 (May 11, 2001) 66 FR 27760 (May 18, 2001). Of course, the exemptions for transactions in Regulation S securities we are adopting today (Exchange Act Rule 3a5–2 and Rule 771 of Regulation R) will permit a bank to sell Regulation S securities to non-U.S. persons, including customers of a foreign affiliate, as long as it meets the conditions of that exemption.

Nothing in this release should be construed as modifying the Exchange Act Section 3(a)(6) definition of ''bank'' as it applies to foreign banks. Generally, foreign banks doing business with U.S. customers will not meet this definition and would be considered broker-dealers under the U.S. securities laws. As such, foreign banks generally will be required to register as U.S. broker-dealers unless they qualify for an exemption from registration under Exchange Act Rule 15a–6.

[34] In 2003, the Commission adopted Exchange Act Rule 15a–11 to provide an exemption from the definitions of both ''broker'' and ''dealer'' for banks engaging in securities lending transactions. *See* Exchange Act Release No. 47364 (Feb .13, 2003), 68 FR 8686 (Feb. 24, 2003) (*http://www.sec.gov/rules/final/34-47364.htm*). As applicable to banks' broker activities, the Rule 15a–11 exemption was never operable because of the temporary exemptions applicable to all bank broker activities. The Regulatory Relief Act required the Commission and the Federal Reserve Board to jointly propose rules governing banks' broker activities, and we are adopting Rule 772 of Regulation R jointly with the Federal Reserve Board to exempt banks from the ''broker'' definition for certain securities lending activities. Exchange Act Release No. 56501 (Sept. 24, 2007). The Regulatory Relief Act does not directly affect the operation of the rules the Commission adopted concerning banks' dealer activities.

[35] Rule 3a5–3(d) defines the term ''conduit lender'' to mean a bank that borrows or loans securities, as principal, for its own account, and contemporaneously loans or borrows the same securities, as principal, for its own account. The rule further states that a bank that qualifies under this definition as a conduit lender at the commencement of a transaction will continue to qualify, notwithstanding whether: (1) The lending or borrowing transaction terminates and so long as the transaction is replaced within one business day by another lending or borrowing transaction involving the same securities; and (2) any substitutions of collateral occur. Rule 3a5–3(d).

[36] Rule 3a5–3(b) defines the term ''securities lending transaction'' to mean a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

[37] Rule 3a5–3(c) defines the term ''securities lending services'' to mean: (1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower; (2) receiving, delivering, or directing the receipt or delivery of loaned securities; (3) receiving, delivering, or directing the receipt or delivery of collateral; (4) providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction; (5) investing, or directing the investment of, cash collateral; or (6) indemnifying the lender of securities with respect to various matters.

[38] Rule 3a5–3(a).

[39] 15 U.S.C. 78c(a)(54)(A). In part, this definition encompasses corporations and partnerships with at least $25 million in investments.

[40] One commenter specifically emphasized the need for a securities lending exemption to continue to apply to a bank's conduit lending activity. *See* America's Community Bankers Letter.

[41] *See* Union Bank of California Letter.

[42] Broker-dealers are the most frequent borrowers of securities. In this context, we note that borrowers of securities who are not qualified investors do not directly borrow securities from noncustodial banks, but instead generally borrow securities through intermediaries that would be qualified investors. The rule, however, permits banks to lend securities to employee benefit plans with at least $25 million

Continued

Some commenters suggested exempting banks involved in securities repurchase and reverse repurchase transactions for non-exempt securities from the ''dealer'' definition, based on the view that repurchase and reverse repurchase activities constitute the functional equivalent of financing or securities lending activities.[43] We and the Federal Reserve Board are soliciting comments about banks' involvement in repurchase and reverse repurchase transactions, as discussed more fully in the Joint Adopting Release. The information we receive through this process should help inform any future actions the Commission may take in this area.

D. Withdrawal of Exchange Act Rule 3b–9, Rule 15a–8, and Rule 15a–9

Finally, we are withdrawing three outdated rules under the Exchange Act. No commenters addressed the proposed withdrawal of these rules.

We are withdrawing Exchange Act Rule 3b–9, in which the Commission defined the term ''bank'' for purposes of the Exchange Act definitions of ''broker'' and ''dealer,'' because the rule was invalidated by the U.S. Court of Appeals for the District of Columbia Circuit.[44] We also are withdrawing Exchange Act Rule 15a–8, which provided a temporary exemption—that has since expired—from Exchange Act Section 29 liability for banks' securities activities. In addition, we are withdrawing Exchange Act Rule 15a–9, which provides an exemption from the definitions of ''broker'' and ''dealer'' for savings associations and savings banks. The Regulatory Relief Act made Rule 15a–9 unnecessary by causing savings associations and savings banks to be treated as ''banks,'' thus eliminating the need to differentiate between these entities for the purposes of the Exchange Act.

III. Administrative Law Matters

A. Paperwork Reduction Act Analysis

These rules and rule amendments do not impose recordkeeping or information collection requirements, or other collections of information that require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Accordingly, the Paperwork Reduction Act does not apply.[45] We received no comments on this issue.

B. Consideration of Benefits and Costs

We believe the rules and rule amendments that we are adopting are consistent with Congress's intent in enacting the GLBA, and will facilitate banks' compliance with the federal securities laws and provide banks with greater legal certainty regarding their conduct with respect to securities transactions. These changes are very limited in scope. Specifically, we are: (1) Adopting Exchange Act Rule 3a5–2 to permit banks to purchase from and sell to non-U.S. persons and registered broker-dealers securities exempt under Regulation S; (2) adopting a clarifying amendment to Exchange Act Rule 15a–6 to conform the rule to the revised statutory definition of ''broker'' and ''dealer'' under the Exchange Act as well as to the rules adopted thereunder, without changing the substance of the exemption; (3) amending Exchange Act Rule 15a–11 to eliminate its reference to banks' ''broker'' activities and clarify its continued availability for banks' ''dealer'' activities, and redesignating it as Rule 3a5–3; and (4) withdrawing three outdated rules under the Exchange Act—Rule 3b–9 because of its invalidation by the U.S. Court of Appeals for the District of Columbia Circuit; Rule 15a–8(b) because that exemption expired on March 31, 2005; and Rule 15a–9, which is no longer necessary after passage of the Regulatory Relief Act. In light of comments received, we are adopting Rule 3a5–2 with changes to make the rule more flexible and to address technical matters. We are adopting the other rule changes as proposed. We received no comments on the costs and benefits of these rule changes.[46]

Rule 3a5–2, by permitting banks to purchase from and sell to non-U.S. persons and registered broker-dealers securities that are exempt under Regulation S, provides the benefit of allowing U.S. banks to engage in overseas Regulation S transactions on the same basis as foreign banks, subject to terms that are reasonably crafted to maintain appropriate standards of functional regulation and investor protection. In adopting this rule, we have liberalized the proposal to permit banks to rely on their ''reasonable belief'' that the securities initially were sold in compliance with Regulation S when purchasing from a broker-dealer, as well as when purchasing from a non-U.S. person. This change is intended to prevent banks from losing the exemption due to inadvertent errors in identifying the source of securities sold under the exemption. We believe that permitting banks to engage in these Regulation S transactions on a riskless principal basis will provide banks with competitive benefits, without imposing significant costs.[47]

The revisions to Rules 15a–6 and 15a–11, and the redesignation of Rule 15a–11 as Rule 3a5–3, are technical in nature to bring those rules up-to-date in light

in investments, even though those plans do not meet all of the requirements of the ''qualified investor'' definition, yet are sophisticated market participants. That latter provision in part addresses industry concerns. *See* Letter from Edward J. Rosen, Cleary, Gottlieb, Stein & Hamilton, to Annette Nazareth, Director, Division of Market Regulation, Commission, dated Oct. 9, 2002 (requesting that the exemption encompass banks' securities lending activity involving any entity that owns and invests on a discretionary basis at least $25 million in investments).

[43] *See* ABA Letter (specifically addressing repurchase transactions involving non-exempt corporate debt; stating that while banks could provide similar financing services by converting repurchases into secured loans, they would have weaker creditor rights in bankruptcy; also stating that some investors may be permitted by governing documents to enter into repurchases, but not secured loans); Clearing House Ass'n Letter (''We note that providing financing and liquidity to customers via repurchase and reverse repurchase transactions is a traditional banking activity, and permitting banks to engage in such transactions with respect to non-exempt securities will benefit customers that do not have exempt securities against which to borrow.''); Citigroup Letter (''Given the economic equivalence between repurchase and reverse repurchase transactions and the traditional bank activity of secured lending, it is unclear why the exemption from dealer registration has been limited to transactions involving only exempted securities.''); IIB Letter (stating that repurchase transactions are the functional equivalent of securities lending, and also questioning whether these transactions actually constitute securities transactions for purposes of the GLBA push-out provisions). One commenter also urged the Commission to consider an exemption for banks engaged in repurchase transactions in an agency capacity. *See* Clearing House Ass'n Letter.

Banks are permitted by statutory exception to engage in purchase and sale activities with respect to exempt securities such as government securities. Exchange Act Section 3(a)(5)(C)(i)(II).

[44] *American Bankers Association* v. *SEC*, 804 F.2d 739 (D.C. Cir. 1986).

[45] We note that, as a practical matter, banks likely already keep records that could be used to show they meet the terms of the exemption. We also note that Section 203 of the GLBA specifically requires the bank regulators to promulgate recordkeeping requirements.

[46] As discussed in the release adopting Regulation R, two commenters stated that the start-up and ongoing costs of complying with Regulation R will be significant, that the Agencies underestimated the amount of time associated with compliance, and that the Agencies should modify Regulation R to reduce the cost burden. *See* Ass'n of Colorado Trust Companies letter; Fiserv Trust Company letter. Those comments, which were general in nature, did not discuss the Exchange Act ''dealer'' amendments addressed here.

[47] Under their current blanket exemption from broker registration, banks have been able to engage in economically equivalent transactions in an agency capacity. This exemption will permit banks to engage in such activities in a riskless principal capacity, without substantially changing either the costs of the activities or the benefits provided. Further, Exchange Act Rule 3a5–1 already exempts banks from acting as ''dealers'' for engaging in riskless principal transactions, provided that they engage in fewer than 500 such transactions per year in the aggregate under the exemption and the de minimis broker exception in Exchange Act Section 3(a)(4)(b)(vi).

of the GLBA and the Regulatory Relief Act without changing their substance in the context of banks' dealer activities. Moreover, the withdrawal of the three outdated Rules 3b–9, 15a–8(b), and 15a–9 under the Exchange Act is administrative in effect. These changes will impose no costs and will provide administrative certainty and clarity.

C. Consideration of Burden on Competition, and on Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[48] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[49] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We received no comment on these issues.

We do not believe that the rules and rule amendments addressed here will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The rules and rule amendments will provide exemptions for banks that are consistent with the exceptions added to the Exchange Act by Congress in the GLBA. They will not impose any additional competitive burdens on banks engaging in a securities business, other than those imposed by Congress through functional regulation in the GLBA. The revisions to Rules 15a–6 and 15a–11, and the redesignation of Rule 15a–11 as Rule 3a5–3, are technical in nature to bring those rules up-to-date in light of the GLBA and the Regulatory Relief Act without changing their substance in the context of banks' dealer activities. Further, the withdrawal of Rules 3b–9, 15a–8(b), and 15a–9 is administrative in nature, and will not have any impact on efficiency, competition or capital formation.

As we noted in the proposing release, the types of dealer activities that are the subject of these rules and rule amendments generally are not the types of activities in which small banks or small broker-dealers directly participate, and accordingly there will likely be little, if any, competitive costs to small banks.

We do not believe that the rules and rule amendments impose any effects on efficiency, competition, or capital formation that are not a consequence of the GLBA statutory provisions. Rule 3a5–2 and Rule 3a5–3 in particular make it easier for banks to conduct sales of Regulation S securities to persons located abroad and securities lending activities, respectively, after the GLBA changes to the federal securities laws. More generally, the rules and rule amendments also give banks enhanced legal certainty for these securities activities. Nothing in the rules and rule amendments will adversely affect capital formation. In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with certain exceptions from Commission oversight for specified activities. These rules and rule amendments are consistent with Congress' intent and make it easier for banks to comply with the requirements of the GLBA.

D. Regulatory Flexibility Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act (''RFA''),[50] the Commission certifies that the rules and rule amendments will not have a significant economic impact on a substantial number of small entities.

In the proposing release, the Commission requested written comments on matters discussed in the initial regulatory flexibility analysis (''IRFA''), particularly on (a) the number of small entities that would be affected by the amendments; (b) the nature of any impact the amendments would have on small entities and empirical data supporting the extent of the impact; and (c) how to quantify the number of small entities that would be affected by and/or how to quantify the impact of the amendments. We received no comments and believe that the rules and rule amendments will not have a significant economic impact on a substantial number of small entities.

IV. Statutory Authority

Pursuant to authority set forth in the Exchange Act and particularly Sections 3(a)(4), 3(b), 15, 17, 23(a), and 36 thereof (15 U.S.C. 78c(a)(4), 78c(b), 78*o*, 78q, 78w(a), and 78mm, respectively) the Commission is repealing current Rules 3b–9, 15a–8(b), and 15a–9 (§§ 240.3b–9, 240.15a–8(b), and 240.15a–9, respectively). Pursuant to the same authority, the Commission also is adopting Exchange Act Rule 3a5–2 (§ 240.3a5–2) adopting the amendments to Exchange Act Rule 15a–6 (§ 240.15a–6), and adopting amendments to and redesignating Exchange Act Rule 15a–11 as Rule 3a5–3 (§ 240.15a–11 and § 240.3a5–3, respectively).

V. Text of Final Rules and Rule Amendments

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Sections 240.3a5–2 and 240.3a5–3 are added to read as follows:

§ 240.3a5–2 Exemption from the definition of ''dealer'' for banks effecting transactions in securities issued pursuant to Regulation S.

(a) A bank is exempt from the definition of the term ''dealer'' under section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)), to the extent that, in a riskless principal transaction, the bank:

(1) Purchases an eligible security from an issuer or a broker-dealer and sells that security in compliance with the requirements of 17 CFR 230.903 to a purchaser who is not in the United States;

(2) Purchases from a person who is not a U.S. person under 17 CFR 230.902(k) an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903, and resells that security to a purchaser who is not in the United States or to a registered broker or dealer, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904; or

[48] 15 U.S.C. 78w(a)(2).

[49] 15 U.S.C. 78c(f).

[50] 5 U.S.C. 603.

(3) Purchases from a registered broker or dealer an eligible security after its initial sale with a reasonable belief that the eligible security was initially sold outside of the United States within the meaning of and in compliance with the requirements of 17 CFR 230.903, and resells that security to a purchaser who is not in the United States, provided that if the resale is made prior to the expiration of any applicable distribution compliance period specified in 17 CFR 230.903(b)(2) or (b)(3), the resale is made in compliance with the requirements of 17 CFR 230.904.

(b) *Definitions.* For purposes of this section:

(1) *Distributor* has the same meaning as in 17 CFR 230.902(d).

(2) *Eligible security* means a security that:

(i) Is not being sold from the inventory of the bank or an affiliate of the bank; and

(ii) Is not being underwritten by the bank or an affiliate of the bank on a firm-commitment basis, unless the bank acquired the security from an unaffiliated distributor that did not purchase the security from the bank or an affiliate of the bank.

(3) *Purchaser* means a person who purchases an eligible security and who is not a U.S. person under 17 CFR 230.902(k).

(4) *Riskless principal transaction* means a transaction in which, after having received an order to buy from a customer, the bank purchased the security from another person to offset a contemporaneous sale to such customer or, after having received an order to sell from a customer, the bank sold the security to another person to offset a contemporaneous purchase from such customer.

§ 240.3a5–3 Exemption from the definition of ''dealer'' for banks engaging in securities lending transactions.

(a) A bank is exempt from the definition of the term ''dealer'' under section 3(a)(5) of the Act (15 U.S.C. 78c(a)(5)), to the extent that, as a conduit lender, it engages in or effects securities lending transactions, and any securities lending services in connection with such transactions, with or on behalf of a person the bank reasonably believes to be:

(1) A qualified investor as defined in section 3(a)(54)(A) of the Act (15 U.S.C. 78c(a)(54)(A)); or

(2) Any employee benefit plan that owns and invests, on a discretionary basis, not less than $25,000,000 in investments.

(b) *Securities lending transaction* means a transaction in which the owner of a security lends the security temporarily to another party pursuant to a written securities lending agreement under which the lender retains the economic interests of an owner of such securities, and has the right to terminate the transaction and to recall the loaned securities on terms agreed by the parties.

(c) *Securities lending services* means:

(1) Selecting and negotiating with a borrower and executing, or directing the execution of the loan with the borrower;

(2) Receiving, delivering, or directing the receipt or delivery of loaned securities;

(3) Receiving, delivering, or directing the receipt or delivery of collateral;

(4) Providing mark-to-market, corporate action, recordkeeping or other services incidental to the administration of the securities lending transaction;

(5) Investing, or directing the investment of, cash collateral; or

(6) Indemnifying the lender of securities with respect to various matters.

(d) For the purposes of this section, the term *conduit lender* means a bank that borrows or loans securities, as principal, for its own account, and contemporaneously loans or borrows the same securities, as principal, for its own account. A bank that qualifies under this definition as a conduit lender at the commencement of a transaction will continue to qualify, notwithstanding whether:

(1) The lending or borrowing transaction terminates and so long as the transaction is replaced within one business day by another lending or borrowing transaction involving the same securities; and

(2) Any substitutions of collateral occur.

§ 240.3b–9 [Removed and reserved]

■ 3. Section 240.3b–9 is removed and reserved.

■ 4. Section 240.15a–6 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 240.15a–6 Exemption of certain foreign brokers or dealers.

(a) * * *

(4) * * *

(i) A registered broker or dealer, whether the registered broker or dealer is acting as principal for its own account or as agent for others, or a bank acting pursuant to an exception or exemption from the definition of ''broker'' or ''dealer'' in sections 3(a)(4)(B), 3(a)(4)(E), or 3(a)(5)(C) of the Act (15 U.S.C. 78c(a)(4)(B), 15 U.S.C. 78c(a)(4)(E), or 15 U.S.C. 78c(a)(5)(C)) or the rules thereunder;

* * * * *

§ 240.15a–8 [Removed and reserved]

■ 5. Section 240.15a–8 is removed and reserved.

§ 240.15a–9 [Removed and reserved]

■ 6. Section 240.15a–9 is removed and reserved.

§ 240.15a–11 [Removed and reserved]

■ 7. Section 240.15a–11 is removed and reserved.

* * * * *

By the Commission.

Dated: September 24, 2007.

Nancy M. Morris,

Secretary.

[FR Doc. E7–19093 Filed 10–2–07; 8:45 am]

BILLING CODE 8011–01–P

Federal Register

Wednesday,
October 3, 2007

Part IV

National Archives and Records Administration

Privacy Act of 1974 Republication of Systems of Records Notice; Notice

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Privacy Act of 1974 Republication of Systems of Records Notices

AGENCY: National Archives and Records Administration (NARA).

ACTION: Republication of Systems of Records Notices.

SUMMARY: The National Archives and Records Administration (NARA) is republishing 34 system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, to incorporate minor corrective and administrative changes. NARA proposes to add one new system to its inventory, NARA 39, Visitor Ticketing Application (VISTA) Files; change the name of NARA 37 from ''Order Online!'' to ''NARA Online Ordering System;'' and to revise its routine uses (found in Appendix A) to incorporate routine use language recommended by the President's Task Force on Identity Theft. This routine use is being added to all of the systems in NARA's inventory. One system, among NARA's inventory of system notices, NARA 23, Office of Inspector General Investigative Case Files, was published in the **Federal Register** on June 6, 2007 [72 FR 31348]. That system notice is not republished here. The proposed changes are in compliance with OMB Circular No. A–130, Appendix I.

One system is being deleted from the inventory of systems notices because NARA no longer maintains the information (NARA 29, State Historical Records Advisory Board Member Files).

EFFECTIVE DATES: This proposed action will become effective without further notice on November 2, 2007, unless comments received on or before that date cause a contrary decision. If changes are made based on NARA's review of any comments received, a new final notice will be published.

ADDRESSES: NARA invites interested persons to submit comments on this system notice. Comments may be submitted by any of the following methods:

Mail: Send comments to: Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.

Fax: Submit comments by facsimile transmission to 301–837–0293.

E-Mail: Send comments to *ramona.oliver@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Ramona Branch Oliver, Privacy Act Officer, 301–837–2024 (voice) or 301–837–0293 (fax).

SUPPLEMENTARY INFORMATION: The NARA system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**. They are available on the Internet at *http://www.archives.gov/foia/privacy-program/inventory.html* or from the Privacy Act Officer, Office of General Counsel (NGC), Room 3110, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD, 20740–6001.

The notice for each system of records states the name and the location of the record system, the authority for and manner of its operation, the categories of individuals that it covers, the types of records that it contains, the sources of information in these records, and the proposed ''routine uses'' of each system of records. Each notice also includes the business address of the NARA official who will inform interested persons of the procedures for gaining access to and correcting records pertaining to themselves.

One of the purposes of the Privacy Act, as stated in section 2(b)(4) of the Act, is to provide certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to disseminate any record of identifiable personal information in a manner that assures that such action is for a necessary and lawful purpose, that information is current and accurate for its intended use, and that adequate safeguards are provided to prevent misuse of such information. NARA intends to follow these principles in transferring information to another agency or individual as a ''routine use'', including assurance that the information is relevant for the purposes for which it is transferred.

The NARA notices and the inventory of routine uses, as amended, are published at the end of this notice.

Dated: September 25, 2007.

Allen Weinstein,

Archivist of the United States.

NARA 1

SYSTEM NAME:

Researcher Application Files.

SYSTEM LOCATION:

Researcher application files are maintained in the following locations in the Washington, DC area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Customer Services Division;

(2) Presidential Libraries, Projects, and Staffs;

(3) Regional Records Services Facilities; and

(4) Washington National Records Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who apply to use original records for research in NARA facilities in the Washington, DC area, the Presidential libraries and projects, and the regional records services facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Researcher application files may include: researcher applications; related correspondence; and electronic records. These files may contain the following information about an individual: name, address, telephone number, proposed research topic(s), occupation, name and address of employer/institutional affiliation, educational level and major field of study, expected result(s) of research, photo, researcher card number, type of records used, and other information furnished by the individual. Electronic systems may also contain additional information related to the application process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2111 note, and 2203(f)(1).

PURPOSE(S):

The information in this system is used to register researchers who wish to gain access to original records; to assist NARA in maintaining intellectual control over archival holdings and to refer related information to the Office of Inspector General if original records are determined to be missing or mutilated; to disseminate information related to events and programs of interest to NARA's researchers as appropriate; and measure customer satisfaction with NARA services. Aggregate information from this system may be used for the purposes of review, analysis, planning and policy formulation related to customer service staffing and facility needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains researcher application files on individuals to: register persons who apply to use original records for research at a NARA facility; record initial research interests of researchers; determine which records researchers may want to use; to contact researchers if additional information

related to their research interest is found or if problems with the requested records are discovered; and prepare mailing lists for sending notices of events and programs of interest to researchers, including the fundraising and related activities of NARA-associated foundations, and invitations to participate in voluntary customer satisfaction surveys, unless individuals elect that their application information not be used for this purpose. The electronic databases serve as finding aids to the applications. Information in the system is also used by NARA staff to compile statistical and other aggregate reports regarding researcher use of records.

The routine use statements A, C, E, F, G, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual or by researcher card number.

SAFEGUARDS:

During normal hours of operation, paper records are maintained in areas accessible only to authorized personnel of NARA. Electronic records are accessible via passwords from workstations located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Researcher application files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For researchers who apply to use records and Nixon presidential materials in the Washington, DC area, the system manager for researcher application files is: Assistant Archivist for Records Services—Washington DC (NW). For researchers who apply to use accessioned records, presidential records, and donated historical materials in the Presidential libraries, Presidential projects, and the regional records services facilities, the system managers of researcher application files are the directors of the individual libraries and regional records services facilities. For researchers who apply to use records on storage at the Washington National Records Center (WNRC), the system manager is the Director of the WNRC. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer, whose address is listed in Appendix B following the NARA Notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in researcher application files is obtained from researchers and from NARA employees who maintain the files.

NARA 2

SYSTEM NAME:

Reference Request Files.

SYSTEM LOCATION:

Reference request files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Office of Records Services—Washington, DC;

(2) National Historical Publications and Records Commission;

(3) Presidential Libraries, Projects, and Staffs; and

(4) Regional Records Services Facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who request information from or access to accessioned, inactive, congressional, presidential records, presidential materials, and/or donated historical materials in the custody of organizational units located in the Washington, DC, area; Presidential Libraries, Projects, and Staffs; and Regional Records Services Facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reference request files may include: reference service slips; reference service databases; correspondence control registers and databases; and correspondence, including administrative forms used for routine inquiries and replies, between NARA staff and researchers. These files may contain some or all of the following information about an individual: name, address, telephone number, position title, name of employer/institutional affiliation, educational background, research topic(s), field(s) of interest, identification of requested records, credit card or purchase order information, and other information furnished by the researcher.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2111 note, 2203(f)(2), and 2907.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains reference request files on individuals to: maintain control of records being used in a research room; establish researcher accountability for records; prepare replies to researchers' reference questions; record the status of researchers' requests and NARA replies to those requests; enable future contact with researchers, if necessary; and facilitate the preparation of statistical and other aggregate reports on researcher use of records. The routine use statements A, C, E, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in reference request files may be retrieved by: the name of the individual; the Record Group number; or the name, social security number, or military service number of the former civilian employee/veteran whose record was the subject of the request at the National Personnel Records Center.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in

attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Reference request files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For reference request files located in organizational units in the Office of Records Services-Washington, DC, the system manager is the Assistant Archivist for Records Services-Washington, DC. For reference request files located in the National Historical Publications and Records Commission, the system manager is the Executive Director, National Historical Publications and Records Commission (NHPRC). For reference request files located in the following locations, the system manager is the director: Presidential Libraries, Projects, and Staffs; and Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in reference request files is obtained from researchers and from NARA employees who maintain the files.

NARA 3

SYSTEM NAME:

Donors of Historical Materials Files.

SYSTEM LOCATION:

Donors of historical materials files are maintained in the following locations in the Washington, DC area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Office of Records Services—Washington, DC organizational units;

(2) Office of Presidential Libraries:

(3) Presidential Libraries, Projects, and Staffs; and

(4) Regional Records Services Facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include donors and potential donors of historical materials and oral history interviews to the Office of Records Services—Washington, DC, Presidential Libraries, Projects, and Staffs, and Regional Records Services Facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system may include correspondence, deeds of gift, deposit agreements, accession files, accession cards, accession logs, inventories of museum objects, and oral history use agreements, all of which are related to the solicitation and preservation of donations and oral history interviews. These files may contain the following information about an individual: name, address, telephone number, occupation, and other biographical data as it relates to the solicitation and donation of historical materials and oral history interviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2111 and 2112.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains donors of historical materials files on individuals to: Record deeds of gift and oral history use agreements; administer the solicitation of, accessioning of, and access to historical materials; maintain control over the accessions program; and facilitate future solicitations of gifts.

NARA may disclose these records to other Federal agencies and former presidents and their agents as NARA administers the access provisions of a deed of gift. The routine use statements A, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in donors of historical materials files may be retrieved by the name of the individual or by the accession number assigned to the donation.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Some donor and historical materials files are permanent records and are transferred to the National Archives of the United States in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Other files have temporary dispositions and are destroyed in accordance with the instructions in the NARA Records Schedule. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For donors of historical materials files located in organizational units in the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for Records Services—Washington, DC, (NW). For donors of historical materials files located in the Office of Presidential Libraries, the system manager is the Assistant Archivist for Presidential Libraries (NL). For donors of historical materials files located in Presidential Libraries, Projects, and Staffs and the Regional Records Services Facilities, the system manager is the director of the individual Presidential Library, Project, or Staff or Regional Records Services Facility. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed above.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial

determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in donors of historical materials files may be obtained from: donors; potential donors; NARA employees who maintain the files and handle solicitations and donations of historical materials and oral history interviews; associates and family members of donors; associates of former presidents; and published sources.

NARA 4

SYSTEM NAME:

Committee and Foundation Member Files

SYSTEM LOCATION:

Committee member files may be maintained in NARA organizational units that provide administrative support to or oversight of internal and inter-agency committees and external standards-setting and professional organizations. Committee member files may also be located in organizational units that provide administrative support to NARA's Federal advisory committees. Foundation member files for the Foundation for the National Archives are maintained in the Center for the National Archives Experience within the Office of Records Services—Washington, DC. Foundation member files for the private foundations that support the presidential libraries may be located at individual Presidential Libraries and Projects. The addresses are listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees who serve on committees and current and prospective members of NARA's Federal advisory committees, the National Archives Foundation, and foundations associated with the presidential libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Committee and foundation member files may include correspondence, resumes, biographical statements, mailing lists, and travel documents. These files may contain the following information about an individual: name, address, telephone number, NARA correspondence symbol, educational background, employment history, list of professional accomplishments and awards, titles of publications, and other information furnished by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains committee member files to: review professional qualifications of prospective committee members; document committee members' travel activities related to committee business; record the participation of committee members in committee activities; and contact members about future meetings and events. NARA maintains foundation member files in order to contact members about meetings, conferences and special events. The routine use statements A, F, G, and H described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in committee and foundation member files may be retrieved by the name of the individual or by the name of the committee or foundation.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Some committee member files are permanent records and are transferred to the National Archives of the United States in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Other committee member [and foundation member—if applicable] files have temporary dispositions and are destroyed in accordance with the instructions in the NARA Records Schedule. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer. One series of committee member files is unscheduled and, therefore, are retained until the Archivist of the United States approves one or more dispositions.

SYSTEM MANAGER(S) AND ADDRESS:

For committee member files the system manager is the Chief of the Policy and Planning Staff (NPOL). For working group member files, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW). For the Foundation for the National Archives member files, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW). For foundation member files located in the presidential libraries and projects, the system manager is the director of the individual Presidential Library or Project. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address, listed in Appendix B following the NARA Notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in committee, working group, and foundation member files is obtained from NARA employees, current and prospective members of Federal advisory committees, working groups, foundations, and references furnished by such persons.

NARA 5

SYSTEM NAME:

Conference, Workshop, and Training Course Files.

SYSTEM LOCATION:

Conference, workshop, and training course files may be maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Office of Records Services—Washington, DC;

(2) Office of Administration;

(3) Presidential libraries, staffs, and projects; and

(4) Office of Regional Records Services.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include attendees and speakers at NARA-sponsored conferences, workshops, and training courses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Conference, workshop, and training course files maintained on attendees may include: Standard Forms 182, Request, Authorization, Agreement, and Certification of Training; application/registration forms; evaluations; other administrative forms; and copies of payment records. Files maintained on speakers may include correspondence, biographical statements, and resumes. These files may contain some or all of the following information about an individual: name, home address, business address, home telephone number, business telephone number, social security number, birth date, position title, name of employer/organization, employment history, professional awards, areas of expertise, research interests, reason(s) for attendance, titles of publications, and other information furnished by the attendee or speaker.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2109, and 2904.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains files on attendees and speakers to: register attendees for conferences, workshops, training courses, and other events; contact attendees for follow-up discussions; plan, publicize, and document interest in current and future NARA-sponsored conferences, workshops, training courses, and special events; and prepare mailing lists in order to disseminate information on future events and publications of related interest. Information in the records is also used to prepare statistical and other reports on conferences, workshops, training courses, and other events sponsored by NARA.

NARA may disclose information on individuals in the files to outside organizations that co-sponsor conferences, workshops, training courses, and other events for purposes of administering the course or event. NARA may disclose information on an individual to the organization or agency that funded the individual's attendance. The routine use statements F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in paper records may be retrieved by either the title or the date of the conference, workshop, training course, or event and thereunder by the name of the individual. Information in electronic records may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Some of the conference, workshop, and training course files are permanent records and are transferred to the National Archives of the United States in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Other files have temporary dispositions and are destroyed in accordance with the instructions in the NARA Records Schedule. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS

For conference, workshop, and training course files located in the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW.). For files located in the Office of Human Resources Services, the system manager is the Assistant Archivist for Administration (NA). For files in the following locations, the system manager is the Director: Presidential Libraries and Projects, and Office of Regional Records Services. The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address is listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the files may be obtained from speakers, attendees, and potential speakers and attendees at NARA-sponsored conferences, workshops, and training courses, and from references provided by those individuals.

NARA 6

SYSTEM NAME:

Mailing List Files.

SYSTEM LOCATION:

Mailing lists may be maintained in the following NARA locations. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) Congressional and Public Affairs Staff;
(2) National Historical Publications and Records Commission;
(3) Public Programs Division;
(4) Organization and Staff Development Staff;
(5) Acquisitions Services Division;
(6) Presidential Libraries and Projects;
(7) Regional Records Services Facilities;
(8) Policy and Planning Staff; and
(9) Office of the Federal Register.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system may include: members of the media; members of Congress; members of the National Historical Publications and Records Commission; members of the Foundation for the National Archives; local, political, and other dignitaries; researchers and records managers; historians, archivists, librarians, documentary editors, and other professionals in related fields; educators; authors; subscribers to free and fee publications and newsletters; buyers of NARA products; vendors; and other persons with an interest in National Archives programs, exhibits, conferences, training courses, and other events.

CATEGORIES OF RECORDS IN THE SYSTEM:

In addition to names and addresses, mailing lists may include any of the

following information about an individual: home/business telephone number; position title; name of employer, organization, and/or institutional affiliation; and subscription expiration date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2307 and 2904(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains mailing lists to generate address labels to: disseminate mailings of NARA publications, newsletters, press releases, and announcements of meetings, conferences, workshops, training courses, public and educational programs, special events, and procurements; send invitations for exhibit openings, lectures, and other special events; and send customers updated information about NARA holdings and about methods of requesting copies of accessioned and non-current records. The routine use statements F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records from which paper records may be printed.

RETRIEVABILITY:

Information about individuals maintained in mailing lists may be retrieved by: the name of the individual; the name of an employer or institutional/organizational affiliation; the category of individuals/organizations on mailing lists; the city or zip code.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

When maintained for programs and functions for which the records have been scheduled, mailing lists are categorized as temporary records. Organizational units update these lists and purge outdated information as needed for the purposes previously cited. For those programs and functions for which mailing lists and all other records have not yet been scheduled, NARA is in the process of identifying and scheduling these records.

SYSTEM MANAGER(S) AND ADDRESS:

For mailing lists maintained in the previously cited locations (1) through (9), the system managers are:

(1) Director, Congressional and Public Affairs Staff (NCON);

(2) Executive Director, National Historical Publications and Records Commission (NHPRC);

(3) Assistant Archivist for Records Services—Washington, DC (NW);

(4) Assistant Archivist for Administration (NA);

(5) Assistant Archivist for Administration (NA);

(6) Directors, of the individual Presidential Libraries;

(7) Directors, of the individual Regional Records Services Facilities;

(8) Director, Policy and Planning Staff (NPOL); and

(9) Director of the Federal Register (NF).

The addresses are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in mailing lists is obtained from individuals whose names are recorded on mailing lists for the purposes previously cited or from NARA employees who maintain the lists.

NARA 7

SYSTEM NAME:

Freedom of Information Act (FOIA) Request Files and Mandatory Review of Classified Documents Request Files

SYSTEM LOCATION:

Freedom of Information Act (FOIA) and mandatory review request files are maintained in the following locations. The addresses for these locations are listed in Appendix B following the NARA Notices.

(1) Office of the Federal Register;

(2) Office of the Inspector General;

(3) Office of General Counsel;

(4) Office of Records Services—Washington, DC;

(5) Regional Records Services Facilities; and

(6) Presidential Libraries, Projects, and Staffs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who cite the Freedom of Information Act (FOIA) to request access to records and persons who request the mandatory review of security-classified materials under Executive Order 12958, as amended or predecessor orders.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files for requests made under the Freedom of Information Act and the mandatory review provisions of Executive Order 12958, as amended (or predecessor orders) may include: correspondence control registers, logs, and databases; requests for access or mandatory review, appeal letters from requestors, NARA replies to original requests and appeals, and supporting documents; Certificate of Citizenship; and other administrative forms used in the process. These files may also contain information or determinations furnished by and correspondence with other Federal agencies. FOIA and mandatory review request files may contain some or all of the following information about an individual: name, address, telephone number, position title, name of employer/institutional affiliation, marital status, birthplace, birth date, citizenship, research interests, other information provided by the requestor, and copies of documents furnished to the requestor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12958, as amended, its predecessor orders governing access to classified information, and 5 U.S.C. 552, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains FOIA and mandatory review request files on individuals to record: requests for records under the FOIA, requests for access to security-classified materials under the mandatory review provisions of Executive Order 12958, as amended and predecessor orders, and appeals of denials of access; actions taken on

requests and appeals; and the status of requests and appeals in logs and databases. The records are also used to facilitate the preparation of statistical and other reports regarding use of the FOIA and the mandatory review provisions of Executive Order 12958, as amended.

NARA may disclose information in request files to agencies that have equity in the requested records in order for those agencies to review records for possible declassification and release. The routine use statements A, E, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in FOIA and mandatory review request files may be retrieved by one or more of the following data elements: the name of the individual; an alphanumeric case file number; a project number assigned to the request; the Record Group number; the type of request (FOIA or mandatory review); or the name, social security number, or military service number of the former civilian employee/veteran whose record was the subject of the request at the National Personnel Records Center.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Some of the Freedom of Information Act (FOIA) and Mandatory Review of Classified Documents Request files are permanent records and are transferred to the National Archives of the United States in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Other files have temporary dispositions and are destroyed in accordance with the instructions in the NARA Records Schedule. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For Freedom of Information Act (FOIA) request files and mandatory review request files, the system managers are:

(1) For FOIA requests files maintained by the Office of Federal Register, the system manager is the Director of the Federal Register (NF);

(2) For FOIA request files related maintained by the Office of the Inspector General, the system manager is the Inspector General, Office of the Inspector General (OIG);

(3) For FOIA request files for NARA's operational records the system manager is the General Counsel, Office of General Counsel (NGC);

(4) For FOIA and mandatory review request files maintained by organizational units within the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for the Office of Records Services—Washington, DC.

(5) For FOIA and mandatory review request files maintained by Regional Record Services Facilities the system manager is the Director for the individual regional facility.

(6) For FOIA and mandatory review request files maintained by Presidential Libraries, Projects, and Staffs, the Director of the Library, Project, or Staff is the system manager. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR Part 1202.

RECORD SOURCE CATEGORIES:

Information in FOIA and mandatory review request files is obtained from persons who cite the FOIA to request access to records, researchers who request mandatory review of security-classified records, NARA employees who maintain the files and handle FOIA and mandatory review requests and appeals, and other agencies that have reviewed the requested records.

NARA 8

SYSTEM NAME:

Restricted and Classified Records Access Authorization Files.

SYSTEM LOCATION:

Restricted and classified records access authorization files are maintained in the following locations. The addresses are listed in Appendix B following the NARA Notices.

(1) Space and Security Management Division;

(2) Office of Records Services—Washington, DC;

(3) Regional Records Services Facilities;

(4) Presidential Libraries, Projects, and Staffs; and

(5) Office of General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include persons who request to use agency-restricted, donor-restricted, and security-classified records or materials in the custody of organizational units located in the Washington, DC, area; Regional Records Services Facilities; and Presidential Libraries, Projects, and Staffs. This includes records requested for the purpose of conducting statistical, social science or biomedical research in accordance with 36 CFR 1256.

CATEGORIES OF RECORDS IN THE SYSTEM:

Access authorization files include applications for access to restricted and classified records, letters of authorization from sponsoring agencies, other documentation related to security clearance levels, and information in an electronic database. These files may include some or all of the following information about an individual: name, address, telephone number, birth date, birthplace, citizenship, social security number, occupation, name of employer/institutional affiliation, security clearance level, basis of clearance, name of sponsoring agency, field(s) of interest, intention to publish, type of publication, subject(s) of restricted or classified records to be reviewed, the expiration date for authorization to review the records, and other information furnished by the requestor, including reference letters which may contain identifying information concerning a third party.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108 and 2204.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains restricted and classified records access authorization

files on individuals to: maintain a record of requests for access to restricted and classified records; authorize and control access to restricted and classified records and materials; and facilitate preparation of statistical and other reports.

NARA may disclose information in these access authorization files to other agencies that have an equity in the restricted or classified records in order for agency officials to review access authorization requests. The routine use statements A, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in restricted and classified records access authorization files may be retrieved by some or all of the following: the name of the individual, the name of the sponsoring agency, Record Group number, or collection title.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Restricted and classified records access authorization files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For restricted and classified records access authorization files the system managers are:

(1) For authorization files maintained by Space and Security Management Divisions, the system manager is the Assistant Archivist for Administration (NA);

(2) For access authorization files maintained by organizational units within the Office of Records Services—Washington, DC, the system manager is the Assistant Archivist for Records Services—Washington, DC (NW).

(3) For access authorization files maintained at a Regional Records Services Facility, the system manager is the Director of the Regional Records Services Facility.

(4) For access authorization files maintained by a Presidential Library, Project or Staff, the system manager is the Director of the Presidential Library, Project, or Staff.

(5) For access authorization files located in the Office of General Counsel (NGC) the system manager is the General Counsel.

The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in these files is obtained from persons who request to use restricted and classified records, NARA employees who maintain the files, employers of requestors, and sponsoring agency officials.

NARA 9

SYSTEM NAME:

Authors Files.

SYSTEM LOCATION:

Authors files are maintained in the Congressional and Public Affairs Office (NCON), in the Washington, DC area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include authors who have submitted manuscripts for publication in *Prologue: Quarterly of the National Archives* or in other NARA publications.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on authors may include correspondence, resumes, biographical statements, and manuscript copies of articles. These records may contain some or all of the following information about an individual: name, address, telephone number, educational background, professional experience and awards, research interests, and titles of previous publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2307.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains files on individual authors in order to: select authors' manuscripts for publishing in *Prologue: Quarterly of the National Archives* or in other NARA publications; maintain a record of authors' manuscripts; contact authors concerning re-publication of manuscripts and other related issues. The routine use statement F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in authors files may be retrieved by the issue date of the publication and there under by the name of the individual.

SAFEGUARDS:

During normal hours of operation, records are maintained in areas accessible only to authorized personnel of NARA. After hours, buildings have security guards and/or doors are secured, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Authors files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is: The Director of the Congressional Affairs and Public Affairs Office (NCON). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in authors files is obtained from authors or their agents.

NARA 10 [RESERVED]
NARA 11

SYSTEM NAME:

Credentials and Passes.

SYSTEM LOCATION:

Records related to credentials and passes are maintained at the following locations in the Washington, DC area and other geographical regions. The addresses are listed in Appendix B following the NARA Notices.

(1) Policy and Planning Staff;

(2) Space and Security Management Division;

(3) Facilities and Personal Property Management Division;

(4) Office of the Federal Register;

(5) Regional Records Services Facilities;

(6) Presidential Libraries, Projects and Staffs; and

(7) Washington National Records Center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system may include NARA employees, volunteers, contractors at all NARA facilities, and employees or contractors of other federal agencies temporarily stationed at NARA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Credentials and passes may include: Copies of official passport records; copies of identification badges; and administrative forms and information in electronic databases used to generate NARA identification badges and access cards and to issue room and stack area keys and parking space permits. Credentials and passes may contain some or all of the following information about an individual:

1. Official passport records: Copies of passport application records which include: Name; photograph; name of agency (NARA); address; telephone number; social security number; position title; grade; birth date; height; weight; color of hair and eyes; passport number; passport issue and expiration dates;

2. Copies of identification badges and administrative forms and information in electronic databases used to generate NARA identification badges and access cards: Name; photograph; NARA correspondence symbol; office telephone number; social security number; position title; grade; name of agency or firm (contractors only); birth date; height; weight; color of hair and eyes; identification/access card number; card issue and expiration dates; building locations, time zones, and reasons for required access; signatures of the individual and authorized officials; and dates of signatures;

3. Administrative forms and information in electronic databases used to issue room and stack area keys: Name; NARA correspondence symbol; office telephone number; building room number/stack area; type of key issued (single door or stack master); key tag number; signatures of the individual and authorized official; and dates of signatures; and

4. Administrative forms used to assign parking spaces: Name; address; office telephone number; name of agency; make, year, and license number of vehicle; signatures of carpool members; and dates of signatures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains records on individuals in order to facilitate the issuance and control of Government passports, NARA identification badges, access cards, room and stack area keys, and parking space permits. At the National Archives at College Park, information in an electronic database is used to generate single badges that identify individuals and electronically allow individuals to enter and exit secured and non-secured areas of the building. Routine use statements A, B, C, D, E, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in credentials and passes may be retrieved by the name of the individual, identification card number, and/or social security number.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Credentials and passes are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the following types of credentials and passes are:

1. Official passport records: Director, Policy and Communications Staff (NPOL);

2. Records used for NARA identification badges and access cards for employees and volunteers in the Washington, DC area, for badges and access cards for contractors at the National Archives Building and the National Archives at College Park, and for key issuance and parking control at the National Archives Building and the National Archives at College Park: Assistant Archivist for Administration (NA).

3. Records used for NARA identification badges and access cards for contractors and for key issuance and parking control at the Washington National Records Center: Director, Washington National Records Center (NWMW).

4. Records used for key issuance and parking control at the Office of the Federal Register: Director of the Federal Register (NF).

5. Records used for NARA identification badges and access cards and for key issuance and parking control at the National Personnel Records Center, Presidential Libraries and Projects, and Regional Records Services Facilities: Directors of the National Personnel Records Center, Presidential Libraries and Projects, and Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the

NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in credentials and passes is obtained from individuals being issued credentials and passes from authorized issuing officials.

NARA 12

SYSTEM NAME:

Emergency Notification Files.

SYSTEM LOCATION:

Emergency notification lists are maintained in the Space and Security Management Division at the National Archives at College Park. Local emergency notification files are maintained in all NARA facilities nationwide. The addresses for these locations are listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees who have been designated as primary and alternate emergency contact personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Emergency notification files include lists of names of NARA officials, cover memoranda, and administrative forms. These files may contain some or all of the following information about an individual: Name, correspondence symbol, home address, business and home telephone numbers, position title, and emergency assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains current directory information on designated NARA employees to contact outside of business hours in case of emergencies involving NARA facilities, including records storage areas, and to notify these employees of weather and energy emergencies that would result in the closing of Government offices. The routine use statement A, D, F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in emergency notification files may be retrieved by the name of the individual or the facility.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel and contractors. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment. Authorized individuals may maintain copies in additional locations.

RETENTION AND DISPOSAL:

Emergency notification files are unscheduled records and, therefore, are retained until the Archivist of the United States approves dispositions. NARA is in the process of scheduling emergency notification records.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the NARA-wide and Washington, DC, area notification lists is the Assistant Archivist for Administration (NA). The system managers for local emergency notification files are the Directors of the Federal Records Centers, Presidential Libraries, Projects and Staffs, and Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in emergency notification files is obtained from the NARA employees whose names appear on emergency notification lists and forms.

NARA 13

SYSTEM NAME:

Defunct Agency Records.

SYSTEM LOCATION:

Defunct agency records may be located in the Regional Records Services Facilities at the locations listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include employees of a defunct agency and those persons who may have had dealings with the agency prior to termination.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes those records of an agency whose existence has been terminated with no successor in function. This system also contains those records that were maintained by a defunct agency in an internal Privacy Act system of records. Categories of personal information maintained on individuals in these records are described in the Privacy Act system notices previously published by the originating agency. Defunct agency records that are located in the Regional Records Services Facilities may be temporary records or permanent records that have not yet been transferred to the custody of the Archivist of the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2107, 2108, 2907, 2908, and 3104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

If records of a defunct agency are unscheduled, NARA may review the records during the appraisal process in order to determine the disposition of the records. NARA may disclose the records, while providing reference service on the records, in accordance with the routine uses in the Privacy Act notices previously published by the defunct agency. The routine use statements A, F, G and H, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, electronic, and microfilm records.

RETRIEVABILITY:

Information in records of a defunct agency may be retrieved by the name of the individual or by other identifier established by the defunct agency when the records were maintained by that agency.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records of a defunct agency that are appraised as temporary are destroyed in accordance with the records disposition instructions approved by the Archivist of the United States. Records of a defunct agency that are appraised as permanent are transferred to the National Archives of the United States.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for records of defunct agencies are the directors of the Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Upon termination of an agency with no successor in function, the agency transfers its records to the custody of NARA. Prior to termination, the agency has described record source categories in its Privacy Act system notices for agency records.

NARA 14

SYSTEM NAME:

Payroll and Time and Attendance Reporting System Records.

SYSTEM LOCATION:

Payroll and time and attendance reporting system records are located in NARA organizational units nationwide that employ timekeepers. The addresses for Washington, DC area offices and staffs and regional facilities are listed in Appendix B following the NARA Notices. An electronic record-keeping system, the Electronic Time and Attendance Management System (ETAMS), is maintained for NARA by the General Services Administration (GSA) under a reimbursable agreement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payroll and time and attendance files may include: Office of Personnel Management (OPM) Form 71, Request for Leave or Approved Absence; GSA Form 873, Annual Attendance Record; NA Form 3004, Intermittent Employees Attendance Record; NA Form 3032A or B, time and Attendance Log; and the electronic system, the Employee Time and Attendance Reporting System (ETAMS). These paper and electronic records may contain some or all of the following information about an individual: name; address; correspondence symbol; telephone number; social security number; birth date; position title; grade; hours of duty; and salary, payroll and related information (e.g., withholding status, voluntary deductions, financial institution), and attendance information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C., 2101 through 8901 is the authority for the overall system. Specific authority for use of social security numbers is contained in Executive Order 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA and GSA maintain payroll, time and attendance reporting system records on individual NARA employees to carry out payroll functions and account for employee work hours.

To the extent necessary, NARA and GSA may disclose information in these records to outside entities for the monitoring and documenting of grievance proceedings, EEO complaints, and adverse actions, and for conducting counseling sessions. NARA, GSA, and other NARA agents may disclose information in the files to state offices of unemployment compensation in connection with claims filed by NARA employees for unemployment compensation. NARA and GSA may disclose information in this system of records to the Office of Management and Budget in connection with the review of private relief legislation. NARA and GSA may disclose information in these records to the Office of Personnel Management for its production of summary descriptive statistics or for related work studies; while published statistics and studies do not contain individual identifiers, the selection of elements of data included in studies may be structured in a way that makes individuals identifiable by inference. The routine use statements A, B, C, D, E, F, G, and H described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfiche, and electronic records.

RETRIEVABILITY:

Information in payroll, time and attendance reporting system records may be retrieved by the name of the individual or by social security number.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from terminals located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Payroll and time and attendance paper records are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Electronic records in PAR are temporary records whose disposition is governed by the General Records Schedules. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the electronic system and paper records sent to the National Payroll Center as input to that system is: Chief, National Payroll Center (6BCY–N), General Services Administration, Room 1118, 1500 East Bannister Rd., Kansas City, MO 64414. System managers for paper records maintained in NARA offices such as OPM Forms 71 and sign-in sheets are the office heads and staff directors of individual offices and staffs in the Washington, DC, area and the directors of Presidential Libraries and Projects, and Regional Records Services Facilities. The system manager for unemployment compensation records is the Assistant Archivist for Administration. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in payroll and time and attendance reporting system records is obtained from: current and former NARA employees themselves, timekeepers, supervisors of employees, GSA payroll specialists, and other Federal agencies for which the individual worked.

NARA 15

SYSTEM NAME:

Freelance Editor/Indexer Files.

SYSTEM LOCATION:

Freelance editor/indexer files are located in the Product Development Staff (NWCD) in the Washington, DC, area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include freelance editors and indexers with whom NARA has contracted for editing and indexing services or who have expressed an interest in performing such services for NARA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Freelance editor/indexer files may include correspondence, resumes, biographical statements, evaluations, examples of previous work, invoices, and certifications for payment. These records may contain some or all of the following information about an individual: name, address, telephone number, educational background, professional experience and awards, research interests, titles of publications, and other information furnished by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 2109, and 2307.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains freelance editor/indexer files on individuals to: review professional qualifications of editors and indexers; make assignments and indicate assignment completion dates; evaluate the quality of work performed during assignments; and document editing and indexing expenditures for budgetary purposes. The routine use statements A, F, G, and H described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records.

RETRIEVABILITY:

Information in freelance editor/indexer files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Freelance editor/indexer files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is Assistant Archivist for Office of Records Services—Washington, DC (NW). The address is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in freelance editor/indexer files may be obtained from: freelance editors and indexers with whom NARA has contracted to perform editing and indexing services; freelance editors and indexers who have expressed an interest in performing services for NARA; NARA employees who maintain the files; and references furnished by freelance editors and indexers.

NARA 16

SYSTEM NAME:

Library Circulation Files.

SYSTEM LOCATION:

Library circulation files are located at the National Archives Library in the Washington, DC area and at Presidential Libraries. The addresses are listed in Appendix B following the NARA notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include all NARA employees and researchers who have borrowed books and other materials from the library collections of the National Archives Library and/or the Presidential Libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Library circulation files contain the following information about an individual: name, correspondence symbol or address, telephone number, titles and call numbers of items borrowed, and dates that the items were borrowed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains library circulation files on individuals in order to control the circulation of library books, periodicals, and other materials in NARA's library collections. The routine use statements A F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in library circulation files may be retrieved by the name of an individual, by the title of the item charged out, or by the call number for the item.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Library circulation files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for library circulation files in the Washington, DC area is: Assistant Archivist, Office of Records Services—Washington, DC (NW). The system managers for library circulation files in the Presidential Libraries are the directors of the individual Libraries. The addresses for the locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in library circulation files is obtained from NARA employees and researchers who borrow books and other materials from the library collections of the National Archives Library and/or the Presidential Libraries.

NARA 17

SYSTEM NAME:

Grievance Records

SYSTEM LOCATION:

Grievance records are maintained in Employee Relations and Benefits Branch locations at the National Archives at College Park, MD and in St. Louis, MO.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees who have submitted grievances to NARA in accordance with Office of Personnel Management (OPM) Regulations (5 CFR part 771) or in accordance with internal negotiated grievance procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grievance records may include statements of witnesses, reports of interviews and hearings, findings and recommendations of examiners, copies of the original and final decisions, and related correspondence and exhibits. These files may contain some or all of the following information about an individual: name, address, social security number, correspondence symbol, telephone number, occupation, grade, salary information, educational background, employment history, medical information, and names of supervisors and witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, and 7121; Executive Order 10577 (3 CFR 1954 through 1958); Executive Order 10987 (3 CFR 1959 through 1963).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains grievance records on individuals in order to process grievances submitted by or on behalf of NARA employees in accordance with OPM Regulations or internal negotiated grievance procedures.

NARA may disclose only enough information in grievance records to any source from which additional information is requested in the course of processing a grievance in order to: identify the source to the extent necessary, inform the source of the purpose(s) of the request, and identify the type of information requested from the source. NARA may also disclose information in grievance files to officials of labor organizations recognized under the Civil Service Reform Act when the information is relevant to the officials' duties of exclusive presentation concerning personnel policies, practices, and matters affecting work conditions. The routine use statements A, D, E, F, G, and H described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records

RETRIEVABILITY:

Information in grievance records may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Grievance files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

Review of requests from individuals seeking amendment of their records which have been the subject of a judicial or quasi-judicial action will be limited in scope. Review of amendment requests of these records will be restricted to determine if the record accurately documents the action of the NARA ruling on the case and will not include a review of the merits of the action, determination, or finding. NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in grievance records may be obtained from: individuals on whom records are maintained, witnesses, NARA officials, and NARA and GSA payroll and personnel specialists.

NARA 18

SYSTEM NAME:

General Law Files.

SYSTEM LOCATION:

Records are located in the Office of the General Counsel in the Washington, DC, area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: current and former NARA employees, other Federal agency employees, individual members of the public, witnesses in litigation, persons who have requested records under the Freedom of Information Act and/or the Privacy Act, persons about whom requests under the Freedom of Information Act and/or the Privacy Act have been made, and persons involved in litigation to which NARA is a party.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain some or all of the following information about an individual: name, social security number, position description, grade, salary, work history, complaint, credit ratings, medical diagnoses and prognoses, and doctor's bills. The system may also contain other records such as: case history files, copies of applicable law(s), working papers of attorneys, testimony of witnesses, background investigation materials, correspondence, damage reports, contracts, accident reports, pleadings, affidavits, estimates of repair costs, invoices, litigation reports, financial data, and other data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C., Part II; 5 U.S.C., Chapter 33; 5 U.S.C. 5108, 5314–5316 and 42 U.S.C. 20003, *et seq.*; 5 U.S.C. 7151–7154; 5 U.S.C. 7301; 5 U.S.C. 7501, note (adverse actions); 5 U.S.C., Chapter 77; 5 U.S.C. App.; 28 U.S.C. 1291, 1346(b)(c), 1402(b), 1504, 2110; 31 U.S.C. 3701, 3711, 3713, 3717, 3718, 3721.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to: give general legal advice, as requested, throughout NARA; prepare attorneys for hearings and trials; reference past actions; and maintain internal statistics. Information may be disclosed to the Department of Justice in review, settlement, defense, and prosecution of claims, complaints, and lawsuits involving contracts, torts, debts, bankruptcy, personnel adverse action, EEO, unit determination, unfair labor practices, and Freedom of Information and Privacy Act requests. Information may be disclosed to the Office of Government Ethics (OGE) to obtain OGE advice on an ethics issue, to refer possible ethics violations to OGE, or during an OGE evaluation of NARA's Ethics Program. The routine use statements A, B, C, D, E, F, G, and H, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information may be obtained by the name of the individual or by a case number assigned by the court or agency hearing the complaint or appeal.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Most files are temporary records and are destroyed in accordance with disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Significant litigation files are permanent records that are eventually transferred to the National Archives of the United States. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the NARA General Counsel (NGC). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from one or more of the following sources: Federal employees and private parties involved in torts and employee claims, contracts, personnel actions, unfair labor practices, and debts concerning the Federal Government; witnesses; and doctors and other health professionals.

NARA 19

SYSTEM NAME:

Workers Compensation Case Files.

SYSTEM LOCATION:

Workers compensation case files are located in the Human Resources Services office at the National Archives at College Park, and in the administrative offices of field units. The addresses are listed in Appendix B following the NARA notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees and former employees who have reported on CA–1 or CA–2 work-related injuries or other occupational health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Workers compensation case files may include: accident reports, including

CA–1 & 2, Federal Employees Notice of Injury or Occupational Disease; CA–4, Claims For Compensation for Injury or Occupation Disease; CA–8, Claims for Continuance of Compensation on Account of Disability; time and attendance reports, and medical reports from physicians and other health care professionals. These files may contain some or all of the following information about an individual: name, address, correspondence symbol, telephone number, occupation, birth date, names of supervisors and witnesses, and medical information related to work-related accidents or other occupational health problems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7902 and Chapter 81.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains workers compensation case files on individuals in order to identify and record information about those NARA employees who have sustained injuries or reported other occupational health problems, and to facilitate the preparation of statistical and other reports regarding work-related injuries or other occupational health problems. NARA may disclose information in the files to a Federal, State, or local public health service agency, concerning individuals who have contracted certain communicable diseases or conditions. NARA may disclose information in the files to the Department of Labor for purposes of administering the workers compensation program. NARA may disclose information in the files to the Occupational Safety and Health Administration for the purposes of monitoring workplace health and safety issues. The routine use statements A, B, C, D, E, F, G, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in workers compensation case files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Workers compensation case files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is: Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in workers compensation case files may be obtained from: individuals to whom the records pertain, NARA supervisors, NARA personnel specialists, physicians, others providing health care services, and the Department of Labor.

NARA 20

SYSTEM NAME:

Reviewer/Consultant Files.

SYSTEM LOCATION:

Reviewer/consultant files are located at the National Historical Publications and Records Commission (NHPRC) in Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include persons who have expressed an interest in or have served as reviewers or consultants for the NHPRC records or publications grant programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reviewer/consultant files may include resumes, biographical statements, correspondence, and lists containing some or all of the following information about an individual: name, address, telephone number, educational background, professional experience and awards, and titles of publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2501 through 2506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NHPRC maintains reviewer/consultant files on individuals in order to select reviewers who will evaluate proposals received for the records and publications grant programs, and to recommend archival consultants for those State and non-state organizations that have received grants for records and publications projects. NARA may disclose to grant recipients the lists of names of potential consultants, in order for the recipients to contact individuals who have expressed an interest in serving as consultants on grant projects. The routine use statements F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in reviewer/consultant files may be retrieved by the name of the individual or the proposal evaluated by the reviewer.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After hours, the building has security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Reviewer/consultant files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for reviewer/consultant files is the Executive Director, National Historical Publications and Records Commission (NHPRC). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in reviewer/consultant files may be obtained from reviewers and consultants and from references furnished by them.

NARA 21

SYSTEM NAME:

National Historical Publication and Records Commission Fellowship and Editing Institute Application Files

SYSTEM LOCATION:

Fellowship and Editing Institute application files are located in the National Historical Publications and Records Commission (NHPRC) in the Washington, DC area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include applicants for NHPRC fellowships in archival administration and advanced historical editing and for the annual Institute for the Editing of Historical Documents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fellowship and Editing Institute application files may include application forms, correspondence, resumes, college transcripts, and evaluations. These records may contain some or all of the following information about an individual: Name; address; telephone number; educational background; professional experience and awards; archival and historical records experience; titles of publications; and other information provided in letters of reference furnished by applicants and in evaluations completed by fellowship institutions and documentary editing projects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2504 and 2506.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NHPRC maintains fellowship and Editing Institute application files on individuals in order to: Evaluate the preliminary eligibility of applicants for fellowships; jointly select, with the director of the Editing Institute, applicants to attend the Institute for the Editing of Historical Documents; and oversee grant-making and grant administration programs. NHPRC discloses copies of individuals' fellowship application files to officials of fellowship institutions and documentary editing projects for the purposes of selecting fellows and administering fellowships in archival administration and advanced historical editing. NHPRC discloses copies of individuals' Editing Institute applications to the director of the Editing Institute to select applicants to attend the annual Institute and to determine the most useful areas of instruction for successful applicants. The routine use statements A, F and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in fellowship and Editing Institute application files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Nearly all fellowship application files and all Editing Institute application files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). However, on occasion, files for accepted fellowship applications may be selected by the Executive Director for inclusion in grant case files that have met established criteria for permanent retention in the National Archives of the United States. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Executive Director, National Historical Publications and Records Commission (NHPRC), Washington, DC. The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in fellowship and Editing Institute application files may be obtained from: Applicants for fellowships in archival administration or advanced historical editing under the NHPRC grant program; applicants for the Institute for the Editing of Historical Documents; references furnished by applicants; and officials of fellowship institutions, documentary editing projects, and the Institute for the Editing of Historical Documents.

NARA 22

SYSTEM NAME:

Employee Related Files.

SYSTEM LOCATION:

Employee related files may be maintained at supervisory or administrative offices at all NARA facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include former and current NARA employees and relatives of employees of the National Personnel Records Center.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee related files consist of a variety of employee related records maintained for the purpose of administering personnel matters. These files may contain some or all of the following information about an individual: Name; home and emergency addresses and telephone numbers; social security number; birth date; professional qualifications, training, awards, and other recognition; employment history; and information about congressional employee relief bills, conduct, and work assignments. Employee related records may also include military service data on employees of the National Personnel Records Center and their relatives accumulated by operating officials in administering the records security program at the Center. Employee related files do not include official personnel files, which are covered by Office of Personnel Management systems of records OPM/GOVT–1 through 10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. and 31 U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains employee related files on individuals in order to document travel and outside employment activities of NARA employees, and to carry out personnel management responsibilities in general. The routine use statements A, B, C, D, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in employee related files may be retrieved primarily by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Employee related files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

System managers for employee files are the Office heads and staff directors of individual offices and staffs in the Washington, DC area and the directors of the Presidential Libraries and Projects, and Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in employee related files may be obtained from NARA employees and supervisors, and other personnel and administrative records.

NARA 24

SYSTEM NAME:

Personnel Security Files.

SECURITY CLASSIFICATION:

Some of the material contained in this system of records has been classified in the interests of national security pursuant to Executive Orders 12958, as amended and 13142.

SYSTEM LOCATION:

Personnel security records are located in the Space and Security Management Division at the National Archives at College Park, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by the system include: Current and former NARA employees; applicants for employment with NARA; contract employees performing services under NARA jurisdiction; and private and Federal agency researchers, experts, and consultants who request access to security-classified records.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel security files may include questionnaires, correspondence, summaries of reports, and electronic logs of individuals' security clearance status. These records may contain the following information about an individual: Name, current address, telephone number, birth date, birthplace, social security number, educational background, employment and residential history, background investigative material, and security clearance data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450; Executive Order 12958, as amended; Executive Order 12968; Executive Order 13142; and 5 U.S.C. 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains personnel security records on individuals as a basis for determining suitability for Federal or contractual employment and for issuing and recertifying security clearances. Routine use statements C and H, described in Appendix A following the NARA Notices, apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper, microfiche, and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual or by social security number.

SAFEGUARDS:

During business hours, paper and microfiche records are maintained in locked rooms and/or in three-way combination dial safes with access limited to authorized employees. Electronic records are accessible via passwords from workstations located in secured offices. Information is released only to officials on a need-to-know basis. After hours, buildings have security guards and/or doors are secured, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Personnel security files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and

Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in personnel security files may be obtained from: NARA employees; applicants for employment; contractor employees; private and Federal agency researchers, experts, and consultants; law enforcement agencies; other government agencies; intelligence sources; informants; educational institutions; and individuals' employers, references, co-workers, and neighbors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the personnel security case files in this system of records are exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act of 1974, as amended. The system is exempt:

a. To the extent that the system consists of investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence; and

b. To the extent that the system consists of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified material, but only to the extent that the disclosure of such material would reveal the identity of a person who furnished information to the Government under an express promise that the identity of the person would be held in confidence, or, prior to the effective date of the Act, under an implied promise that the identity of the person would be held in confidence. This system has been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the responsibilities of the National Archives and Records Administration in the areas of Federal employment, Government contracts, and access to security-classified information.

NARA 25

SYSTEM NAME:

Order Fulfillment and Accounting System Records.

SYSTEM LOCATION:

Order Fulfillment and Accounting System (OFAS) records are maintained in organizational units in the following Washington, DC area locations:

(1) Office of Records Services—Washington, DC;

(2) Office of Presidential Libraries;

(3) Office of the Federal Register;

(4) Office of Regional Records Services; and

(5) National Archives Trust Fund Branch.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: Researchers who order reproductions at Washington, DC area and regional records facilities or online via the archives.gov website; and customers who order NARA inventory items, such as microform and printed publications, mementos, and other specialty products from catalogues and other marketing publications.

CATEGORIES OF RECORDS IN THE SYSTEM:

OFAS records may include: Ordering forms; correspondence; copies of checks, money orders, credit card citations, and other remittances; invoices; and order and accounting information in the electronic system. These records may contain some or all of the following information about an individual: Name, address, telephone number, record(s) or item(s) ordered, and credit card or purchase order information. OFAS records also include user profile data, reproduction order form data, transaction data, and credit card payment data transmitted from NARA Online Ordering System, NARA 37, via an automated XML (Extensible Markup Language) interface that operates within NARA's secure internal network.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c) and 2307.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains OFAS records on individuals to: Receive, maintain control of, and process orders for reproductions of archival records and other fee items; bill customers for orders; maintain payment records for orders; process refunds; and provide individuals information on other NARA products. Customer order information may be initially disclosed to a NARA agent, a bank that collects and deposits payments in a lockbox specifically used for crediting order payments to the National Archives Trust Fund. NARA may disclose certain order information to contractors, acting as NARA agents that make reproductions of archival records. NARA also may disclose information in OFAS records for the processing of customer refunds to the Bureau of Public Debt (BPD), which provides NARA's financial and accounting system under a cross-servicing agreement. The routine use statements A, E, F, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in OFAS records may be retrieved by the name of the individual and/or the OFAS transaction number. Information in electronic records may also be retrieved by the invoice number or zip code.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. Credit card information

is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

OFAS records are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for OFAS records is the Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in OFAS records is obtained from customers, NARA employees or agents who are involved in the order process, and BPD employees who process refunds.

NARA 26

SYSTEM NAME:

Volunteer Files.

SYSTEM LOCATION:

Volunteer files may be maintained at supervisory or administrative offices at all NARA facilities that use volunteer workers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who have applied to be NARA volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Volunteer files consist of a variety of records maintained by operating officials to administer personnel matters affecting volunteers. Records may include: Applications for volunteer service and for building passes, registration forms, other administrative forms, correspondence, resumes, letters of recommendation, college transcripts and forms, performance assessments, and copies of timesheets. Volunteer files may include some or all of the following information about an individual: Name; home and emergency addresses and telephone numbers; social security number; birth date; professional qualifications, training, awards, and other recognition; employment history; and information about injuries, conduct, attendance, years of service, and work assignments. This system of records does not include official personnel files, which are covered by Office of Personnel Management systems of records OPM/GOVT–1 through 10.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2105(d) and generally 5 and 31 U.S.C.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains volunteer files on individuals to: Evaluate individuals who apply to serve as volunteers, docents, interns, and work study students at NARA facilities; assign work and monitor performance; and carry out personnel management responsibilities in general affecting those volunteers. NARA may disclose attendance and performance information on interns and work study students to colleges and universities that oversee those individuals in student internships and work study programs. The routine use statements A, B, C, D, F, G and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in volunteer files may be retrieved primarily by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Volunteer files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For volunteer files located in Staff Development Services Branch, the system manager is the Assistant Archivist for Administration (NA). For volunteer files located in organizational units in the Office of Records Services—Washington, DC the system manager is the Assistant Archivist for Records Services—Washington, DC (NW). For volunteer files located in individual Presidential Libraries, Projects, and Staffs and Regional Records Services Facilities, the system manager is the director of the Presidential Library, Project, or Staff or Regional Records Services Facilities. The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in volunteer files is obtained from the volunteers themselves, NARA supervisors, persons listed as references in applications submitted by volunteers, and educational institutions.

NARA 27

SYSTEM NAME:

Contracting Officer and Contracting Officer's Technical Representative (COTR) Designation Files.

SYSTEM LOCATION:

Contracting officer and contracting officer's technical representative (COTR) designation files are maintained in the Acquisitions Services Division and the Financial Services Division in the Washington, DC area.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees who have been appointed as NARA contracting officers, Government credit cardholders, and COTRs in accordance with Federal Acquisition Regulations (FAR) and internal procurement procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contracting officer and COTR designation files may include: Standard Forms 1402, Certificate of Appointment; correspondence, copies of training course certificates; copies of training forms; and lists. These files may contain some or all of the following information about an individual: Name, address, NARA correspondence symbol, telephone number, social security number, birth date, position title, grade, procurement authorities, and information about procurement training and Government credit cards issued.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104 and 48 CFR 1.603 generally.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains contracting officer and COTR designation files in order to administer procurement certification and training programs for NARA contracting officers, credit cardholders, and COTRs in accordance with the FAR and internal procurement procedures. The routine use statements A, F, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in contracting officer and COTR designation files may be retrieved by the name of the individual or by NARA correspondence symbol.

SAFEGUARDS:

During business hours, records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Contracting officer and COTR designation files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Electronic files are periodically updated and purged of outdated information. Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for contracting officer and COTR designation files is the Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in contracting officer and COTR designation files may be obtained from the individuals on whom records are maintained, NARA supervisors, and organizations that provide procurement training or issue Government credit cards.

NARA 28

SYSTEM NAME:

Tort and employee claim files.

SYSTEM LOCATION:

Records are located in the Office of General Counsel (NGC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include: Current and former NARA employees, other Federal agency employees, and individual members of the public who have filed a tort claim or an employee claim against NARA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain some or all of the following information about an individual: Name, social security number, position description, grade, salary, work history, complaint, credit ratings, medical diagnoses and prognoses, and doctor's bills. The system may also contain other records such as: Case history files, copies of applicable law(s), working papers of attorneys, testimony of witnesses, background investigation materials, correspondence, damage reports, contracts, accident reports, pleadings, affidavits, estimates of repair costs, invoices, financial data, and other data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552; 5 U.S.C. 552a; 5 U.S.C., Part II; 28 U.S.C. 1291, 1346(b)(c), 1402(b), 1504, 2110, 2401(b), 2402, 2411(b), 2412(c), 2671–2680.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to make determinations on tort and employee claims and for internal statistical reports. Information may be disclosed to: the General Services Administration to process payments for approved claims; and the Department of Justice in review, settlement, defense, and prosecution of claims, and law suits arising from those claims. The routine use statements A, B, C, E, F, and G, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OR RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Tort and employee claim files are temporary records and are destroyed in accordance with disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the General Counsel, Office of General Counsel (NGC). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA Notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from one or more of the following sources: Federal employees and private parties involved in torts and employee claims, witnesses, and doctors and other health professionals.

NARA 29 [DELETED]
NARA 30

SYSTEM NAME:

Garnishment files.

SYSTEM LOCATION:

Records are located in the Office of General Counsel (NGC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees against whom a garnishment order has been filed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system may contain some or all of the following information about an individual: Name, social security number, address, position title and NARA unit, salary, debts, and creditors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Part II; 42 U.S.C. 659; 11 U.S.C. 1325; 5 U.S.C. 15512 to 5514, 5517, 5520.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records are used to process garnishment orders. Information is disclosed to the General Services Administration, acting as NARA's payroll agent, to process withholdings for garnishments. The routine use statements E, F, and H, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Garnishment files are temporary records and are destroyed in accordance with disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager is the General Counsel, Office of General Counsel (NGC). The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from courts that have issued a garnishment order and NARA personnel records.

NARA 31

SYSTEM NAME:

Ride Share Locator Database.

SYSTEM LOCATION:

The ride share locator database is maintained at the Facilities and Personal Property Management Division (NAF).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees whose duty station is or may become College Park, MD and who have expressed an interest in the NARA Ride Share Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

The ride share locator database contains the following information about an individual: Name; city, county and State and zip code of residence; NARA unit; and NARA work phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains the ride share locator database to provide employees with the names of and residential information of other employees who have expressed an interest in sharing rides for daily commuting to the National Archives at College Park, MD. The routine use statements F and H, described in Appendix A following the NARA Notices, also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records from which paper records may be printed.

RETRIEVABILITY:

Information in the ride share locator database may be retrieved by the name of the individual, city, State, and/or zip code.

SAFEGUARDS:

During business hours, paper records are maintained in area accessible to authorized NARA personnel. Electronic records are accessible via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records in the ride share locator database are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the ride share locator database is the Assistant Archivist for Administration (NA). The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the ride share locator database is obtained from individuals who have furnished information to the NARA Ride Share Program.

NARA 32

SYSTEM NAME:

Alternate Dispute Resolution Files.

SYSTEM LOCATION:

Alternate Dispute Resolution (ADR) files are maintained by the Office of General Counsel (NGC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA staff and former staff, who participate in the ADR process, the agency's Dispute Resolution Specialist and Deputy Dispute Resolution Specialist, the agency's RESOLVE Contact, members of the ADR panel (representatives from Equal Opportunity and Diversity Programs (NEEO), the Human Resources Services Division (NHH), and the local American Federation of Government Employees (AFGE) union and contractor personnel used as mediators in the ADR process.

CATEGORIES OF RECORDS IN THE SYSTEM:

ADR files may include: Written and electronic (sometimes sensitive) communication between the employee or former employee, participant representative(s), Dispute Resolution Specialist and Deputy Dispute Resolution Specialist, the agency's RESOLVE Contact, members of the ADR Panel, and the contractor mediator; procurement data; invoices for services; and ADR case files. The system maintains may contain the following information about an individual: Name, home and office addresses, telephone number, social security number, dollar value of services rendered by the contractor, previous employment disputes, and education and employment experience of the contractor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Laws 101–552 and 104–320, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains ADR files in order to facilitate the Alternative Dispute Resolution program at the agency. These records may be used by an employee or former employee in the course of resolving a dispute, by members of the Dispute Resolution staff facilitating dispute resolution and payment of contractors, and by the contract mediators performing services and invoicing for an ADR case. The Routine Use statements A, F, and H, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by: The name of the individual; the location of the work site; a numeric case file number; and/or the type of request.

SAFEGUARDS:

During normal hours of operation, paper records are maintained in areas only accessible to authorized personnel of NARA. Electronic records are accessible via passwords from workstations located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Agency Alternate Dispute Resolution files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for agency ethics ADR program files is the General Counsel, Office of General Counsel (NGC). The address for this organization is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the: NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the agency Alternate Dispute Resolution program files is obtained from NARA staff and former staff, participant representative(s), the Dispute Resolution Staff, the ADR panel, and the contract mediators.

NARA 33

SYSTEM NAME:

Development and Donor Files.

SYSTEM LOCATION:

The agency's Development and Donor files are maintained by the Center for the National Archives Experience (NWE) within the Office of Records Services—Washington, DC (NW) and

the National Archives Trust Fund Division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who donate money or other gifts to NARA, the Foundation for the National Archives, and prospective donors and other persons contacted by the Development Staff, the Archivist of the United States, and other NARA officials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Development and Donor Files may include biographical and demographic information for individuals and organizations; background information, interests, affiliations, and giving history for donors, including their relationship and participation with the organization and its stakeholders; prospect management data such as interests, affiliations, cultivation and solicitation of gifts, strategy reports, and talking points; information on gifts and pledges made and miscellaneous information about each gift; record of acknowledgment packages and solicitation letters, including membership cards, receipts, reminders, renewal notices, program notices, and invitations and attendance at special events.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2112(g)(1); 2305.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains Development and Donor Files in order to facilitate the gift solicitation and receipt authority of the Archivist of the United States on behalf of the National Archives and Records Administration. The information in these files may be shared, but not for redistribution, with the member (must be personal to the member, not shared among members) and staff, Foundation Board Directors, and contractors of the Foundation for the National Archives, which is a non-governmental, 501(c)(3) organization that support the programs and activities of NARA by soliciting, receiving, expending, and otherwise utilizing monetary donations and other gifts on behalf of NARA programs. The Routine Use statements A, E, F, G, and H described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual or the organization, interest, project, or gift level with which the individual is associated.

SAFEGUARDS:

During normal hours of operation, paper records are maintained in areas accessible only to authorized personnel of NARA. Electronic records are accessible via passwords from workstations located in attended offices. After hours, buildings have security guards and/or doors are secured and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Development and Donor files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

For Development and Donor files relating to the activities of the Foundation for the National Archives, the system manager is the Director of the Center for the National Archives Experience (NWE). For Development and Donor files relating to the activities of the National Archives Trust Fund Board, the system manager is the Director, National Archives Trust Fund Division. The addresses for these offices are listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address is listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the Development and Donor files is obtained from the Foundation for the National Archives and by the Center for the National Archives Experience in its daily business activities, including communications with and cultivation and solicitation of prospective donors and members and publicly available sources of NARA.

NARA 34

SYSTEM NAME:

Agency Ethics Program Files.

SYSTEM LOCATION:

The agency's ethics program files are maintained by the Office of General Counsel (NGC). The address for this organization is listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees and former employees who request ethics guidance form the agency's ethics staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Ethics program files may include employee memoranda and correspondence, notes taken by the ethics staff, memoranda summarizing advice listed orally, and electronic records. These files may contain the following information about an individual: name, address, and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Orders 12674 and 12731, 5 CFR Parts 2638 and 7601.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains ethics program files on employees to document advice and opinions listed in ethics matters and to maintain a historical record of ethics opinions that may be used in future ethics cases. Routine use statements A, E, G, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Information in credentials and passes may be retrieved by the name of the individual or date.

SAFEGUARDS:

During business hours, paper records are maintained in areas accessible only to authorized NARA personnel. Electronic records are accessible via

passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Agency ethics program files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for ethic program files is the Office of General Counsel (NGC). The address for this organization is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in ethics program files is obtained from NARA employees, former employees and the agency's ethics staff.

NARA 35

SYSTEM NAME:

Case Management and Reporting System (CMRS)

SYSTEM LOCATION:

This automated system is located at the National Personnel Records Center (Military Personnel Records) in St. Louis, MO, and the National Archives and Records Administration in College Park, MD. The addresses for these locations are listed in Appendix B following the NARA Notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who request information from or access to inactive military personnel, medical, and organizational records in the physical custody of the National Personnel Records Center (Military Personnel Records). Subjects of these inactive records are also covered. In addition, this system covers current and former Federal civilian employees whose paper personnel record have been transferred to the National Personnel Records Center (Civilian Personnel Records) for scanning, transmission to OPM's electronic personnel (eOPF) system, and/or storage at NPRC-CPR.

CATEGORIES OF RECORDS IN THE SYSTEM:

CMRS files may include: correspondence, including administrative forms used for routine inquiries and replies, between NARA staff and requesters; stored copies of frequently requested documents from individual Official Military Personnel Files (OMPF's); production and response time data used for internal reporting purposes; and databases used to respond to requests. These files may contain some or all of the following information about an individual: Name, address, telephone number, position title, name of employer/institutional affiliation, identification of requested records, Social Security Number/Service Number, previous military assignments, and other information furnished by the requester. CMRS files may also include the name and social security number of the subject of the Federal civilian employee personnel file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2110, and 2907

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains CMRS files to: Maintain control of records being requested for either internal or external use, establish employee and requester accountability for records, prepare replies to requester's reference questions, record the status of requesters' requests and NARA replies to those requests, and to facilitate the preparation of statistical and other aggregate reports on employee performance and requester satisfaction. The routine use statements A, C, D, E, F, G, and H, described in Appendix A following the NARA notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in CMRS files may be retrieved by the name, Social Security or military service number of the veteran whose record was the subject of the request. By use of a querying capability, information may also be retrieved by use of a system-assigned request number, by name and date of birth of the veteran, and by requester-supplied information, such as name and address, phone number, or email address. Information in CMRS files related to a Federal civilian employee may be retrieved by the subject of the record's name or Social Security number.

SAFEGUARDS:

During business hours, electronic records are accessible to authorized NARA personnel via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

The disposition of the records in the CMRS system is under consideration. Accordingly, the records generated by the system cannot be destroyed until a Records Schedule is approved by the Archivist. Once the disposition is determined, retention and disposal of the records will be governed in accordance with the applicable disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager, CMRS, is the Director, National Personnel Records Center. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial

determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the CMRS file is obtained from requesters, NARA employees who maintain the file, from the military service department in which the subject of the record served, and from the Federal agency with which the subject of the record was/is employed.

NARA 36

SYSTEM NAME:

Public Transportation Benefit Program Files.

SYSTEM LOCATION:

The transportation benefit program files are maintained in the following locations in the Washington, DC, area and other geographical regions. The addresses for these locations are listed in Appendix B following the NARA Notices:

(1) The Facilities and Personal Property Management Division (NAF);

(2) Presidential libraries, projects, and staffs; and

(3) Regional records services facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All NARA employees who have enrolled in the Public Transit Subsidy Program (PTSP) are covered by this system, including: full-time employees; part-time employees; intermittent employees; and temporary employees and students.

CATEGORIES OF RECORDS IN THE SYSTEM:

The public transportation benefit program files contain information on NARA employees that is used to document the distribution of transportation subsidies. These files contain information submitted on NA Form 6041, Application—Public Transit Subsidy Program, by both current and non-current participants and include: name; home address; Social Security number; NARA unit; and NARA work phone number. In addition, files may contain vouchers and other forms used to document the disbursement of subsidies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104 and Executive Order 13150

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains transportation benefit program files on individuals in order to: provide the Department of Transportation with the names, Social Security numbers, and addresses of NARA employees who have enrolled in the Public Transit Subsidy Program or are members of qualified vanpools; and to verify employee compliance with the rules of the program. The routine use statements A, F, and H, described in Appendix B following the NARA notices, also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper forms (NA 6041, Application—Public Transit Subsidy Program; NA Form 6042—Authorization for Third Party Pickup—Public Transit Subsidy Program) and electronic records.

RETRIEVABILITY:

Information in the public transportation benefit program files may be retrieved by the name of the individual.

SAFEGUARDS:

During business hours, paper records are maintained in area accessible to authorized NARA personnel. Electronic records are accessible to authorized personnel via passwords from workstations located in attended offices. After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

Records in the public transportation benefit program files are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to, NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for the transportation benefit program files in the Washington, DC, area is the PTSP Manager in NAF. Local PTSP managers are designated for the Presidential libraries and regional records services facilities. The address for this location is listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B following the NARA notices.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the public transportation benefit program files is obtained from individuals who have furnished information to the NARA PTSP.

NARA 37

SYSTEM NAME:

NARA Online Ordering System

SYSTEM LOCATION:

The NARA Online Ordering System is located in the data center at the National Archives and Records Administration in College Park, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include researchers who order reproductions of NARA archival materials at *http://www.archives.gov.*

CATEGORIES OF RECORDS IN THE SYSTEM:

NARA Online Ordering System may include: user login data (i.e., user ID and password; user profile data (e.g., name, address, phone number); credit card payment data (e.g., card type, card number, expiration date); reproduction order form data (e.g., detailed information describing the requested archival record); transaction data (e.g., system-generated order identification information such as order number, order date, order type); correspondence from NARA (e.g., written responses to customer requests) and quotations to initiate an order; and, digital reproductions (e.g., digital facsimiles of WWI draft cards available via download).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2116(c), 2307 and 3504.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records maintained in the system are used only for order entry, order validation, order processing, payment processing, and order fulfillment. The public may use the NARA Online Ordering System to complete and submit a reproduction order to NARA. Each night, submissions to the NARA Online Ordering System are sent to NARA's Order Fulfillment and

Accounting System (OFAS—NARA 25) via an automated XML (extensible markup language) interface that operates within NARA's secure internal network. The NARA Online Ordering System maintains profile data (e.g., name, address, phone number) for researchers who initiate orders of reproductions. The profile data is used to automatically complete the payment and/or shipping address sections of the order form so that customers do not have to manually re-enter the information. Neither NARA nor its agents use customer profile data in the NARA Online Ordering System for other purposes. The routine use statements A, E, F, and H, described in Appendix A apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in the NARA Online Ordering System may be retrieved by the NARA customer using his or her user ID and password. Also, summary order data (order number, master number [OFAS order number]), status (e.g., received, processing, shipped, cancelled) and submission date) may be retrieved by the customer or the NARA customer service agent using the order number.

SAFEGUARDS:

Access to the data center that houses the NARA Online Ordering System is restricted to approved systems administrators and, with the exception of a limited number of operations staff, is limited to normal business hours. Electronic records are accessible only on a ''need to know basis'' using controlled logins and passwords from workstations located in attended offices. Credit card information is compartmentalized so that it is available only to those NARA employees responsible for posting and billing credit card transactions. The National Archives at College Park has 24-hour security guards, controlled entrances, and electronic surveillance.

RETENTION AND DISPOSAL:

Order Online! records are temporary records and are destroyed in accordance with the disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for NARA Online Ordering System is: Assistant Archivist for Records Services—Washington, DC (NW). The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records are to notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records are to submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the NARA Online Ordering System is obtained from NARA customers, employees or agents who are involved in the order process, and Bureau of Public Debt (BPD) employees who process refunds.

NARA 38

SYSTEM NAME:

Project Management Records.

SYSTEM LOCATION:

This system is located at the National Archives and Records Administration (NARA) in College Park, MD.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include NARA employees and NARA contractors who work on NARA projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual files may contain some or all of the following information about NARA employees and NARA contractors: name, job title, work organization, supervisor, project assignments, work experience, and work availability. Project files consist of a list of NARA approved projects and related information about these projects. These files will contain some or all of the following information: Work tasks, planned and actual start and finish dates, resource requirements, dependencies and deliverables. Work files consist of information reported by an individual that shows, by task: resource expenditures in hours and dollars, remaining effort to complete the task, date of completion, risk assessments, issues and documentation that shows work progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2104, 31 U.S.C. 1115, and 40 U.S.C. 1423

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains this information to effectively manage NARA's project portfolio. This includes defining projects and, within them, activities, tasks, milestones, and deliverables and assigning individuals to projects, measuring performance of on-going projects against established baselines, assessing the availability of resources to begin new projects and determining the capital costs of completed projects. Records will be disclosed for these uses both to authorized NARA staff and to contractors assisting NARA in these activities. These records may also be used to evaluate the performance of individuals, both NARA staff and contractors, against goals established by project managers and/or contract managers. Records from this system of records may be disclosed as a routine use to an agency or official of the U.S. Government exercising oversight over an activity covered by the system, or over the methods or manner in which NARA manages these activities, the resources committed to them, and their results. Such disclosures are limited to the extent necessary for them to exercise their oversight authority. Oversight agencies include, but are not limited to, the NARA Inspector General, GAO or other entities evaluating, auditing, or reviewing NARA's project management, capital investments, and earned value management. They may include officials of other agencies who are partners of NARA in one or more of the projects covered by the system. The routine use statements A, C, D, E, F, G, and H described in Appendix A also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and paper.

RETRIEVABILITY:

Information in employee related files will be retrieved by the name of the individual.

SAFEGUARDS:

Electronic records are accessible to authorized personnel via password from workstations owned by NARA and maintained in NARA attended offices.

After business hours, buildings have security guards and/or secured doors, and all entrances are monitored by electronic surveillance equipment.

RETENTION AND DISPOSAL:

The disposition of the project management records is under consideration. Accordingly, the records generated cannot be destroyed until a Records Schedule is approved by the Archivist. Once the disposition is determined, retention and disposal of the records will be governed in accordance with the applicable disposition instructions in the NARA Records Schedule (a supplement to, the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer.

SYSTEM MANAGER(S) AND ADDRESS:

The system manager for project management records is the Assistant Archivist for Information Services (NH). The address for this location is listed in Appendix B following the NARA notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information about individuals in the records is obtained primarily from NARA employees and NARA contractors who work on NARA projects. Additional information may be obtained from NARA supervisors, other personnel, NARA operational records and information provided by contractors who provide staff to work on NARA projects.

NARA 39

SYSTEM NAME:

Visitor Ticketing Application (VISTA) Files.

SYSTEM LOCATION:

Visitor Ticketing Application Files are maintained at the Presidential Libraries across the country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include persons who serve as points of contact for groups visiting the Presidential Libraries and invited guests to special events at the libraries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Visitor Ticketing Application Files may include the following information on an individual: mailing address, telephone number, e-mail address, and credit card information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C. 2108, 2111 note, and 2203(f)(1).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

NARA maintains the Visitor Ticketing Application Files on individuals to: store information on groups that interact with the library; conduct outreach with the points of contact with these groups, in order to maintain visitor levels and improve service; to study visitor data over time; and to store information on those attending special events. The routine use statements A, C, E, F, G, and H, described in Appendix A following the NARA Notices, also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic records.

RETRIEVABILITY:

Information in the records may be retrieved by the name of the individual.

SAFEGUARDS:

Electronic records are accessible via passwords from workstations located in attended offices. VISTA Files are maintained on servers unique to each Presidential library.

RETENTION AND DISPOSAL:

Visitor Ticketing Application Files are unscheduled records and, therefore, are retained until the Archivist of the United States approves dispositions. NARA is in the process of scheduling the Visitor Ticketing Application Files.

SYSTEM MANAGER(S) AND ADDRESS:

The system managers for the Visitor Ticketing Application Files are the Directors of the individual Presidential Libraries (NL). The addresses for these locations are listed in Appendix B following the NARA Notices.

NOTIFICATION PROCEDURE:

Individuals interested in inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

RECORD ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORD PROCEDURES:

NARA rules for contesting the contents and appealing initial determinations are found in 36 CFR part 1202.

RECORD SOURCE CATEGORIES:

Information in the Visitor Ticketing Application Files is obtained from researchers and from NARA employees who maintain the files.

Appendix A—Routine Uses

The following routine use statements will apply to National Archives and Records Administration notices where indicated:

A. *Routine Use-Law Enforcement:* In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records, may be referred, as a routine use, to the appropriate agency, whether Federal, State, local, or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

B. *Routine Use-Disclosure When Requesting Information:* A record from this system of records may be disclosed as a routine use to a Federal, State, or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

C. *Routine Use-Disclosure of Requested Information:* A record from

this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, conducting a security or suitability investigation, classifying a job, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

D. *Routine Use-Grievance, Complaint, Appeal:* A record from this system of records may be disclosed to an authorized appeal or grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Office of Personnel Management, the Merit Systems Protection Board, Federal Labor Relations Authority, or the Equal Employment Opportunity Commission when requested in the performance of their authorized duties. To the extent that official personnel records in the custody of NARA are covered within the system of records published by the Office of Personnel Management as Government wide records, those records will be considered as a part of that Government wide system. Other records covered by notices published by NARA and considered to be separate systems of records may be transferred to the Office of Personnel Management in accordance with official personnel programs and activities as a routine use.

E. *Routine Use-Congressional Inquiries:* A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

F. *Routine Use-NARA Agents:* A record from this system of records may be disclosed as a routine use to an expert, consultant, agent, or a contractor of NARA to the extent necessary for them to assist NARA in the performance of its duties. Agents include, but are not limited to, GSA or other entities supporting NARA's payroll, finance, and personnel responsibilities.

G. *Routine Use-Department of Justice/Courts:* A record from this system of records may be disclosed to the Department of Justice or in a proceeding before a court or adjudicative body before which NARA is authorized to appear, when: (a) NARA, or any component thereof; or, (b) any employee of NARA in his or her official capacity; or, (c) any employee of NARA in his or her individual capacity where the Department of Justice or NARA has agreed to represent the employee; or (d) the United States, where NARA determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or by NARA before a court or adjudicative body is deemed by NARA to be relevant and necessary to the litigation, provided, however, that in each case, NARA determines that disclosure of the records is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

H. *Routine Use—Data breach:* A record from this system of records may be disclosed to appropriate agencies, entities, and persons when (1) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (2) NARA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by NARA of another agency or entity) that rely upon the compromised information; and (3) the disclosure is made to such agencies, entities, and persons who are reasonably necessary to assist in connection with NARA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

APPENDIX B

To inquire about your records or to gain access to your records, you should submit your request in writing to: NARA Privacy Act Officer, General Counsel (NGC), National Archives and Records Administration, 8601 Adelphi Road, Room, College Park, MD 20740–6001.

If the system manager is the Assistant Archivist for Record Services—Washington, DC (NW), the records are located at the following address: Office of Record Services—Washington, DC (NW), National Archives and Records Administration, 8601 Adelphi Road, Room 3400, College Park, MD 20740–6001.

If the system manager is the Assistant Archivist for Presidential Libraries (NL), the records are located at the following address: Office Presidential Libraries (NL), National Archives and Records Administration, 8601 Adelphi Road, Room 2200, College Park, MD 20740–6001.

If the system manager is the director of a Presidential library, the records are located at the appropriate Presidential library, staff or project:

George Bush Library, 1000 George Bush Drive West, College Station, TX 77845.

Jimmy Carter Library, 441 Freedom Parkway, Atlanta, GA 30307–1498.

William J. Clinton Library, 1200 President Clinton Avenue, Little Rock, AR 72201.

Dwight D. Eisenhower Library, 200 SE 4th Street, Abilene, KS 67410–2900.

Gerald R. Ford Library, 1000 Beal Avenue, Ann Arbor, MI 48109–2114.

Herbert Hoover Library, 210 Parkside Drive, P.O. Box 488, West Branch, IA 52358–0488.

Lyndon B. Johnson Library, 2313 Red River Street, Austin, TX 78705–5702.

John F. Kennedy Library, Columbia Point, Boston, MA 02125–3398.

Richard Nixon Library, 1800 Yorba Linda Boulevard, Yorba Linda, CA 92886.

Richard Nixon Library—College Park, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.

Ronald Reagan Library, 40 Presidential Drive, Simi Valley, CA 93065–0600.

Franklin D. Roosevelt Library, 4079 Albany Post Road, Hyde Park, NY 12538–1999.

Harry S. Truman Library, 500 West U.S. Highway 24, Independence, MO 64050–1798.

If the system manager is the Assistant Archivist for Regional Records Services (NR), the records are located at the following address:

Office Regional Records Services (NR), National Archives and Records Administration, 8601 Adelphi Road, Room 3600, College Park, MD 20740–6001.

If the system manager is the director of a regional records services facility, the records are located at the appropriate regional records services facility:

NARA's Pacific Alaska Region (Anchorage), 654 West Third Avenue, Anchorage, Alaska 99501–2145.

NARA's Southeast Region (Atlanta), 5780 Jonesboro Road, Morrow, Georgia 30260.

NARA's Northeast Region (Boston), Frederick C. Murphy Federal Center, 380 Trapelo Road, Waltham, Massachusetts 02452–6399.

NARA's Great Lakes Region (Chicago), 7358 South Pulaski Road, Chicago, Illinois 60629–5898.

NARA's Great Lakes Region (Dayton), 3150 Springboro Road, Dayton, Ohio 45439–1883.

NARA's Rocky Mountain Region (Denver), Bldg. 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, Colorado 80225–0307.

NARA's Southwest Region (Fort Worth), 1400 John Burgess Drive, Fort Worth, Texas 76140–6222.

NARA's Southwest Region (Fort Worth), 501 West Felix Street, Building 1, Fort Worth, Texas 76115–3405.

NARA's Central Plains Region (Kansas City), 2312 East Bannister Road, Kansas City, Missouri 64131–3061.

NARA's Pacific Region (Laguna Niguel, CA), 24000 Avila Road, 1st Floor, East Entrance, Laguna Niguel, California 92677–3497.

NARA's Pacific Region (Riverside, CA), 23123 Cajalco Road, Perris, California 92570–7298.

NARA's Central Plains Region (Lee's Summit, MO), 200 Space Center Drive, Lee's Summit, Missouri 64064–1182.

NARA's Northeast Region (New York City), 201 Varick Street, New York, New York 10014–4811.

NARA's Mid Atlantic Region (Center City Philadelphia), 900 Market Street, Philadelphia, Pennsylvania 19107–4292.

NARA's Mid Atlantic Region (Northeast Philadelphia), 14700 Townsend Road, Philadelphia, Pennsylvania 19154–1096.

NARA's Northeast Region (Pittsfield, MA), 10 Conte Drive, Pittsfield, Massachusetts 01201–8230.

NARA's Pacific Region (San Francisco), 1000 Commodore Drive, San Bruno, California 94066–2350.

NARA's Pacific Alaska Region (Seattle), 6125 Sand Point Way NE., Seattle, Washington 98115–7999.

National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, Missouri 63118–4126.

National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100.

If the system manager is the Director of the Information Security Oversight Office (ISOO), the records are located at the following address: Information Security Oversight Office (ISOO), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 100, Washington, DC 20408–0001.

If the system manager is the Director of the National Historical Publications and Records Commission (NHPRC), the records are located at the following address: National Historical Publications and Records Commission (NHPRC), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room 106, Washington, DC 20408–0001.

If the system manager is the Director of the Policy and Planning Staff, the records are located at the following address: Policy and Planning Staff (NPOL), National Archives and Records Administration, 8601 Adelphi Road, Room 4100, College Park, MD 20740–6001.

If the system manager is the Assistant Archivist for Information Services, the records are located at the following address: Office of Information Services (NH), National Archives and Records Administration, 8601 Adelphi Road, Room 4400, College Park, MD 20740.

If the system manager is the Assistant Archivist for Administration, the records are located at the following address: Office of Administration (NA,) National Archives and Records Administration, 8601 Adelphi Road, Room 4200, College Park, MD 20740.

If the system manager is the Director of the Federal Register, the records are located at the following address: Office of the Federal Register (NF), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

If the system manager is the Inspector General, the records are located at the following address: Office of the Inspector General (OIG), National Archives and Records Administration, 8601 Adelphi Road, Room 1300, College Park, MD 20740.

If the system manager is the General Counsel, the records are located at the following address: General Counsel (NGC), National Archives and Records Administration, 8601 Adelphi Road, Room 3110, College Park, MD 20740.

If the system manager is the Director of the Center for the National Archives Experience, the records are located at the following address: Center for the National Archives Experience (NWE), National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Room G9, Washington, DC 20408–0001.

If the system manager is the Director of the Washington National Records Center, the records are located at the following address: Washington National Records Center (NWMW), National Archives and Records Administration, 4205 Suitland Road, Suitland, MD 20746–8001.

[FR Doc. E7–19351 Filed 10–2–07; 8:45 am]

BILLING CODE 7515–01–P

Federal Register

Wednesday,
October 3, 2007

Part V

Department of Homeland Security

Coast Guard

33 CFR Part 169

Long Range Identification and Tracking of Ships; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 169

[USCG–2005–22612]

RIN 1625–AB00

Long Range Identification and Tracking of Ships

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would require, consistent with international law, certain ships to report identifying and position data electronically. This proposed rule is intended to implement an amendment to chapter V of the International Convention for the Safety of Life at Sea (SOLAS), regulation 19–1, and would better enable the Coast Guard to correlate Long Range Identification and Tracking (LRIT) data with data from other sources, detect anomalies, and heighten our overall Maritime Domain Awareness. This proposed rule is consistent with the Coast Guard's strategic goals of maritime security and maritime safety, and the Department's strategic goals of awareness, prevention, protection, and response.

DATES: Comments and related material must reach the Docket Management Facility on or before January 2, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2005–22612 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov*.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

You must also send comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure that the comments are received on time, the preferred method is by e-mail at *nlesser@omb.eop.gov* or fax at 202–395–6566. An alternate, though slower, method is by U.S. mail to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

You may inspect the material proposed for incorporation by reference at room 1210, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–372–1425. Copies of the material are available as indicated in the ''Incorporation by Reference'' section of this preamble.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, contact Mr. William Cairns, Office of Navigation Systems, Coast Guard, telephone 202–372–1557, e-mail *William.R.Cairns@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. Submitting Comments

If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2005–22612), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time, click on ''Search for Dockets,'' enter the docket number for this rulemaking (USCG–2005–22612) in the Docket ID box, and click enter. You may also visit the Docket Management Facility in Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

C. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

D. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register**

published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

II. Acronyms

AIS Automatic Identification System
ASP Application Service Provider
CSP Communications Service Provider
DHS Department of Homeland Security
DOT Department of Transportation
DSC Digital Selective Calling
GMDSS Global Maritime Distress and Safety System
HF High Frequency
ICC Intelligence Coordination Center
IMO International Maritime Organization
ITU International Telecommunication Union
LRIT Long Range Identification and Tracking
MF Medium Frequency
MISLE Marine Information for Safety and Law Enforcement
MSC Maritime Safety Committee
NEPA National Environmental Policy Act of 1969
NPRM Notice of Proposed Rulemaking
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
SAR Search and Rescue
SOLAS International Convention for the Safety of Life at Sea, 1974, as amended
SOLAS V/19–1 SOLAS Chapter V Regulation 19–1
SSAS Ship Security Alert System
VHF Very High Frequency
VMS Vessel Monitoring System

III. Background and Purpose

This section discusses the United States' involvement in the development of the international long-range identification and tracking (LRIT) scheme, provides a summary of the LRIT amendment to chapter V of the International Convention for the Safety of Life at Sea (SOLAS), regulation 19–1, and describes how LRIT information will be generated and processed.

A. LRIT History—International and Domestic

In 2002, Congress enacted the Maritime Transportation Security Act of 2002, Pub. L. 107–295, 116 Stat. 2064 (November 25, 2002), one provision of which authorized the Secretary of the Department in which the Coast Guard is operating to develop and implement a long-range automated vessel tracking system for all vessels in United States waters that are equipped with the Global Maritime Distress and Safety System (GMDSS) or equivalent satellite technology. The Secretary was authorized to use existing maritime organizations to collect and monitor tracking information under the system. 46 U.S.C. 70115 (2002). The Secretary delegated that authority to the Coast Guard. Department of Homeland Security Delegation No. 0170.1. The new system came to be called long-range identification and tracking of ships.

The Coast Guard early-on realized that it would be necessary to work through the International Maritime Organization (IMO) to obtain an international agreement to achieve the full benefits of LRIT. Under the leadership of the Commandant of the Coast Guard, the U.S. aggressively pursued at IMO an international agreement by an amendment to the SOLAS Convention, 1974, that would authorize flag State, port State and coastal State access to LRIT information (ship name, position, and date and time of report) for all ships subject to that amendment.

We use the terms ''flag State,'' ''port State,'' and ''coastal State'' throughout this document. Flag State refers to the nation whose flag the ship is entitled to fly. Port State refers to a nation at whose internal waters, ports, or roadsteads a ship will call, is calling, or has called. Coastal State refers to a nation off whose coast a ship is transiting without calling at its internal waters, ports, or roadsteads.

This explanation of these three terms is provided to assist the reader in understanding the provisions of this proposed rule, and is not intended as a comprehensive definition of those terms. Nor is it to be understood to express a view as to the jurisdictional competence or authority of the nation in its capacities as a flag State, port State, or coastal State.

From 2002 to 2006, the U.S. energetically pursued a SOLAS LRIT amendment through the IMO's Maritime Safety Committee (MSC) and its subsidiary bodies. The resulting agreement included the establishment of a legal mechanism under the customary law of the sea, as reflected in the 1982 Law of the Sea Convention, by which a coastal State could access foreign ship identification and tracking information for all ships subject to the regime a specified distance from the coast, including those not calling at a port or place of the coastal State. The SOLAS Contracting Governments, meeting at IMO, set that distance at 1,000 nautical miles.

An amendment to the SOLAS Convention was agreed to at the 81st session of the MSC, as were performance standards and functional requirements for the new LRIT system. See, Resolutions MSC.202(81), containing the text of the amendment; and MSC.210(81) containing the performance standards and functional requirements of the LRIT system; both adopted May 19, 2006.

Also during this period, the United States Congress continued its support for the LRIT goal, by amending 46 U.S.C. 70115 in 2004 and again in 2006. The first amendment, struck the word, ''may'' and inserted ''shall, consistent with international treaties, conventions, and agreements to which the United States is a party,''. See, sec. 803(b) of the Coast Guard and Maritime Transportation Act of 2004, Pub. L. 108–293, 118 Stat. 1080 (August 9, 2004). The second amendment inserted a date certain, April 1, 2007, by which the LRIT system was to be developed and implemented. See, sec. 107 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Pub. L. 109–347, 120 Stat. 1891 (October 13, 2006). It is clear from the foregoing serial amendments to 46 U.S.C. 70115, and the legislative history that Congress places great emphasis on the development and implementation of LRIT, consistent with SOLAS, and that the LRIT system must be developed as rapidly as possible. See Legislative History, H. Conf. Rpt. No. 107–777, at 84 (Nov. 13, 2002), reprinted in 2002 U.S. Code Cong. and Adm. News, 1325; H. Conf. Rep. No. 108–617, at 97 (Jul. 20, 2004), reprinted in 2004 U.S. Code Cong. and Adm. News, 964, 965; H. Conf. Rpt. No. 109–711, at 83 (Sep. 29, 2006).

As a Contracting Government to SOLAS, the United States will be bound by the LRIT amendment. The IMO-sponsored LRIT system is scheduled to become operational on December 31, 2008. Most ships to which SOLAS V/19–1 applies must begin transmitting their position reports starting with the first survey of the ship radio installation after December 31, 2008; new ships, those built on or after December 31, 2008, will need to transmit position reports as soon as they get underway on their first international voyage.

At IMO meetings in February 2007, including a Sub-Committee on Radiocommunications and Search and Rescue meeting, COMSAR 11, numerous countries expressed doubts about the system being ready for operational capability by the scheduled date and suggested that it might be necessary to postpone the IMO implementation date. The United States was among those countries voicing strong opposition to delaying the implementation date.

The Coast Guard intends to implement LRIT for U.S. ships and ships calling at ports or places of the United States according to the schedule set forth in the proposed rule, regardless

of whether the IMO decides to postpone the international implementation date. If IMO LRIT implementation dates are pushed back, the Coast Guard would establish a national data center, the equivalent of an LRIT Data Center as described in section III.C below. This data center would be for U.S. flag ships and would make that data center available to other SOLAS Contracting Governments as a cooperative data center on an interim basis on the condition that those Contracting Governments that choose to take advantage of this offer arrange for their ships to pay for the communications and associated costs of transmitting the four positions reports per day required by the performance standards in Resolution MSC.210(81).

If a Contracting Government does not participate in the U.S. national or cooperative data center, or does not participate in any other data center capable of transmitting LRIT information to the U.S. national or cooperative data center, then vessels from that Contracting Government that would be required to submit position reports to an LRIT Data Center under this proposed rule, would instead be required to transmit a position report every six hours to the National Vessel Movement Center. This is the same center where notices of arrival required under 33 CFR part 160, subpart C, are sent.

B. Summary of the SOLAS Amendment

The LRIT amendment to SOLAS does not prejudice the rights, jurisdiction, or obligations of states under international law. SOLAS chapter V, regulation 19–1 (SOLAS V/19–1) applies to the following ships on international voyages:

- Passenger ships (all ships carrying more than 12 passengers);
- Cargo ships of 300 gross tonnage or more, including high speed craft; and
- Mobile offshore drilling units (self propelled).

These ships must be fitted with equipment that meets performance standards in IMO Resolution MSC.210(81) and automatically transmits—

- The identity of the ship;
- Its position; and
- The date and time the position report was provided.

Contracting Governments are to bear all communications costs associated with LRIT information. There are no communications charges to ships for this purpose.

Contracting Governments are entitled to purchase a ship's LRIT information based on their relationship to the ship. A flag State may purchase information on a ship anywhere in the world as long as that ship is entitled to fly its flag. Unless the ship is within the internal waters of another State, a port State may purchase LRIT information on a ship calling at its ports after the ship has indicated its intention to do so and a coastal State may purchase LRIT information on a ship that is within a specified distance—not to exceed 1,000 nautical miles—off the coastal State's baseline. Additionally, a coastal State would not be entitled to position reports from a ship in its Flag Administration's territorial seas.

Shipboard equipment must be capable of being switched off in exceptional circumstances to protect the safety or security of the ship. In addition to those circumstances specified in international agreements, rules, or standards, the ship's master may switch the equipment off if leaving it on would compromise the safety or the security of the ship.

A Contracting Government is entitled to decide for security or other reasons not to provide LRIT information to other Contracting Governments in their capacity as a coastal State. If a Contracting Government wants to take advantage of this provision, it must notify IMO, which will in turn notify others.

The SOLAS LRIT regime has provisions for safeguarding LRIT data. Contracting Governments must—

- Recognize and respect commercial confidentiality and sensitivity of LRIT information they receive;
- Protect the information from unauthorized access and disclosure; and
- Use the LRIT information in a manner consistent with international law.

Contracting Governments with search and rescue (SAR) authorities are entitled to LRIT information without charge for SAR purposes.

C. Description of the LRIT System

The LRIT system consists of the shipborne LRIT information transmitting equipment, Communications Service Providers (CSPs), Application Service Providers (ASPs), LRIT Data Centers, including any related Vessel Monitoring System(s) (VMSs), the LRIT Data Distribution Plan and the International LRIT Data Exchange. Certain aspects of the performance of the LRIT system are reviewed or audited by the LRIT Coordinator acting on behalf of the IMO and its Contracting Governments. Figure 1 provides an illustration of the LRIT System Architecture.

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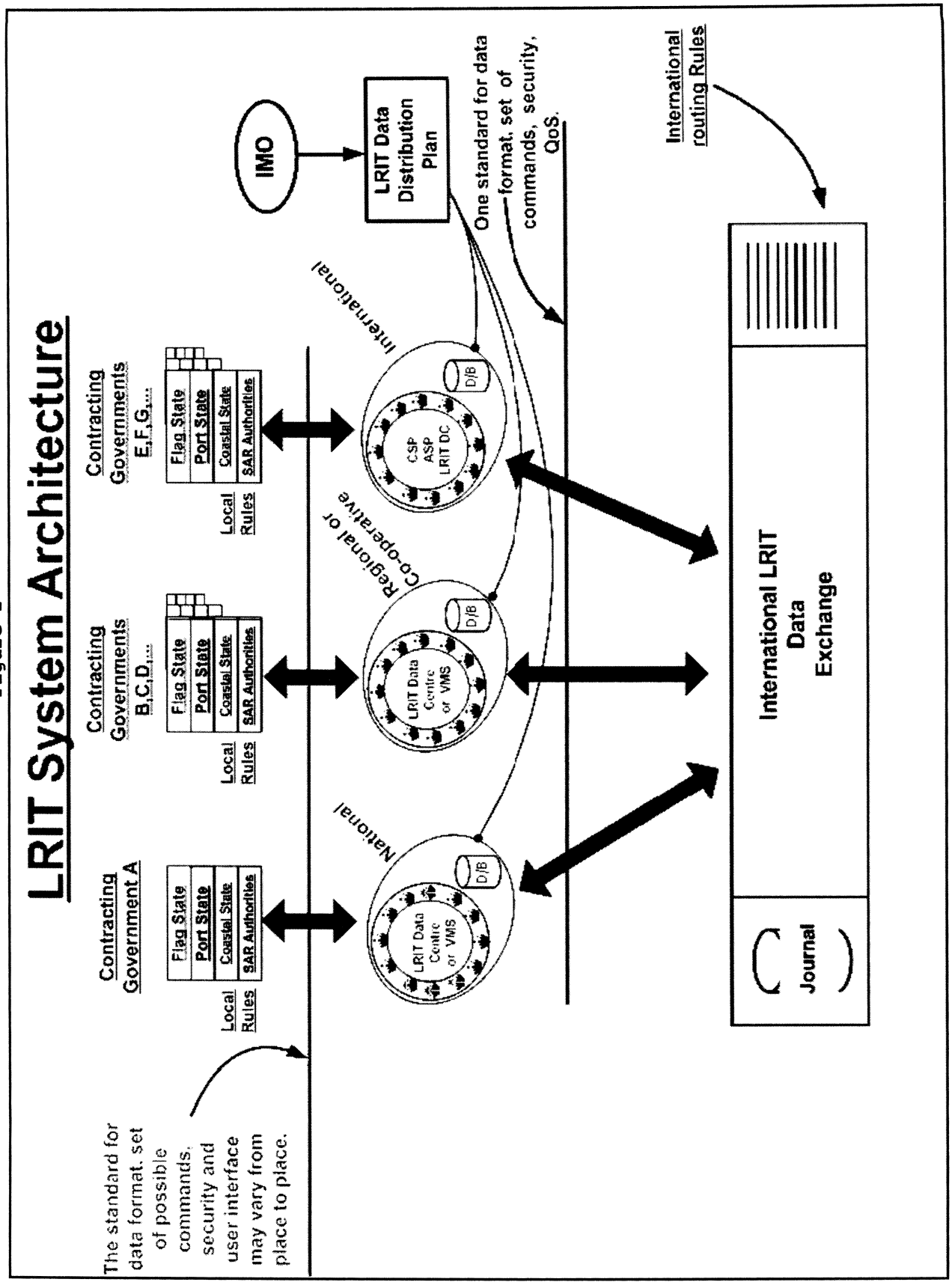
Figure 1



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LRIT information is provided upon request to Contracting Governments and SAR services entitled to receive the information through a system of LRIT Data Centers. These centers may be National, Regional, Co-operative, or International. Each Administration determines the LRIT Data Center to which its flag ships will report. When information must be obtained from another data center, the International LRIT Data Exchange routes the request and the response.

Each Administration provides to the LRIT Data Center it has selected a list of the ships entitled to fly its flag that will be required to transmit LRIT information. Flag Administrations should update such lists as and when changes occur. Ships need only transmit their LRIT information directly to the LRIT Data Center selected by their Administration.

Shipborne Equipment

SOLAS Chapter IV, Radio communications, requires ships operating beyond sea areas A1 and A2, but within sea area A3, to be equipped with an Inmarsat-C ship earth station (SOLAS IV/10). The Inmarsat satellite network provides high quality data (and voice) services for ships at sea under the GMDSS. The shipborne LRIT equipment may either be the radio equipment that forms part of the GMDSS (i.e., Inmarsat-C) or other satellite-based communications, or other secure (i.e., encrypted) terrestrial communications. Initially, LRIT was envisioned to use Inmarsat-C to transmit position reports. Inmarsat-C receiver equipment has changed over the years and, accordingly, its ability to satisfy LRIT requirements is varied. Some Inmarsat-C equipment may already be able to meet LRIT performance standards. Some may need hardware or software upgrades. Some older Inmarsat-C equipment (depending on the manufacturer), may not be upgradeable to meet LRIT requirements and will need to be replaced. We are not able to identify the population of vessels that may require upgrades or equipment replacement, but we do not anticipate this to be a large population. We invite public comment on this assumption about the size of this population.

Under SOLAS Chapter IV, Radio communications, ships operating in sea areas A1 and A2 need very high frequency (VHF) and medium frequency (MF), or VHF and Inmarsat-C (SOLAS IV/9). As noted in the ''Discussion of the Proposed Rule'' section below, the United States has not defined sea areas A1 or A2. Those ships that currently operate in A1 and A2 on international voyages will need to carry LRIT equipment. This is an added equipment requirement for those ships that currently satisfy SOLAS requirements with VHF and MF. This is not believed to be a significant population. We invite public comment on this assumption.

As the design of the LRIT system evolved at IMO, there was an accommodation for multiple CSPs and the associated shipborne LRIT equipment. For example, many shipping companies use fleet management systems which utilize satellite communications equipment other than Inmarsat to transmit information. Additionally, secure terrestrial high frequency (HF) communications may also satisfy LRIT requirements. All shipborne equipment will be registered with a given ASP that is recognized by the Administration.

Communications Service Providers

CSPs provide services which link the various parts of the LRIT system using communications protocols in order to ensure the end-to-end secure transfer of the LRIT information. A CSP is prohibited from using non-secure broadcast systems. A CSP may use a satellite-based communications system or a secure (encrypted) terrestrial communications system capable of reaching the requisite distances (i.e., high frequency radio). A CSP may also provide services as an ASP.

Application Service Providers

ASPs offer value-added services to LRIT Data Centers. An ASP provides a communication protocol interface between the CSPs and the LRIT Data Center, to enable—

- Remote integration of the shipborne equipment into an LRIT Data Center;
- Automatic configuration of transmission of LRIT information;
- Automatic modification of the interval of transmission of LRIT information;
- Automatic suspension of transmission of LRIT information;
- On-demand transmission of LRIT information; and
- Automatic recovery and management of transmission of LRIT information.

ASPs also provide an integrated transaction management system for the monitoring of LRIT information throughput and routing, and ensure that LRIT information is collected, stored and routed in a reliable and secure manner.

LRIT Data Center

An LRIT Data Center may be National, Regional, Cooperative, or the International Data Center. Each Administration decides to which LRIT Data Center its ships are required to transmit their LRIT information. The LRIT Data Center ensures that LRIT Data Users are only provided with the LRIT information they are entitled to receive as specified in SOLAS V/19–1. Each LRIT Data Center collects LRIT information directly from ships assigned to it by the Administration. It also collects LRIT information from ships instructed by their Administration to transmit the LRIT information to the center through the International LRIT Data Exchange. Similarly, it makes available LRIT information to other LRIT Data Centers through the International LRIT Data Exchange.

LRIT Data Centers archive LRIT information for at least 1 year and until such time as the annual report of the audit of its performance by the LRIT Coordinator is accepted by IMO.

All LRIT Data Centers would provide certain information to SAR services. These position reports, transmitted by all ships located within the geographic area specified by the SAR service requesting the information, would permit the rapid identification of ships which may be called upon to provide assistance in relation to the search and rescue of persons in distress at sea. The LRIT information will be provided irrespective of the location of the geographic area and even if the geographic area is outside the SAR region associated with the SAR service requesting the information.

National, Regional and Co-operative LRIT Data Centers may also serve as a National, Regional, or Co-operative VMS and may require, as VMS, the transmission from ships of additional information, or of information at different intervals, or of information from ships which are not required to transmit LRIT information.

If a National, Regional or Co-operative LRIT Data Center collects additional information from ships, it will transmit only the required LRIT information to the other LRIT Data Centers through the International LRIT Data Exchange.

International LRIT Data Center

There is one International LRIT Data Center for the ships of Contracting Governments not participating in a National, Regional or Co-operative LRIT Data Center.

International LRIT Data Exchange

There is one International LRIT Data Exchange which routes LRIT information between LRIT Data Centers using the information provided in the LRIT Data Distribution Plan.

LRIT Data Distribution Plan

The LRIT Data Distribution Plan includes—

- A list of Contracting Governments and SAR services entitled to receive LRIT information, and their points of contact;
- Information on the boundaries of geographic areas within which each Contracting Government is entitled to receive LRIT information about ships in the area;
- Information given by a Contracting Government pursuant to SOLAS V/19–1;
- A list of ports and port facilities together with the associated geographic co-ordinates (based on World Geodetic System 84 datum) located within the territory of each Contracting Government;
- The National, Regional, Co-operative and International LRIT Data Center(s) and their points of contact; and
- A record indicating which LRIT Data Center is collecting and archiving LRIT information for each of the Contracting Governments.

LRIT Coordinator

The LRIT Coordinator reviews the performance of the LRIT system taking into account the provisions of SOLAS V/19–1 and the current performance standard and reports its findings at least annually. The LRIT Coordinator reviews the performance of ASPs that serve the International LRIT Data Center; audits the performance of all LRIT Data Centers based on archived information and their fee structures; audits the performance of the International LRIT Data Exchange and its fee structure, if any; and verifies that Contracting Governments and SAR services receive the LRIT information they have requested and are entitled to receive.

Administrations

Each Administration decides to which LRIT Data Center its ships are required to transmit their LRIT information. Each Administration provides to the selected LRIT Data Center the following information for each of its ships required to transmit LRIT information:

- Name of ship;
- IMO ship identification number;
- Call sign; and
- Maritime Mobile Service Identity.

Contracting Governments

Each SOLAS Contracting Government may obtain the LRIT information to which it is entitled under the provisions of SOLAS V/19–1, and has requested of the appropriate LRIT Data Center. A SOLAS Contracting Government provides the LRIT Data Center the criteria for receiving such information. The Contracting Government may give the LRIT Data Center standing orders regarding the criteria for receiving LRIT information.

Search and Rescue Services

A SAR service, when it wishes to receive LRIT information pursuant to the provisions of SOLAS V/19–1, indicates to the LRIT Data Center the criteria for receiving such information. According to SOLAS V/19–1, SAR services shall receive this information free of charge. Subject to the provisions of the national legislation of the SOLAS Contracting Government concerned, SAR services provide information when requested by the LRIT Coordinator to enable the review of the performance of the LRIT system and for the resolution of any disputes.

IV. Discussion of Proposed Rule

The proposed rule would require certain ships on an international voyage to transmit position information using LRIT equipment. These requirements would appear in a new subpart to 33 CFR Part 169: Subpart C—Transmission of Long Range Identification and Tracking Information.

As stated in proposed § 169.200, the purpose of the proposed LRIT regulations is to implement SOLAS V/19–1 and to require certain ships engaged on an international voyage to transmit ship identification and position information electronically. The types of ships required to transmit position reports are identified in proposed § 169.205: Passenger ships, including high-speed passenger craft, and cargo ships, including high speed craft, of 300 gross tonnage or more, and self-propelled mobile offshore drilling units.

Under proposed § 169.210, a U.S. flag ship required to transmit position reports must do so at all times when engaged on an international voyage. A foreign flag ship must transmit position reports depending on its relationship to the United States. A foreign ship must transmit position reports once it has announced its intention to enter a U.S. port or place under U.S. notice of arrival requirements in 33 CFR part 160, subpart C. Once a foreign ship is within 1,000 nautical miles of the United States baseline, it must transmit position reports unless, the ship's Flag Administration, under authority of SOLAS V/19–1.9.1, has directed the ship not to do so.

As noted above, many ships subject to this proposed rule will already have the necessary transmission equipment because of existing radio communications requirements under SOLAS Chapter IV and applicability requirements in SOLAS I/3 and IV/1. In addition, our definition of international voyage in proposed § 169.5 would capture U.S. flag ships operating from a foreign port. These ships would be subject to SOLAS XI–2/6 requirements and required under 33 CFR 104.297 to have a Ship Security Alert System (SSAS) which, like GMDSS equipment, should allow the ship to meet LRIT requirements without purchasing new equipment.

LRIT implementation dates are based on when a ship is constructed and where it operates. The earliest LRIT implementation date in proposed § 169.220 would be December 31, 2008, for ships constructed on or after that date. Ships constructed before December 31, 2008, would be required to comply with LRIT requirements by the first survey of the ships radio installation after December 31, 2008, if the ship operates within—

- One hundred (100) nautical miles of the United States baseline, or
- Within range of an Inmarsat geostationary satellite, or other Application Service Provider recognized by the Administration, with which continuous alerting is available.

An additional 6 months is provided—until the first survey of radio installation after July 1, 2009—for ships constructed before December 31, 2008, that operate both within and outside the area or range identified immediately above. But those ships must meet the earlier deadline if they operate within that area or range on or before the first survey of the ships radio installation after July 1, 2009.

We do not use the term ''sea area'' in our proposed rule. IMO uses that term in SOLAS V/19–1.4, regarding these installation dates above, as well as in describing a LRIT exemption. We have used a ship-within-range approach represented by set distances, instead, because the United States has not yet defined sea area A1 or A2, as it is permitted to do under SOLAS IV/1.12 and 1.13 consistent with IMO Resolution A.801(19). For the purposes of implementing SOLAS V/19–1, we propose the following distances as the functional equivalents of our as-yet undefined sea areas: Sea area A1, within 20 nautical miles from the U.S. baseline; sea area A2, within 20 to 100 nautical miles from the U.S. baseline.

As stated in proposed § 169.215, LRIT equipment must be type-approved and meet the requirements of IMO Resolutions A.694(17) and MSC.210(81), and IEC standard IEC 60945. Manufacturers seeking type approval

should submit details of their equipment to Commandant, Office of Design and Engineering Standards. Under proposed § 169.225, a ship must use an Application Service Provider recognized by its Administration. Under proposed § 169.230, position reports must be transmitted every 6 hours unless a more frequent interval is requested remotely by an LRIT Data Center.

As specified in proposed § 169.240, a ship may switch its LRIT equipment off when permitted by its Flag Administration or in circumstances described in SOLAS V/19–1.7, but under proposed § 169.245, the ship's master must inform the Flag Administration promptly if the LRIT equipment is switched off or fails to operate. The reason for switching the equipment off, along with the duration of it being off, must be recorded in the ship's logbook.

An exemption from LRIT requirements is provided in proposed § 169.235 for ships equipped with an operating automatic identification system (AIS) if the ship operates only within 20 nautical miles of the United States baseline, warships, and ships operating solely on the Great Lakes.

In addition to adding subpart C, we also propose to revise the general provision in subpart A of 33 CFR part 169 by revising the description of the purpose of the part, adding LRIT-related definitions in § 169.5, and adding an ''Incorporation by Reference'' section where we incorporate IMO resolutions A.694(17), MSC.202(81) and MSC.210(81), and IEC standard IEC 60945, respectively, related to SOLAS V/19–1 and LRIT performance standards and functional requirements.

V. Regulatory Analysis

A. Regulatory Evaluation

Section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This proposed rule is not a ''significant regulatory action'' under Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. OMB has not reviewed it under that Order.

The Maritime Transportation Security Act, authorized the Coast Guard under the Department of Homeland Security Delegation No. 0170.1, to implement the use of LRIT for U.S. and foreign flag ships off the U.S. coastlines that are equipped with GMDSS, i.e., INMARSAT-C, or equivalent satellite technology. The requirement of the carriage of this equipment for foreign flag vessels is contained in the SOLAS Convention, 1974, as amended, and in 47 CFR part 80 for U.S. flag vessels. When implemented, LRIT, as an amendment to SOLAS, would enhance overall maritime domain awareness by providing the United States, as a Contracting Government to SOLAS, with the identities and current location information of vessels that are within 1,000 nautical miles of the U.S., which includes vessels that may be in innocent passage or on the high seas. The Contracting Governments, including the U.S., meeting at the IMO set the distance at 1,000 nautical miles. As an ancillary benefit, LRIT may also assist the Coast Guard in the area of search and rescue by reducing the response time to the location of vessels in distress.

This proposed rule would affect U.S. and foreign flag SOLAS vessels that transit internationally. LRIT would affect vessels engaged on international voyages and would include passenger vessels carrying more than 12 passengers including high-speed craft, cargo ships 300 gross tonnage or more including high-speed craft, and self-propelled mobile offshore drilling units.

The equipment necessary to transmit LRIT data is not a new carriage requirement under this proposed rule. The affected U.S. flag vessel population should already have the requisite GMDSS equipment onboard, as defined in 47 CFR part 80, that is operable and capable of transmitting a vessel's position automatically that meets the performance standards in IMO Resolution MSC.210 (81) and that can transmit LRIT data as detailed in the ''Description of the LRIT System,'' Section III.C, above.

We also envisioned LRIT to be backward compatible with existing equipment onboard vessels and we do not have any data to suggest otherwise. We estimate that less than 5 percent of U.S. flag vessels (less than 23 out of the estimated 450) may need some type of equipment enhancement (either software upgrades or equipment upgrades such as a new GMDSS unit for example) in order to satisfy the LRIT requirement and may incur minimal costs as a result of this proposed rule. We estimate the cost for a new GMDSS unit or equivalent satellite unit to be around $3,000. If new units were needed on only 23 U.S. flag vessels, then the equipment cost incurred by industry would be less than $70,000 to fulfill the LRIT requirement.

We request comments from the public to determine whether your company would be required to make software or hardware upgrades or replacements in order to comply with the requirements of this proposed rule. In addition, we also request information on what this cost would be per affected vessel and how this would impact your company.

In addition, we anticipate that the crew would not engage in activities outside of their normal duties in order to comply with the LRIT requirement. The only requirement for each vessel is to have the GMDSS activated when the vessel is underway so its position can be reported automatically.

Flag States, port States, and coastal States, as described previously in this preamble, that are entitled to request and receive the LRIT information, would be required to pay for this service. The United States, as a Contracting Government, would incur the cost for vessels that transit within 1,000 nautical miles of the U.S. coastline that transmit their position signals to a data center that collects the information.

Based on information from the Coast Guard's Intelligence Coordination Center (ICC) and Marine Information for Safety and Law Enforcement (MISLE) data, we estimate that 3,000 vessels transit within 1,000 nautical miles of the U.S. coastlines on any given day and would be affected by this proposed rule. To obtain the U.S. flag population of vessels, we utilized the Coast Guard's MISLE database and searched vessels that are SOLAS-certificated and that have an ''ocean'' route designation. Of the approximately 3,000 vessels that ICC estimated, approximately 450 are U.S. flag vessels and the remaining balance is foreign flag vessels that transit internationally.

The LRIT equipment would require a one-time activation and would remain on unless switched off in exceptional circumstances to protect the safety or security of the ship, or when the ship is no longer engaged on an international voyage. Once the crew activates the onboard equipment, information would be transmitted automatically from the vessel to an LRIT Data Center. More information on the LRIT System can be found in the ''Description of the LRIT System,'' Section III.C, above.

Based on the SOLAS LRIT amendments, one transmission may be made every six hours, or four times a day, 365 days a year. The Coast Guard's Office of Navigation Systems estimates that each transmission would cost the U.S. Government $0.25, or even less if

transmissions are purchased in bulk. We use $0.25 as a reasonable estimate for our analysis. We estimate that foreign flag vessels would make approximately 10,200 transmissions per day (2,550 vessels × 4 transmissions per day) for a total of 3,723,000 transmissions per year (2,550 vessels × 4 transmissions per day × 365 days per year). We estimate that U.S. flag vessels would make approximately 1,800 transmissions per day (450 vessels × 4 transmissions per day) for a total of 657,000 transmissions per year (450 vessels × 4 transmissions per day × 365 days per year).

We estimate that the U.S. Government would incur data transmission costs of approximately $930,750 (3,723,000 transmissions × $0.25 per transmission) annually from foreign flag vessels and $164,250 (657,000 transmissions × $0.25 per transmission) annually from U.S. vessels for a total annual cost of $1,095,000.

B. Small Entities

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

We have reviewed this proposed rule for potential economic impacts on small entities. Since the U.S. Government would incur costs associated with the transmission of information from a vessel to the United States and we estimate that any equipment upgrade cost that may be incurred by a ship would be no more than $3,000 and that less than 23 ships would require such upgrades, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rulemaking so that they can better evaluate its effects on them and participate in the rulemaking. If you think that this proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning these provisions or options for compliance, please consult with the Coast Guard personnel listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. Note, the Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

D. Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow.

Title: Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data.

OMB Control Number: 1625–xxxx.

Summary of The Collection Of Information: Certain vessels will periodically report identity and position data electronically.

Need for Information: When implemented, LRIT will enhance security by providing the United States with the identities and current location of vessels off our coastlines. The United States would then have sufficient time to evaluate the security risk posed by a vessel and then respond, if necessary, to reduce the risk of a possible security threat. In addition, there will also be an immediate safety benefit by enhancing the information available to SAR services. Accurate information on the location of a vessel in distress as well as vessels in the area that could lend assistance will save valuable response time to affect a timely rescue.

Proposed Use of Information: Provide the United States with identity and current location data for a vessel off our coast and assess whether there is a security risk or to assist rescue coordination centers response to a vessel in distress.

Description of the Respondents: Owners/operators of U.S. flag ships that trade internationally.

Number of Respondents: Approximately 450 vessels.

Frequency of Response: A one-time GMDSS LRIT system initialization for each vessel.

Burden of Response: 20 minutes per vessel.

Estimate of Total Annual Burden: 150 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to OMB for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES.**

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

E. Federalism

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

It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as the reporting of casualties and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are

within the field foreclosed from regulation by the States. See the decision of the Supreme Court in the consolidated cases of United States v. Locke and Intertanko v. Locke, 529 U.S. 89, 120 S.Ct. 1135, March 6, 2000.

The requirements in this proposed rule that certain ships on international voyages have and operate LRIT equipment that meets international performance standards fall into the categories of equipping ships and operating that equipment. Because the States may not regulate within these categories, preemption under Executive Order 13132 is not an issue.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. Civil Justice Reform

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

I. Protection of Children

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

J. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 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.

K. Energy Effects

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

L. Technical Standards

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

Our proposed rule would use technical standards that were adopted by IMO's Maritime Safety Committee. The IMO is considered a voluntary consensus standards group, but even if it was not, the OMB Circular regarding NTTAA, A–119, makes an exception for activities ''carried out pursuant to treaties''—such as revising Coast Guard regulations to reflect SOLAS amendments.

M. Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. A preliminary ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. We seek any comments or information that may lead to discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 169

Endangered and threatened species, Marine mammals, Marine safety, Navigation (water), Radio, Reporting and recordkeeping requirements, Vessels, Water pollution control.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 169 as follows:

PART 169—SHIP REPORTING SYSTEMS

1. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1230(d), 1231; 46 U.S.C. 70115, Department of Homeland Security Delegation No. 0170.1.

§ 169.1 [Amended]

2. Amend § 169.1 as follows:

a. In the section heading, remove the word ''subpart'' and add, in its place, the word ''part''; and

b. In the last sentence, add the words ''maritime security and domain awareness,'' immediately after ''navigation safety,''.

3. In § 169.5, revise the section heading; add introductory text and add, in alphabetical order, the definitions of the terms ''Administration'', ''Cargo ship'', ''Flag Administration'', ''Gross tonnage'', ''High speed craft'', ''High speed passenger craft'', ''International voyage'', ''Long range identification and tracking (LRIT) information or position report'', ''LRIT Data Center'', ''Mobile offshore drilling unit'', ''Passenger ship'', and ''United States'' to read as follows:

§ 169.5 How are terms used in this part defined?

As used in this part—

Administration means the Government of the State whose flag the ship is entitled to fly.

Cargo ship means any ship which is not a passenger ship.

Flag Administration means the Government of a State whose flag the ship is entitled to fly.

Gross tonnage means tonnage as defined under the International Convention on Tonnage Measurement of Ships, 1969.

* * * * *

High speed craft means a craft that is operable on or above the water and is capable of a maximum speed equal to or exceeding $V=3.7\times displ^{.1667}$, where ''V'' is the maximum speed and ''displ'' is the vessel displacement corresponding to the design waterline in cubic meters.

High speed passenger craft means a high speed craft carrying more than 12 passengers.

International voyage means a voyage from a country to which the present International Convention for the Safety of Life at Sea (SOLAS), 1974 applies to a port outside such country, or conversely. For U.S. ships, such voyages will be considered to originate at a port in the United States, regardless of when the voyage actually began. Such voyages for U.S. ships will continue until the ship returns to the United States from its last foreign port.

Long range identification and tracking (LRIT) information or *position report* means a report containing the following information:

(1) The identity of the ship;

(2) The position of the ship (latitude and longitude); and

(3) The date and time of the position provided.

LRIT Data Center means a center established by a SOLAS Contracting Government or a group of Contracting Governments, or in the case of the International Data Center, by IMO, to request, receive, process, and archive LRIT information. An LRIT Data Center may be National, Regional, Co-operative or International.

* * * * *

Mobile offshore drilling unit means a self-propelled vessel capable of engaging in drilling operations for the exploration or exploitation of subsea resources.

Passenger ship means a ship that carries more than 12 passengers.

* * * * *

United States means the States of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

4. In subpart A, add § 169.15 to read as follows:

§ 169.15 Incorporation by reference: Where can I get a copy of the publications mentioned in this part?

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, it is available for inspection at the Coast Guard, Office of Navigation Systems (CG–3PWN), 2100 Second Street SW., Washington, DC 20593–0001, and is available from the sources indicated in this section.

(b) *International Electrotechnical Commission (IEC) Bureau Central de la Commission Electrotechnique Internationale,* 3 rue de Varembé, P.O. Box 131, 1211 Geneva 20, Switzerland.

(1) IEC 60945, Maritime navigation and radiocommunication equipment and systems general requirements—methods of testing and required test results, Edition 4.0 (2002–08), incorporation by reference approved for § 169.215.

(2) [Reserved]

(c) *International Maritime Organization (IMO),* 4 Albert Embankment, London SE1 7SR, U.K.

(1) IMO Resolution MSC.202(81), Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended, May 19, 2006, incorporation by reference approved for § 169.240.

(2) IMO Resolution MSC.210(81), Performance Standards and Functional Requirements for the Long-Range Identification and Tracking of Ships, May 19, 2006, incorporation by reference approved for § 169.215.

(3) Resolution A.694(17), General requirements for shipborne radio equipment forming part of the global maritime distress and safety system (GMDSS) and for electronic navigational aids, 6 November 1991, incorporation by reference approved for § 165.215.

5. Add subpart C, consisting of §§ 169.200 through 169.245, to read as follows:

Subpart C—Transmission of Long Range Identification and Tracking Information

Sec.

169.200 What is the purpose of this subpart?
169.205 What types of ships are required to transmit LRIT information (position reports)?
169.210 Where during its international voyage must a ship transmit position reports?
169.215 How must a ship transmit position reports?
169.220 When must a ship be fitted with LRIT equipment?
169.225 Which Application Service Providers may a ship use?
169.230 How often must a ship transmit position reports?
169.235 What exemptions are there from reporting?
169.240 When may LRIT equipment be switched off?
169.245 What must a ship master do when LRIT equipment is switched off or fails to operate?

Subpart C—Transmission of Long Range Identification and Tracking Information

§ 169.200 What is the purpose of this subpart?

This subpart implements Regulation 19–1 of SOLAS Chapter V (SOLAS V/19–1) and requires certain ships engaged on an international voyage to transmit vessel identification and position information electronically. This requirement enables the Coast Guard to obtain long range identification and tracking (LRIT) information and thus heightens our overall maritime domain awareness, enhances our search and rescue operations, and increases our ability to detect anomalies and deter transportation security incidents.

§ 169.205 What types of ships are required to transmit LRIT information (position reports)?

The following ships, while engaged on an international voyage, are required to transmit position reports:

(a) A passenger ship, including high speed passenger craft.

(b) A cargo ship, including high speed craft, of 300 gross tonnage or more.

(c) A mobile offshore drilling unit while underway and not engaged in drilling operations.

§ 169.210 Where during its international voyage must a ship transmit position reports?

The requirements for the transmission of position reports, imposed by the United States, vary depending on the relationship of the United States to a ship identified in § 169.205.

(a) *Flag State relationship.* A U.S. flag ship engaged on an international voyage must transmit position reports wherever they are located.

(b) *Port State relationship.* A foreign flag ship engaged on an international voyage must transmit position reports after the ship has announced its intention to enter a U.S. port or place under requirements in 33 CFR part 160, subpart C.

(c) *Coastal State relationship.* A foreign flag ship engaged on an international voyage must transmit position reports when the ship is within 1,000 nautical miles of the baseline of the United States, unless their Flag Administration, under authority of SOLAS V/19–1.9.1, has directed them not to do so.

§ 169.215 How must a ship transmit position reports?

A ship must transmit position reports using Long Range Identification and Tracking (LRIT) equipment that has been type-approved by their Administration. To be type-approved by the Coast Guard, LRIT equipment must meet the requirements of IMO Resolutions A.694(17) and MSC.210(81), and IEC standard IEC 60945 (Incorporated by reference, see § 169.15).

§ 169.220 When must a ship be fitted with LRIT equipment?

A ship identified in § 169.205 must be equipped with LRIT equipment—

(a) Before getting underway, if the ship is constructed on or after December 31, 2008.

(b) By the first survey of the radio installation after December 31, 2008, if the ship is—

(1) Constructed before December 31, 2008, and

(2) Operates within—

(i) One hundred (100) nautical miles of the United States baseline, or

(ii) Range of an Inmarsat geostationary satellite, or other Application Service Provider recognized by the Administration, with which continuous alerting is available.

(c) By the first survey of the radio installation after July 1, 2009, if the ship is—

(1) Constructed before December 31, 2008, and

(2) Operates within the area or range specified in paragraph (b)(2) of this section as well as outside the range of an Inmarsat geostationary satellite with which continuous alerting is available. While operating in the area or range specified in paragraph (b)(2) of this section, however, a ship must install LRIT equipment by the first survey of the radio installation after December 31, 2008.

§ 169.225 Which Application Service Providers may a ship use?

A ship may use an Application Service Provider (ASP) recognized by its Administration. Some Communication Service Providers may also serve as an ASP.

§ 169.230 How often must a ship transmit position reports?

A ship's LRIT equipment must transmit position reports at 6-hour intervals unless a more frequent interval is requested remotely by an LRIT Data Center.

§ 169.235 What exemptions are there from reporting?

A ship is exempt from this subpart if it is—

(a) Fitted with an operating automatic identification system (AIS), under 33 CFR 164.46, and operates only within 20 nautical miles of the United States baseline,

(b) A warship, naval auxiliaries or other ship owned or operated by a SOLAS Contracting Government and used only on Government non-commercial service, or

(c) A ship solely navigating the Great Lakes of North America and their connecting and tributary waters as far east as the lower exit of the St. Lambert Lock at Montreal in the Province of Quebec, Canada.

§ 169.240 When may LRIT equipment be switched off?

A ship engaged on an international voyage may switch off its LRIT equipment only when it is permitted by its Flag Administration, or in circumstances detailed in SOLAS V/19–1.7 (Incorporated by reference, see § 169.15).

§ 169.245 What must a ship master do if LRIT equipment is switched off or fails to operate?

(a) If a ship's LRIT equipment is switched off or fails to operate, the ship's master must inform his or her Flag Administration without undue delay.

(b) The master must also make an entry in the ship's logbook that states—

(1) His or her reason for switching the LRIT equipment off, or an entry that the equipment has failed to operate, and

(2) The period during which the LRIT equipment was switched off or non-operational.

Note to § 169.245: For U.S. vessels, the U.S. Coast Guard's Operations System Center (OSC) serves as the Flag Administration for purposes of this section. The OSC is located in Kearneysville, WV, and may be contacted by phone at 877–872–4797, or e-mail at *LRIT@uscg.mil.*

Dated: September 28, 2007.

J.G. Lantz,

Acting Assistant Commandant for Prevention, U.S. Coast Guard.

[FR Doc. 07–4895 Filed 9–28–07; 3:29 pm]

BILLING CODE 4910–15–P

Federal Register

Wednesday,
October 3, 2007

Part VI

The President

Proclamation 8181—National Breast Cancer Awareness Month, 2007

Proclamation 8182—National Disability Employment Awareness Month, 2007

Federal Register
Vol. 72, No. 191
Wednesday, October 3, 2007

Presidential Documents

Title 3—

The President

Proclamation 8181 of September 28, 2007

National Breast Cancer Awareness Month, 2007

By the President of the United States of America

A Proclamation

Breast cancer is the second leading cause of cancer-related deaths among American women. During National Breast Cancer Awareness Month, we renew our commitment to fighting this disease, raising awareness, and supporting those affected by breast cancer.

Research has shown that several factors may increase the risk of developing breast cancer, including family history, age, genetics, and obesity. By making healthy lifestyle choices and exercising regularly, individuals can help reduce the risk of developing breast cancer. Mammograms, regular self-exams, and clinical breast exams are also vital because they can help doctors diagnose cancer before it has a chance to spread. When breast cancer is detected early, treatment is more effective, giving hope to patients and helping save lives.

My Administration is committed to strengthening our Nation's efforts against this devastating disease. Earlier this year I was pleased to sign the ''National Breast and Cervical Cancer Early Detection Program Reauthorization Act,'' which will allow us to continue helping low-income and uninsured women gain access to vital cancer screening. In order to best detect and treat breast cancer, Federal agencies are collaborating with national organizations, State health agencies, and other key groups to promote important disease education and prevention activities. Our Nation leads the world in medical research, and through the dedicated efforts of thousands of Americans, we can build a healthier and more hopeful future for our citizens.

During National Breast Cancer Awareness Month, we remember those living with breast cancer and their family and friends who provide them with love and support. Their courage and determination are an inspiration to us all. We also recognize the innovative, lifesaving work of doctors, researchers, and other medical professionals. Through their efforts to prevent, detect, and treat breast cancer, they are helping make a difference in the lives of our citizens. Until we find a cure for breast cancer, we will continue our Nation's fight against this disease.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws of the United States, do hereby proclaim October 2007 as National Breast Cancer Awareness Month. I call upon Government officials, businesses, communities, health care professionals, educators, volunteers, and the people of the United States to continue our Nation's strong commitment to preventing, treating, and ultimately curing breast cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–4936
Filed 10–2–07; 8:49 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8182 of September 28, 2007

National Disability Employment Awareness Month, 2007

By the President of the United States of America

A Proclamation

National Disability Employment Awareness Month is an opportunity to recognize the contributions and accomplishments of Americans with disabilities and to underscore our Nation's commitment to advancing employment opportunities for all our citizens.

Americans with disabilities strengthen our country's workforce, and their achievements help keep our Nation the world's economic leader. Landmark reforms such as the Americans with Disabilities Act of 1990 have helped to ensure that individuals with disabilities are better able to engage in productive work and participate fully in the life of our Nation. It is important that we continue to expand on these opportunities for Americans with disabilities by eliminating the barriers and false perceptions that hinder them from joining the workforce. By enhancing the workplace environment for people with disabilities, employers can help provide access to jobs that allow these individuals to demonstrate their potential and realize their dreams.

Since 2001, my New Freedom Initiative has helped promote the full participation of people with disabilities in all areas of society, including education, training, and employment. Programs such as ''Ticket to Work'' and services at One-Stop Career Centers have helped improve access to employment training and placement services for individuals who want to work. Throughout the Federal Government, we have worked to improve access to jobs for individuals with disabilities and to promote greater inclusiveness in the workforce. Individuals and employers can learn more about the Federal Government's disability-related programs by visiting DisabilityInfo.gov. We will continue to build on the progress that has been made for individuals with disabilities and will work to ensure that our Nation remains a place of opportunity for all Americans.

To recognize the contributions of Americans with disabilities and to encourage all citizens to ensure equal opportunity in the workforce, the Congress (36 U.S.C. 121) has designated October of each year as ''National Disability Employment Awareness Month.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 2007 as National Disability Employment Awareness Month. I call upon Government officials, labor leaders, employers, and the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of September, in the year of our Lord two thousand seven, and of the Independence of the United States of America the two hundred and thirty-second.

[FR Doc. 07–4937
Filed 10–2–07; 8:49 am]
Billing code 3195–01–P

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 3668/P.L. 110–90

TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Sept. 29, 2007; 121 Stat. 984)

H.J. Res. 43/P.L. 110–91

Increasing the statutory limit on the public debt. (Sept. 29, 2007; 121 Stat. 988)

H.J. Res. 52/P.L. 110–92

Making continuing appropriations for the fiscal year 2008, and for other purposes. (Sept. 29, 2007; 121 Stat. 989)

H.R. 3625/P.L. 110–93

To make permanent the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2007; 121 Stat. 999)

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